

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



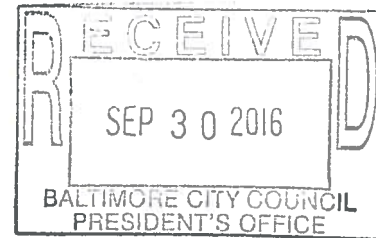
DEPARTMENT OF LAW

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

September 29, 2016

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

Attn: Natawna B. Austin
Executive Secretary



Re: City Council Bill 16-0734 – Rezoning – Certain Properties in the
Remington Central Business Area

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 16-0734 for form and legal sufficiency. The bill would change the zoning for 12 properties in the R-7, R-8 and R-9 Zoning Districts in Remington to the B-1-2 Zoning District.

The rezoning of these properties was previously before the City Council in Council Bill 15-0542, which was approved, and, on November 9, 2015, signed into law as Ordinance 15-426. A “Petition for Judicial Review,” challenging the validity of the ordinance on numerous grounds, was subsequently filed in the Circuit Court. The Petitioners prevailed on several points, and, on July 8, 2016, the Circuit Court reversed the decision of the City Council and remanded the matter to: (1) the Planning Commission and the Board of Municipal and Zoning Appeals to make findings pursuant to Section 16-305(b) of the Zoning Code of Baltimore City; and (2) the City Council to make complete findings: (i) pursuant to Section 10-304(b)(1) of the Land Use Article of the Annotated Code of Maryland; and (ii) that relate to the prior original zoning or comprehensive rezoning pursuant to Section 10-304(b)(2) of the Land Use Article of the Annotated Code of Maryland and *Prince George’s County v. Zimmer*, 444 Md. 490 (2015). Thereafter, the Petitioners filed an appeal to the Court of Special Appeals regarding certain issues on which the City had prevailed. The Greater Remington Improvement Association (“GRIA”), with the support of the owners of the 12 properties, desiring to move forward, made a new application for the rezoning of the properties, which is now before City Council in 16-0734, the current bill.

Under Section 10-304(b)(3) of the Land Use Article, “[t]he City Council may not allow the filing of an application for a reclassification of a tract or parcel of land for which a reclassification has been denied by the City Council on the merits in the 12 months before the date of the application.” Similarly, under Section 16-201(b) of the City Zoning Code, “[a] bill

proposing a change in the zoning classification of any property may not be introduced at any time within 12 months after the City Council has denied the same reclassification of the same property on the merits.” The City Council did not deny the reclassification of the properties on the merits in Council Bill 15-0542. Rather, the reversal and remand came from the Circuit Court of Baltimore City after the City Council **approved** the bill and it was signed into law by the Mayor. Thus, the prohibitions in the above-cited provisions do not apply to Council Bill 16-0734.

Turning to the merits, the City Council may approve the rezoning of the 12 properties if it finds facts for each property which show either a mistake in the existing zoning classification or a substantial change in the character of the neighborhood. Md. Land Use Code Ann., §10-304(b)(2). In evaluating whether the proposed rezonings meet this standard, the City Council is required to make findings of fact, for each property, on the following matters: (1) population changes; (2) the availability of public facilities; (3) the present and future transportation patterns; (4) the compatibility with existing and proposed development; (5) the recommendations of the Planning Commission and the Board of Municipal Zoning Appeal; and (6) the relation of the proposed amendment to the City’s plan. §10-304(b)(1). The recommendations of the Planning Commission and the Board of Municipal Zoning Appeals must be based on certain considerations outlined in the State and the City Codes. *See* Md. Land Use Code Ann., §10-305; Zoning Code of Baltimore City (“ZC”), §16-305.

The Law Department notes that the Department of Planning has issued a Staff Report concerning this bill (“Report”) which applies the relevant provisions of the Land Use Article and City Zoning Code to each property. Specifically, the Report addresses the considerations required by Section 16-305 of the Zoning Code (*see* Report at 16-18, 30-32, 44-46, 58-60, 72-74, 86-88, 100-02, 114-16, 128-30, 142-43, 156-58, 170-72), and Section 10-305 of the Land Use Article (*see* Report at 5-6, 19-20, 33-34, 47-48, 61-62, 75-76, 89-90, 103-04, 117-18, 131-32, 145-46, 159-60). The Report also provides detailed findings regarding the factors listed in Section 10-304(b)(1) of the Land Use Article. *See* Report at 9-12, 23-26, 37-40, 51-54, 65-68, 79-82, 93-96, 107-10, 121-24, 135-38, 149-52, 163-66. In addition, the Report provides a set of proposed findings of fact regarding a substantial change in the neighborhood to support the rezoning of each of the 12 properties under 10-304(b)(2) of the Land Use Article, and, in doing so, considers the change from the time of the comprehensive rezoning in 1971. *See* Report at 6-9, 12-16, 20-23, 26-30, 34-37, 40-44, 48-51, 54-58, 62-65, 68-72, 76-79, 82-86, 90-93, 96-100, 104-07, 110-14, 118-21, 124-28, 132-35, 138-42, 146-49, 152-56, 160-63, 166-70.¹

The Land Use and Transportation Committee (the “Committee”) is required to hold a quasi-judicial public hearing with regard to the bill wherein it will hear and weigh the evidence as presented in: (1) the Planning Report and other agency reports; (2) testimony from the Planning Department and other City agency representatives; and (3) testimony from members of the public and interested persons. Quasi-judicial hearings differ from the legislative hearings in that the former usually involve an application for a property-specific authorization wherein the Council is called upon to hear evidence at a public hearing, both for and against the request, and

¹ The Law Department believes that, although these findings were made for the present bill, they would have addressed and completed the findings found by the Circuit Court to be lacking in the record of Council Bill 15-0542 if the remand of that matter had proceeded.

apply a set of standards as identified in the statute or ordinance which governs the particular application being made. *See Maryland Overpak Corp. v. Mayor and City Council of Baltimore*, 395 Md. 16, 53 (2006) (“A quasi-judicial proceeding in the zoning context is found where, at a minimum, there is a fact-finding process that entails the holding of a hearing, the receipt of factual and opinion testimony and/or forms of documentary evidence, and a particularized conclusion, based upon delineated statutory standards, for the unique development proposal for the specific parcel or assemblage of land in question.”).

After weighing the evidence presented and submitted into the record before it, the Committee is required to make findings of fact for each property with regard to the factors identified above in §10-304(b)(1). The Committee is also required to make a determination under §10-304(b)(2) as to whether a mistake was made when the properties were given their current zoning, or whether there has been a substantial change in the character of the neighborhood since the City’s last comprehensive rezoning in 1971, such as to justify the rezoning being requested. If after its investigation of the facts, the Committee agrees with the findings in the Report or finds similar and/or additional facts to support the rezoning, it may adopt these findings and the legal requirements for granting the rezoning would be met.

Certain procedural requirements apply to this bill beyond those listed above because a change in the zoning classification of a property is deemed a “legislative authorization.” ZC §§16-101(c)(1); 16-101(d). Specifically, special notice requirements apply to the bill’s introduction, including posting of each property for 30 days within one week of the notice of introduction. *See* ZC §16-203. The bill must be referred to certain City agencies, which are obligated to review the bill in a specified manner. *See* ZC §§16-301, 16-302 & 16-305. Additional public notice and hearing requirements apply to the bill, including advertising the time, place and subject of the hearing in a paper of general circulation for 15 days and posting the property conspicuously with this same information. *See* Md. Land Use Code Ann., §10-303; ZC §16-402. Finally, certain limitations on the City Council’s ability to amend the bill after the public hearing apply, including a Third Reading hold-over before final passage by the Council. *See* ZC §§16-403, 16-404.

The bill is the appropriate method for the City Council to review the facts and make the determination as to whether the legal standard for the rezonings has been met. Assuming the legal standard is met and that all procedural requirements are satisfied, the Law Department approves the bill for form and legal sufficiency.

Sincerely,



Jennifer Landis

Assistant Solicitor

cc: David Ralph, Acting City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor K. Tervalá, Chief Solicitor