

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

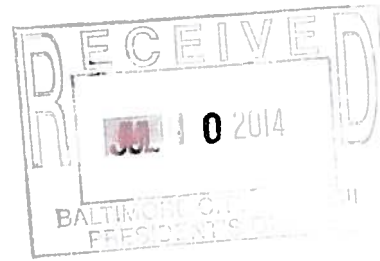


DEPARTMENT OF LAW

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

July 10, 2014

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



Attn: Executive Secretary

Re: City Council Bill 14-0378 – Zoning – Amending Ordinance 13-176

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 14-0378 for form and legal sufficiency. The bill amends Ordinance 13-176 to amend the site plan attached to and made part of that Ordinance, which permitted the establishment, maintenance, and operation of housing for the elderly on the property known as 1600 North Chester Street (Block 1469, Lots 11-22, 24-31A, and 67-75). The bill also permits modification of the site plan by approval of the Planning Commission and modifies the variance granted by Ordinance 13-176 for a certain yard setback requirement.

The Law Department's concern with this bill is the language on page 2, lines 5 and 6. This language permits the Planning Commission to approve future amendments to the site plan. Although this language is somewhat ambiguous, it appears to intend that in the future, any amendments to the site plan would not require approval by ordinance; only the approval of the Planning Commission.

Granting this power is problematic. The site plan is made part of the proposed ordinance, according to the language on page 2, lines 1 through 4 ("The approved site plan...is attached to and made part of this Ordinance"). Given the language in lines 1 through 4, once the site plan is made part of the ordinance, any change to the site plan is an amendment to the ordinance. Amending an ordinance is a legislative act, which cannot be delegated to the Planning Commission. *See Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 161 (1999) ("The rule is plain and well established that legislative or discretionary powers or trust devolved by law or charter in a council or governing body cannot be delegated to others....").

In order to avoid an illegal delegation of power, the Law Department recommends the following amendments: On page 2, lines 3 and 4, strike the words "is attached to" and after the comma following the date "April 26, 2014" substitute "and any amendments made thereto

*Fav with Amend*

pursuant to Paragraph 2 of this Section, are". If the recommended amendments are made, Paragraph 1 of Section 1 will ultimately read as follows: "The approve site plan, as depicted on Sheet C101, "Plot Plan", Dated April 26, 2104, and any amendments thereto made pursuant to Paragraph 2 of this Section, are made part of this Ordinance."

If the above amendments are made, or amendments using similar language having the same effect, the Law Department will approve the bill for form and legal sufficiency.

Very truly yours,



Victor K. Tervala  
Chief Solicitor

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