

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

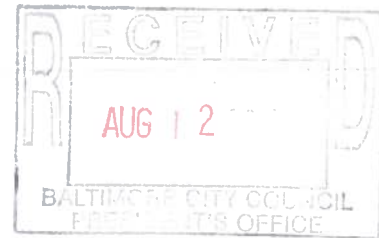


DEPARTMENT OF LAW

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

August 12, 2013

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



Unfavorable

Re: City Council Bill 13-0219 – Rezoning – Critical Overlay District – 2121 Wicomico Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 13-0219 for form and legal sufficiency. The bill would change the boundaries of the Critical Overlay District by removing 2121 Wicomico Street from that District.

The City's Critical Area Overlay District is defined and administered pursuant to Subtitle 3 of Title 8 of the City's Zoning Code. The law defines Critical Area in the City to include certain waters and wetlands, as well as "all land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of the tides." Zoning Code, §8-303(a)(3). These boundaries are therefore tied to geography. *See also* Md. Code, Nat. Res., §8-1807. If the City wishes to exclude a property from this area, that exclusion must be approved by the state Chesapeake and Atlantic Coastal Bays Critical Area Commission (the "Commission") as well as the City's Planning Commission. Md. Code, Nat. Res., §8-1807(c)(3); Zoning Code, §8-305(a). Additionally, the Commission has been given power to make regulations concerning exempting any property from these critical areas. Md. Code, Nat. Res., §8-1806(b)(1)(ii).

There is nothing submitted with this bill to show that it has followed the required state and city approval process to be removed from the Critical Overlay District. Without such a showing, the Law Department cannot approve this bill for form and legal sufficiency.

The Law Department notes, however, that because any change in the zoning classification of a property is deemed a "legislative authorization," certain procedural requirements apply to this bill. 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,

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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, certain limitations on the City Council's ability to amend the bill apply, including a Third Reading hold-over before final passage by the Council. *See* ZC §§16-403, 16-404.

Even if all the procedural requirements, noted above, have been met, the Law Department will not approve the bill for form and legal sufficiency until it is shown that both the City's Planning Commission and the State's Chesapeake and Atlantic Coastal Bays Critical Area Commission have approved the exclusion of this property from the Critical Area Overlay District.

Very truly yours,



Hilary Ruley
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Victor Tervalá, Assistant Solicitor
Jennifer Landis, Assistant Solicitor