

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

October 31, 2011

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

Re: City Council Bill 11-0762 – Urban Renewal – Key Highway -
Amendment

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 11-0762 for form and legal sufficiency. The bill would amend the Urban Renewal Plan for Key Highway (hereinafter the "Plan") to revise Exhibits C and D to reflect the change in zoning, upon approval of CB 11-0738 for 1302 Key Highway, which rezones the property from the M-2-2 Zoning District to the B-2-4 Zoning District. CB 11-0762 also waives certain content and procedural requirements, makes its provisions severable, and provides for its application in relationship to certain other ordinances. The bill provides an immediate effective date.

As we understand it, this bill and Council Bill 11-0764 are similar bills in that they both were intended to amend the Plan. On October 24, 2011 Council Bill 11-0764 was amended by the Urban Affairs and Aging Committee to reflect the changes that were to be made in this Council Bill 11-0762. Thus, as of the date of this bill report, it is our understanding that Council Bill 11-0762 is no longer needed.

Nonetheless, should Council Bill 11-0764 not survive the legislative process, the Law Department's interest in Council Bill 11-0762, as drafted, focuses on matters raised in the Staff Report of the Planning Commission. Specifically, the Staff Report concludes that the proposed amendments to the Plan are incomplete in that they alter only certain Plan exhibits. Among other things, it points out that the text of the Plan, which is intended to govern all land usage in the area, does not currently provide adequate regulation to complete the rezoning to B-2-4 retail or service establishments on the parcel that is now the subject of rezoning under CB 11-0738. Instead, that property currently is governed under the standards, controls and design principles permitted in OR-2 zoning. The Staff Report suggests that the text of the Plan therefore requires amendment before the URP can govern the intended land usage on the parcel.



As a practical matter the Staff Report is correct. From a strictly legal perspective, however, such a Plan amendment may be unnecessary as long as at least one of the uses permitted in a B-2-4 District is permitted in an OR-2 District. This conclusion follows from the application of three legal requirements.

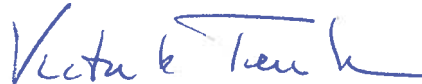
First, pursuant to City Code Article 13, § 2-1(c)(3) (2), a URP may restrict the use of property. Second, pursuant to City Zoning Code, §1-20(c)(3)(ii), when both zoning and URP restrictions apply to the same property, the more restrictive provisions govern. Third, while URP restrictions may exist on property usage, they cannot effectuate an actual rezoning of the property. *See Donnelly Advertising Corp. v. Baltimore*, 279 Md. 660, 665 (1977) (an urban renewal scheme cannot be utilized to enact zoning changes). It follows that a URP may restrict property usage to the extent it does not entirely eliminate the permitted uses under the zoning applicable to the property.

The Law Department notes that two of the uses permitted in an OR-2 District are permitted in B-2-4 District – apartments and rooming houses. Thus, we would conclude that the URP, without the text amendment suggested by the Staff Report, would govern the parcel in question, but the use of the property would be restricted to apartments and rooming houses: the broader retail and service establishment uses envisioned by a B-2-4 designation would be prohibited without a text amendment. Thus, from a practical perspective, if not from a technical legal perspective, a text amendment to the URP as envisioned in the Staff Report is warranted. Without it, 1302 Key Highway may only be used for apartments and rooming houses.

The Law Department also notes that the Planning Commission recommends a text amendment concerning certain height limits. The Law Department would approve the concept contained in such an amendment.

Section 2-6(g)(1) of Article 13 of the City Code requires that any change to an Urban Renewal Plan be made by ordinance. As this is the appropriate mechanism for making changes to the Plan and there are no legal impediments to those changes, the Law Department approves City Council Bill 11-0762 for form and legal sufficiency.

Very truly yours,



Victor K. Tervala
Assistant Solicitor

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