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CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW  
EBONY THOMPSON  
ACTING CITY SOLICITOR  
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BALTIMORE, MD 21202

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October 5, 2023

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 23-0393 – Street Encroachment – 3424 Toone Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 23-0393 for form and legal sufficiency. The bill would permit, with certain conditions, the construction and maintenance of a portion of a building located at 3424 Toone Street that would encroach on the public right-of-way on the west side of Baylis Street. The bill refers to a plat on file with the Department of Transportation (“DOT”) that shows the area of encroachment. That plat, which is part of the bill file, appears to show a proposed rear addition to an existing corner rowhome that creates an overhang encroaching approximately two feet into the sidewalk abutting Bayliss Street.

The City’s Charter makes clear that the Mayor and City Council’s title to a street is inalienable. City Charter, Art. VIII, § 1. However, the Charter authorizes the City to grant “permanent minor privileges,” which are defined as “those in the nature of steps, porticoes, bay windows, bow windows, show windows, columns, tiers, covered vaults, covered areaways, drains or drainpipes, and the like which cannot be removed without a material alteration of the property where the said privilege is located.” Charter, Art. VIII, § 9(b).

The bill’s proposed encroachment appears to qualify as a permanent minor privilege. The Charter provides that the Board of Estimates (“BOE”) may grant minor privileges, upon written application from the applicant, “for such an amount of money and upon such terms as the [BOE] may consider right and proper without the necessity of an ordinance or advertising.” Charter, Art. VIII, § 2. The Charter authorizes the BOE to delegate its powers and duties relating to minor privileges to any department or other municipal agency. *Id.*

Apparently, with regard to encroachments, the BOE has delegated such authority to the Department of Housing and Community Development (“DHCD”) and to DOT. *See* City Building Code 3201.3.1 (“No person may use, encroach on, or connect to any street, highway, alley, or other public right-of-way for any purpose unless that person first obtains permission to do so by: 1. an ordinance of the Mayor and City Council, 2. a minor privilege permit issued by or under the authority of the Board of Estimates, or 3. an appropriate permit issued by the Department of

Transportation.”). This bill is the requisite ordinance to satisfy the requirements of Building Code Section 3201.3.1.

The bill file indicates that the area of the encroachment is on the second floor of the rear addition. Accordingly, the encroachment likely falls under Section 3202.3 of the Building Code, which provides that the maximum projection into the public right of way for this type of encroachment (8 feet or more above grade) is the same as in the International Building Code (“IBC”). The corresponding IBC section establishes a maximum encroachment of four feet for encroachments of this kind. Because the bill provides that the encroachment shall be no more than three feet, it complies with Section 3202.3 of the Building Code. The bill also requires the construction and maintenance of the structure to comply with all relevant City ordinances, rules, and regulations.

Assuming the above facts are true, the Law Department can approve this bill for form and legal sufficiency.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey Hochstetler', is written over a light gray rectangular background.

Jeffrey Hochstetler  
Chief Solicitor

cc: Ebony Thompson, Acting City Solicitor  
Nina Themelis, Mayor’s Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Hilary Ruley, Chief Solicitor  
Ashlea Brown, Chief Solicitor  
Michelle Toth, Assistant Solicitor  
Teresa Cummings, Assistant Solicitor