

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

September 29, 2010

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 10-0570 – Rezoning – 801 West 33rd Street

Dear President and City Council Members:

The Law Department was not originally referred City Council Bill 10-0507 for comment, but has been asked to review it for form and legal sufficiency. The bill would rezone 801 West 33rd Street from R-7 to O-R-2 in order to allow a vacant church to be used as office space.

The City Council may permit such a rezoning if it finds facts sufficient to show either a mistake in the original zoning or a substantial change in the character of the neighborhood. Md. Code, Art. 66B, §2.05(a)(2)(i); Baltimore City Zoning Code, §16-305. The Council must make findings of fact that include six specific items, one of which is whether or not the Planning Commission (“Planning”) and the Board of Municipal Zoning Appeals (“Zoning”) recommends the rezoning. Md. Code, Art. 66B, §2.05(a)(2)(ii)(6). Although both Planning and Zoning are required to consider the same factors based on the same facts, in this case they have reached different conclusions. Baltimore City Zoning Code, §16-305. Maryland law provides that even where both Planning and Zoning disapprove of the rezoning, the Council may decide to approve it. Md. Code, Art. 66B, §2.05(b)(3). Therefore, the Council must decide if there are sufficient facts to show that the character of the neighborhood has changed.


Although Planning raises the issue of potential illegal spot zoning, Maryland Courts have consistently held that rezoning a property is not illegal spot zoning if it complies with the master or comprehensive plan and is for the benefit of the community, not merely the applicant. *See, e.g., Tennison v. Shomette*, 38 Md. App. 1, 8 (1977) (“spot zoning is not invalid per se,” but rather “its validity depends on the facts of each individual case” and “[t]he only relevant inquiries are whether the rezoning is inconsistent with the comprehensive plan and whether it was done for the public good or private benefit”); *accord Mayor and City Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 546-47 (2002); *Cassell v. Mayor of Baltimore*, 195 Md. 348 (1950) (spot zoning can be a valid exercise of the police power where the zoning is in harmony with the comprehensive plan and bears a substantial relationship to the public health, safety, and general welfare).



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As the bill is the appropriate method for the Council to review the facts and make the determination as to whether the neighborhood character has changed thereby meriting a rezoning, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,



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Assistant Solicitor

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