

CITY OF BALTIMORE

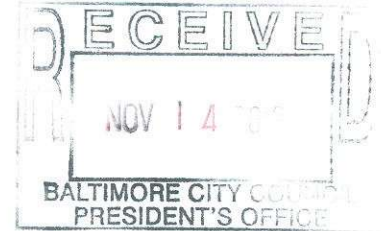
STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

November 14, 2012



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 12-0118 – Rezoning – 2719 Ashland Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0118 for form and legal sufficiency. The bill would change the zoning for 2719 Ashland Avenue from the R-8 Zoning District to the B-1-1 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, Art. 66B, §2.05(a)(2)(i). 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, Art. 66B, §2.05(a)(2)(ii). 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, §16-305.

The Law Department notes that the Report of the Planning Commission ("Report") does not provide any facts to support this rezoning. In fact, the Planning Commission has disapproved this rezoning. However, if the City Council, after its investigation of the facts, finds that a substantial change in the character of the neighborhood has occurred or that there was a mistake in the original zoning, the Council may lawfully approve Council Bill 12-0118.

Such a finding will not result in illegal spot zoning if the rezoning results in conformity to the master or comprehensive plan and the Council determines that the rezoning 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 MBC Realty, LLC v. Mayor of Baltimore*, 192 Md. App. 218, 238-39 (2010) ("In Maryland, spot

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zoning is not illegal per se. It only is illegal if it is an arbitrary and unreasonable deviation of the small area at issue to a use that is inconsistent with the uses to which the remainder of the district is restricted and is done for the sole benefit of the private interests of the owner. *Id.* If the zoning of the small parcel is in accordance and harmony with the comprehensive plan and is done for the public good, and thus bears a substantial relationship to the public health, safety, and welfare, it is valid.”); *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).

Additionally, certain procedural requirements apply to this bill beyond those listed above. Specifically, special notice requirements apply to the bill’s introduction. *See* City Zoning Code (“ZG”) § 16-203. The bill must be referred to certain City agencies, which are obligated to review the bill in a specified manner. *See* ZG §§ 16-301, 16-302 & 16-305. Additional public notice and hearing requirements apply. *See* ZG § 16-402. Finally, certain limitations on the City Council’s ability to amend the bill apply. *See* ZG §§ 16-403, 16-404.

The bill is the appropriate method for the City Council to review the facts and make the determination as to whether the legal standard for rezoning has been met. To this end, the Law Department notes that the Report on the bill does not describe facts that would support the proposed rezoning by the City Council. However, if the City Council finds facts to support a change in the character of the neighborhood or a mistake in the original zoning, the Law Department will approve the bill for form and legal sufficiency, assuming all the procedural requirements, noted above, have been met.

Very truly yours,



Hilary Ruley
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Victor Tervalá, Assistant Solicitor