

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

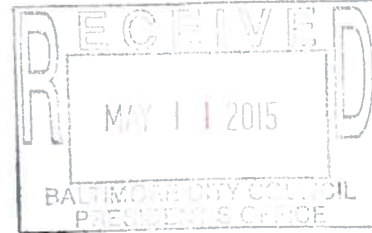


DEPARTMENT OF LAW

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

May 6, 2015

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 15-0496 – Zoning – Conditional Use Conversion of 1-Family Dwelling Unit to a 2-Family Dwelling Unit in the R-8 Zoning District – Variances – 1301 North Broadway

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 15-0496 for form and legal sufficiency. The bill permits the conversion of a 1-family dwelling unit to a 2-family dwelling unit at 3105 North Broadway, which is in an R-8 Zoning district. Such conversions are permitted in R-8 only by ordinance. Baltimore City Zoning Code (“ZC”), § 3-305(b). This is the requisite ordinance to permit this change. The bill authorizes a variance from the off-street parking requirements from 1 to 0. Section 15-208 allows for a 75% reduction in the required off-street parking spaces making the required spaces .25. This is essentially 0 parking spaces so the variance can be granted under the Zoning Code.

The nature of this property will also require variances to be granted for several other bulk regulations that are not provided for in the bill. The bill will therefore need to be amended. An amendment is needed to provide for a variance for lot area size, lot coverage, yard and floor area ratio. . As mentioned in the Planning Commission report, a lot area variance of 225 sq. ft. or 15% of the lot area required by Sec. 4-1106(a). Sec. 15-501 authorizes the granting of the variance. In addition, Sec. 4-1106(a) allows for a lot coverage of 60%. The existing lot coverage is 100%. Sec 15-202 allows for a variance of any amount. The City Council can therefore grant a lot coverage variance of 40%. Sec. 4-1107 requires a minimum 25 ft. rear yard depth. The actual depth is zero. Sec. 15-202 allows for a variance to accommodate these conditions. The City Council may therefore grant a rear yard variance of 25 ft. Finally, Sec. 4-1108 requires a maximum floor area ratio of 2.0. The actual FAR is 3.0. Sec. 15-204 authorizes a variance that increases a basic floor area ratio factor by no more than 75% of the applicable regulation. Under this standard the City Council cannot approve a variance unless the unusable lot exception in Sec. 15-214 applies. To apply that exception, the City Council must find that , in addition to all other findings required by this title, as a matter of fact that:

- (1) the lot cannot be reasonably used for any of the permitted or conditional uses set forth for the zoning district in which it is located;
- (2) the use or bulk regulations applicable to the lot have the effect of depriving the owner of all reasonable use of the lot; and
- (3) the variance is necessary to avoid arbitrariness.

Fav w/ Amend

City Council Bill 15-0496
May 11, 2015
Page 2

These variances may be granted so long as the findings of fact required under Sections 15-217, 15-218, and 15-219 are made. The bill, however, purports to have the "City Council" grant the variances. Since ordinances are passed by the Mayor and City Council and not the "City Council" alone, appropriate amendments to correct this language are attached to this report. *See* City Charter, Art. III, §§ 11; 13.

The Staff Report from the Planning Department (Report) applies the Title 14 considerations for conditional uses and concludes that the proposed use as a 2-family dwelling "would be consistent with residential use in the area, and would enable the continuing residential use of the property." *See* Report at 3. Appropriate amendments for the necessary variances are attached.

Finally, there are certain procedures that must be followed. *See* ZC §§3-305(c), 14-208 (conditional uses must follow procedures in Title 16), 15-302 (variances in conjunction with conditional uses must follow procedures in Title 16); 16-101(c)(2), 16-101(d)(1) (conditional use is a type of legislative authorization, which is a type of zoning legislation); 16-203, 16-401, 16-402 (notice, posting and hearing requirements); 3-305(c), 16-301, 16-302, 16-304 (referral to certain City agencies, which are obligated to review the bill in a specified manner); 16-403, 16-404 (limitations on the City Council's ability to amend the bill, including a Third Reading hold-over before final passage because the bill includes variances, not just a conditional use); *see also* Md. Code, Land Use, §10-303.

Subject to the foregoing amendments and assuming all the procedural requirements are met and the appropriate findings of fact are made, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,



Elena DiPietro
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Jenny Landis, Assistant Solicitor
Victor Tervalo, Chief Solicitor
Hilary Ruley, Chief Solicitor
Avery Aisenstark, Legislative Reference

CITY OF BALTIMORE
COUNCIL BILL 15-0496
(Law Department Amendments)

On page 1, line 22, strike “THE CITY COUNCIL GRANTS” and substitute “PERMISSION IS GRANTED FOR”

On page 2, after line 6, insert: “**SECTION 4.** AND BE IT FURTHER ORDAINED, THAT PURSUANT TO THE AUTHORITY GRANTED BY TITLE 15 OF THE ZONING CODE OF BALTIMORE CITY, SPECIFICALLY BY §§ 15-101, 15-202(A) AND 15-214 THAT PERMISSION IS GRANTED FOR A VARIANCE FOR LOT AREA OF 15%.”

On page 2, after above amendment, insert: “**SECTION 5.** AND BE IT FURTHER ORDAINED, THAT PURSUANT TO THE AUTHORITY GRANTED BY TITLE 15 OF THE ZONING CODE OF BALTIMORE CITY, SPECIFICALLY BY §§ 15-101, 15-202(B) AND 15-214 THAT PERMISSION IS GRANTED FOR A VARIANCE FOR LOT COVERAGE THAT IS MORE THAN THAT OTHERWISE ALLOWED BY APPLICABLE REGULATION.”

On page 2, after above amendment, insert: “**SECTION 6.** AND BE IT FURTHER ORDAINED, THAT PURSUANT TO THE AUTHORITY GRANTED BY TITLE 15 OF THE ZONING CODE OF BALTIMORE CITY, SPECIFICALLY BY §§ 15-101, 15-203 AND 15-214 THAT PERMISSION IS GRANTED FOR A VARIANCE FOR REAR YARD THAT IS MORE THAN THAT OTHERWISE ALLOWED BY APPLICABLE REGULATION.”

On page 2, after above amendment, insert: “**SECTION 7.** AND BE IT FURTHER ORDAINED, THAT PURSUANT TO THE AUTHORITY GRANTED BY TITLE 15 OF THE ZONING CODE OF BALTIMORE CITY, SPECIFICALLY BY §§ 15-101, 15-204, 15-241 AND 15-218 THAT PERMISSION IS GRANTED FOR A VARIANCE FOR REAR YARD THAT IS MORE THAN THAT OTHERWISE ALLOWED BY APPLICABLE REGULATION.”

On page 2, line 7, strike “4” and insert “8”