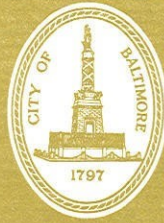


CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

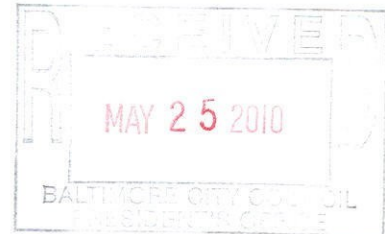


DEPARTMENT OF LAW

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

May 24, 2010

The Honorable President and
Members of the Baltimore
City Council
c/o Karen Randle, Executive Secretary
409 City Hall
Baltimore, MD 21202



RE: City Council Bill 09-0395 – Zoning – Nonconforming Use – Discontinuance or Abandonment

Dear President and Members,

You have requested the advice of the Law Department regarding City Council Bill 09-0395. City Council Bill 395 amends Sections 13-407 and 13-718 of the Zoning Article of the City Code for the purpose of repealing and changing certain exceptions and rules applicable to the discontinuance, abandonment and reestablishment of Class III nonconforming uses.

A nonconforming use is “any lawfully existing use of a structure or of land that does not comply with the applicable bulk regulations of the district in which it is located.” Zoning Code §13-101(c). Title 13 of the Zoning Article regulates the continuance of nonconforming uses in the various districts. Subtitle 4 applies to Class III nonconforming uses which include “all or part of a structure that was designed and erected primarily for a use that is no longer allowed in the district in which it is located; any nonconforming use of the lot on which that structure is located; and any nonconforming use of land or structures not regulated as Class I or Class II.” Zoning Code §13-401.

Under the current law, if such use is discontinued for 12 consecutive months, it is considered abandoned and may not be reestablished. §13-407(a)(1). The Board may, however, extend the period of discontinuance permitted before the use is terminated by an amount not to exceed 12 months. §13-407(a)(2). If there is evidence of abandonment of the use which includes removal of structures, machinery or equipment or alterations indicating a change in the use of the structure, all rights to that use are terminated immediately. §13-407(b). There is an exception to these rules for Class III uses in R-6 to R-10 districts. §13-407(c).

Bill 395 makes several changes to the rules for Class III nonconforming uses. First, it repeals the exception to the discontinuance rules for Class III uses in R-6 through R-10 districts. Second, it limits the extension the Board may permit for discontinuance of nonconforming uses in R-6 through R-10 districts to 18 months (6 months longer than for those in other districts). Finally, it sets a 12 month deadline for the application for an extension of discontinuance in R-6 through R-10 districts.



The City's zoning authority is derived from Article 66B of the Annotated Code of Maryland. Section 2.10 (a) authorizes the City to provide by ordinance for the enforcement of its zoning regulations. The changes made by Bill 395 are designed to make enforcement of the rules for nonconforming uses more effective. Furthermore, Section 2.01 (b)(6) authorizes the City to regulate and restrict "[t]he location and use of buildings ... [and] structures." Finally, the Court of Appeals has recognized "Maryland's well-established policy against the expansion of nonconforming uses." *Trip Associates v. Mayor and City Council of Baltimore*, 392 Md. 563 (2006).

Therefore, City Council Bill 09-0395 is within the authority of the City Council. The Law Department, therefore, approves City Council Bill 09-0395 for form and legal sufficiency.

Sincerely yours,

A handwritten signature in blue ink that reads "Ashlea H. Brown /ERO".

Ashlea H. Brown
Assistant Solicitor

cc: Angela Gibson, City Council Liaison
George A. Nilson, City Solicitor
Elena R. DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Terese Brown, Assistant Solicitor