

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

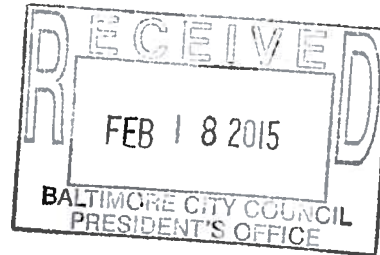


DEPARTMENT OF LAW

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

February 13, 2015

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 14-0453 – Baltimore City Landmark List – Olmstead Parkways

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 14-0453 for form and legal sufficiency. It would designate the “public right-of-way” for several blocks on the Alameda, 33rd Street and the Gwynns Falls Parkway as landmarks.

The City Code states that a landmark list is comprised of either or both the exterior or interior of a “structure,” which is defined as “any creation of man or nature.” City Code, Art. 6, §1-2. However, a “right of way is nothing more than a special and limited right of use.” *West v. Maryland Gas Transmission Corp.*, 162 Md. 298, 159 A. 758, 763 (1932)(citing *Bosley v. Susquehanna Canal*, 3 Bland (Md.) 63 (1830)); accord *Potomac Electric Power Co. v. Classic Community Corp.*, 382 Md. 581, 592 (2004). Although sometimes conceived of as the actual land or bed of the street, the “right-of-way” is a short-hand word for the permission to travel over another’s land. *Id.* Public rights-of-way are not permanently fixed like structures, but can be altered when the government changes the street layout because the public is then given permission to travel over that new layout. Thus, a “right-of-way” is not a structure that can be designated as a landmark under Section 1-2 of Article 6 of the City Code.

Therefore, the Law Department recommends an amendment to the bill to designate the median as the structure landmarked. The medians of these streets appear to be the actual areas that were crafted by the Olmstead brothers, as explained in the report of the City’s Historical and Architectural Preservation (“CHAP”). A suitable amendment is attached to this report. This amendment would obviate the need for the amendments suggested by CHAP.

Once the median is designated as the structure being landmarked, the rules concerning landmarked City property will apply: namely that when the City seeks to change the median, it must submit its plans to CHAP, unless the change is required for public safety or some other law mandates its change. City Code, Art. 6, §§4-9, 4-11. CHAP will then have ninety days to comment upon those plans if it so chooses. *Id.*

Fav w/Amend

Finally, Section 3-2 of Article 6 of the City Code provides that landmarks may not be “approved by the City Council until the City Council has given notice that the proposal is pending and has held a hearing on it. For this purpose, the Commission shall comply with the notice and hearing requirements of Zoning Code Title 16 {“Legislative Authorizations and Amendments”} for proposed changes in zoning classifications.” City Code, Art. 6, §3-2. This requires an introductory statement of intent, posting of the properties at issue, publication in the paper and a hearing. *See* Baltimore City Code, Zoning, §§16-101(c)(1), (d)(1); 16-202(b); 16-203; 16-402.

Assuming that the requisite notice and posting were completed, and subject to the foregoing amendment, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor
Victor Tervalá, Chief Solicitor
Jennifer Landis, Special Assistant Solicitor

**CITY OF BALTIMORE
COUNCIL BILL 13-0267
(Law Department Amendments)**

On page 1, lines 3, 4, 5, 18, 19 and 20, strike each instance of "PUBLIC RIGHT-OF-WAY" and substitute with "MEDIANS"

On page 1, line 6, strike "LANDMARK" and replace with "LANDMARKS"