
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
EBONY THOMPSON
ACTING CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

October 5, 2023

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 23-0394 – Street Encroachment – 229 East Montgomery Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 23-0394 for form and legal sufficiency. The bill would permit, with certain conditions, the construction and maintenance of a portion of a building located at 229 East Montgomery Street that would encroach on the public right-of-way on the west side of Battery Avenue. The bill refers to a plat on file with the Department of Transportation (“DOT”) that shows the area of encroachment. That plat, which is part of the bill file, appears to show a proposed rear addition to an existing corner rowhome that creates an overhang encroaching approximately three feet into the sidewalk abutting Battery Avenue.

The City’s Charter makes clear that the Mayor and City Council’s title to a street is inalienable. City Charter, Art. VIII, § 1. However, the Charter authorizes the City to grant “permanent minor privileges,” which are defined as “those in the nature of steps, porticoes, bay windows, bow windows, show windows, columns, tiers, covered vaults, covered areaways, drains or drainpipes, and the like which cannot be removed without a material alteration of the property where the said privilege is located.” Charter, Art. VIII, § 9(b).

The bill’s proposed encroachment appears to qualify as a permanent minor privilege. The Charter provides that the Board of Estimates (“BOE”) may grant minor privileges, upon written application from the applicant, “for such an amount of money and upon such terms as the [BOE] may consider right and proper without the necessity of an ordinance or advertising.” Charter, Art. VIII, § 2. The Charter authorizes the BOE to delegate its powers and duties relating to minor privileges to any department or other municipal agency. *Id.*

Apparently, with regard to encroachments, the BOE has delegated such authority to the Department of Housing and Community Development (“DHCD”) and to DOT. *See* City Building Code 3201.3.1 (“No person may use, encroach on, or connect to any street, highway, alley, or other public right-of-way for any purpose unless that person first obtains permission to do so by: 1. an ordinance of the Mayor and City Council, 2. a minor privilege permit issued by or under the

authority of the Board of Estimates, or 3. an appropriate permit issued by the Department of Transportation.”). This bill is the requisite ordinance to satisfy the requirements of Building Code Section 3201.3.1.

The bill file indicates that the area of the encroachment is a second floor side addition over the sidewalk. Accordingly, the encroachment likely falls under Section 3202.3 of the Building Code, which provides that the maximum projection into the public right of way for this type of encroachment (8 feet or more above grade) is the same as in the International Building Code (“IBC”). The corresponding IBC section establishes a maximum encroachment of four feet for encroachments of this kind. Because the bill provides that the encroachment shall be no more than three feet, it complies with Section 3202.3 of the Building Code. The bill also requires the construction and maintenance of the structure to comply with all relevant City ordinances, rules, and regulations.

Assuming the above facts are true, the Law Department can approve this bill for form and legal sufficiency.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey Hochstetler', with a long horizontal flourish extending to the right.

Jeffrey Hochstetler
Chief Solicitor

cc: Ebony Thompson, Acting City Solicitor
Nina Themelis, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Chief Solicitor
Michelle Toth, Assistant Solicitor
Teresa Cummings, Assistant Solicitor