

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

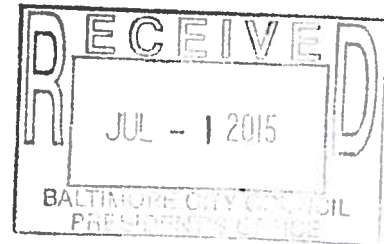


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

July 1, 2015

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



Re: City Council Bill 15-0507 – Zoning – Conditional Use Conversion of Single Family Dwelling Unit to a 2-Family Dwelling Unit in the R-8 Zoning District – Variance – 1912 West Baltimore Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 15-0507 for form and legal sufficiency. The bill permits the conversion of a 1-family dwelling unit to a 2-family dwelling unit at 1912 West Baltimore Street, which is in an R-8 Zoning district. Such conversions are permitted in R-8 only by ordinance. Zoning Code of Baltimore City (“ZC”), § 3-305(b)(2).

In addition to authorizing a conversion, subject to certain conditions, the bill also authorizes two variances from the requirements of the ZC. Specifically, it requests a variance from the lot area requirement and a variance from off-street parking requirements. The Law Department’s concern with Council Bill 15-0507 focuses on the off-street parking variance.

The bill proposes to grant access to off-street parking from an alley that is less than the 15 feet width required by ZC, §10-306(a)(2)(“each vehicle parking space must be designed with...access to...an alley at least 15 feet wide.”). The Report from the Planning Department (“Report”) justifies the need for the variance by noting that nearby properties have rear yard parking pads and use the same alley to access their parking pads. Report at 2.

Section 15 of the ZC, however, does not contain a specific provision authorizing a variance from alley-width requirements. Furthermore, only specific purposes set forth in Article 15, Subtitle 2 are eligible for variance. ZC § 15-102. This mean, if a variance is needed for alley-width requirements, the City Council can only grant it by declaring the property unusable unless alley-width requirements are relaxed pursuant to ZC § 15-214.

Under the above section, the Mayor and City Council may authorize a variance if, in addition to the findings under §§ 15-218 and 15-219, it finds: “(1) the lot cannot reasonably be used for any of the permitted or conditional uses set forth for the zoning district in which it is

located; (2) the use or bulk regulations applicable to the lot have the effect of depriving the owner of all reasonable use of the lot; and (3) the variance is necessary to avoid arbitrariness.” The Law Department notes, however, that no facts in evidence establish this lot as being unusable unless an alley-width variance is granted. The use of § 15-214 begs the question: what prohibits the lot from being used as a 1 or 2-family dwelling without parking? Unless a reasonable case can be made at the committee hearing, § 15-214 is inapplicable.

A less troublesome option exists than declaring the lot unusable, should be City Council wish to proceed with it. Its use requires several interlocking steps:

- (1) We note the Planning Department has supplied information to the effect that this structure predates 1971. According to ZC § 10-203(b), changes to structures built before April 20, 1971 must provide off-street parking only in the amount by which the requirements for the new use exceed those for the existing use.
- (2) This structure is empty at present. An empty structure is considered to be a single-family dwelling. *See* ZC, § 3-305(a)(2).
- (3) As a single family dwelling, only one off-street parking space is required. ZC, § 10-405(1)(i).
- (4) A variance may reduce the number of required off-street parking spaces by 75%. ZC § 15-208(b). A 75% reduction leaves merely 25% of a single space.
- (5) Any fraction less than ½ may be disregarded. ZC, § 10-402(a).

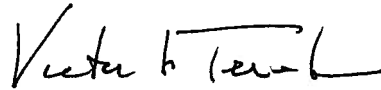
Thus, the use of the above steps will eliminate the requirement for off-street parking.

Granting a conditional use requires that certain procedures be followed. *See* ZC §§ 3-305(c), 14-208 (conditional uses must follow procedures in Title 16), 15-302 (variances in conjunction with conditional uses must follow procedures in Title 16); 16-101(c)(2), 16-101(d)(1) (conditional use is a type of legislative authorization, which is a type of zoning legislation); 16-203, 16-401, 16-402 (notice, posting and hearing requirements); 3-305(c), 16-301, 16-302, 16-304 (referral to certain City agencies, which are obligated to review the bill in a specified manner); 16-403, 16-404 (limitations on the City Council’s ability to amend the bill, including a Third Reading hold-over before final passage because the bill includes variances, not just a conditional use); *see also* Md. Code, Land Use, § 10-303.

Pursuant to ZC, § 15-217, granting a variance requires the City Council to make certain findings of fact: specifically, those required by §15-218 (findings of unnecessary hardship or practical difficulty; and § 15-219 (other required findings). In addition, pursuant to § 16-304, the City Council is required to include a finding that that Board of Zoning and Municipal Appeals and the Planning Commission have based their recommendations to the City Council on considerations required by ZC Title 14 (Conditional Uses).

In sum, if the City Council makes findings of fact as outlined above, and assuming all other procedural requirements are met, the Law Department will approve the bill for form and legal sufficiency.

Sincerely,

A handwritten signature in black ink, appearing to read "Victor K. Tervala". The signature is fluid and cursive, with a long horizontal stroke at the end.

Victor K. Tervala
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Jenifer Landis, Assistant Solicitor