



April 12, 2012

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 12-0038 – Zoning – Conditional Use Convalescent
Nursing, and Rest Home – 4613 Park Heights Avenue

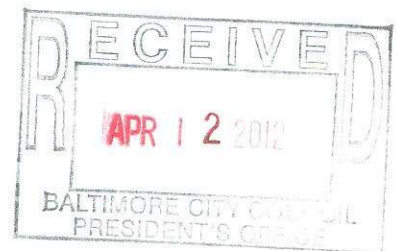
Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0038 for form and legal sufficiency. The bill permits, subject to certain conditions, the establishment, maintenance, and operation of a convalescent, nursing, and rest home (substance abuse treatment center) on the property known as 4613 Park Heights Avenue.

The subject property is zoned R-6 (General Residence District). The conditional uses that require the enactment of an ordinance in an R-6 zone are the same as in an R-1 zone. City Zoning Code (“ZG”) § 4-904. The conditional uses that require the enactment of an ordinance in an R-1 zone include a convalescent, nursing, and rest home. ZG § 4-204. Thus, the passage of this bill is required before the property can be used as intended.

According to the Department of Planning’s bill report and the memorandum from Caroline Hecker to Eric Tiso, dated March 20, 2012, which was attached to the Planning Department’s report (herein together referred to as the “Report”), amendments are being proposed to this bill that would grant certain variances from the City’s Zoning Code. Specifically, the proposed amendments would grant variances as follows:

1. An interior side yard setback of 5’ in lieu of the required 15’;
2. Lot Area of 24,401 s.f. in lieu of the required 32,000 s.f.;
3. Lot Area Coverage of 47% in lieu of the permitted 35%;
4. Floor Area Ratio of 1.57 in lieu of the permitted 1.0;
5. 15 vehicle parking spaces in lieu of the required 29; and
6. Side yard projections of 5’ in lieu of the permitted 3’.



As part of an ordinance granting a conditional use, the Mayor and City Council may grant variances from the requirements of the Zoning Code. ZG § 15-101. A variance, however, may only be granted for the purposes set forth in Part I of Subtitle 2 of Title 15 of the Zoning Code.

F/A

ZG § 15-201. The specific purposes include interior yard setbacks, ZG § 15-203; lot area and lot area coverage, ZG § 15-202; floor area ratio, ZG § 15-204; and off-street parking, ZG § 15-208. These sections provide the amounts by which a requirement may vary from the Zoning Code's standard requirements. The proposed variances satisfy those provisions.

In order to grant a variance, the City Council is required to make certain findings of fact. It must, for example, find that "because of the particular physical surroundings, shape, or topographical conditions of the specific structure or land involved, an unnecessary hardship or practical difficulty would result if the strict letter of the applicable requirement were carried out." ZG § 15-218. Nine other types of specific fact-finding are required. *See* ZG § 15-219.

The Law Department notes that the Report establishes sufficient facts for granting these variances. If the Council adopts the findings of the Report, or finds facts similar to those contained in the Report, the legal requirements for granting the variances would be met.

Note further, pursuant to the City Zoning Code, a bill concerning a conditional use is classified as a "legislative authorization." ZC § 16-101. Legislative authorizations require that certain procedures be followed in the bill's passage. Specifically, certain notice requirements apply to the introduction of the bill. *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 & 16-304. Additional public notice and hearing requirements also apply to the bill. *See* ZC § 16-402. Finally, certain limitations on the City Council's ability to amend the bill apply. *See* ZC § 16-403.

Assuming all the procedural requirements are met, and assuming further that the City Council adopts the Planning Department's Report (which should expressly include Caroline Hecker's memorandum), or finds facts similar to those contained in the Report, the Law Department will approve the bill for form and legal sufficiency.

Sincerely yours,



Victor K. Tervala
Assistant Solicitor

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