

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

August 15, 2013

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

Attn: Karen Randle  
Executive Secretary

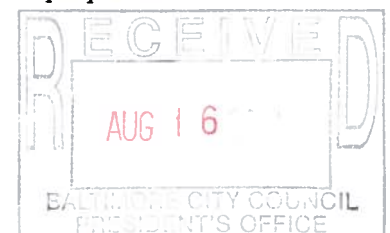
Re: City Council Bill 13-0245 – Rezoning – 2038 Eastern Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 13-0245 for form and legal sufficiency. The bill as proposed would change the zoning for 2038 Eastern Avenue from the R-8 Zoning District to the O-R-3 Zoning District.

The City Council may permit such a rezoning if it finds facts sufficient to show either a mistake in the existing zoning classification or a substantial change in the character of the neighborhood. Md. Code, Land Use, §10-304(b)(2). In evaluating whether the proposed rezoning meets this standard, the City Council is required to make findings of fact 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. Md. Code, Land Use, §10-304(b)(1). The recommendations of the Planning Commission and the Board of Municipal Zoning Appeal must be based on certain considerations outlined in the City Code. *See* Baltimore City Zoning Code ("ZC"), §16-305.

The Law Department notes that the Report of the Planning Commission ("Report") provides findings of fact that would support rezoning, but the Report recommends an amendment to the bill to: (1) change the proposed rezoning to the B-1-2 District instead of the O-R-3 District; and (2) rezone three adjacent parcels to the B-1-2 District. If the City Council wishes to pass the bill with the Planning Commission's recommended amendment, the City Council, after its hearing in which appropriate findings of fact are presented, may adopt the Report of the Planning Commission as its findings of fact to support a determination that a substantial change in the character of the neighborhood has occurred, and that B-1-2 is the appropriate zoning for the properties. The Council may then lawfully approve Council Bill 13-0245 as amended.



If the City Council does not agree with the proposed Planning Commission amendment it may not rely on the Planning Commission testimony and Report for its findings of fact. During the hearing, appropriate testimony must be presented to establish separate findings of fact that support a substantial change in the neighborhood to justify the change to an O-R-3 zoning for the property at 2038 Eastern Avenue.

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 the 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. Code, Land Use, §10-303; ZC §16-402. Finally, of importance here, 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.

Assuming the City Council makes appropriate findings of fact for the version of the bill that it wishes to adopt, the Law Department will approve the bill for form and legal sufficiency, assuming all the procedural requirements, noted above, have been met.

Sincerely,



Jennifer Landis  
Special Assistant Solicitor

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