

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

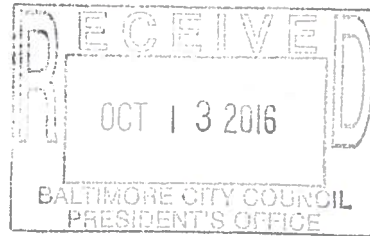


DEPARTMENT OF LAW

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

October 12, 2016

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



Re: City Council Bill 16-0688 – Rezoning – 320 South Highland Avenue

Dear President and City Council Members:

The Law Department has been asked to review City Council Bill 16-0688 for form and legal sufficiency. The bill changes the zoning for the property known as 320 South Highland Avenue from the B-2-2 Zoning District to the B-2-3 Zoning District.

The Law Department’s concern with this bill is that no facts in any document thus far examined show that the proposed rezoning is based on a mistake in the original zoning or a substantial change in the character of the neighborhood. As members of the Land Use and Transportation Committee well know, the City Council may permit a rezoning only if either of these conditions exists. Md. Code, Land Use Article, §10-304(b)(2). The Department of Planning Report (“Report”) attached to the two Planning Commission reports of August 5, 2016 and August 26, 2016 notes the absence of these conditions. In fact, the Report states that the proposed rezoning amounts to illegal spot zoning. See Aug 5 Report, p.2.

As the Court said in *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514 (2002):

Spot zoning occurs when a small area in a District is placed in a different zoning classification than the surrounding property ... Spot zoning is not invalid *per se*. Rather, its validity depends on the facts of each individual case [W]hile spot zoning is illegal if it is inconsistent with an established comprehensive plan and is made solely for the benefit of a private interest, it is a valid exercise of the police power where the zoning is in harmony with the comprehensive plan and there is a substantial relationship to the public health, safety and general welfare.

372 Md. At 546. The Report, in concluding that the proposal amounts to illegal spot zoning, states that the Planning Department “does not find that this change is in the public’s interest, in that the proposed change in zoning for this sole parcel is not in conformity to the zoning regulations of the surrounding properties.” Report at p. 2.

Fav w/ comments

If this property is to be zoned lawfully, the City Council must find facts contrary to those presented to the Planning Commission; specifically, facts that indicate the proposed zoning is the result of a mistake in the existing zoning classification or a substantial change in the character of the neighborhood. Furthermore, facts must show that the proposed rezoning is in conformance with the comprehensive plan and is not solely for the benefit of the applicant, which otherwise would constitute illegal spot zoning. These facts ordinarily are presented at the public hearing of the bill, but may also be presented and found on Second or Third Reader.

In addition to finding facts that support the above conclusions, State law also requires the City Council to find facts related to 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 Article, §10-304(b)(1).

Along with fact finding, certain procedural requirements also must be satisfied before the Council may act to rezone the property. These include public notice and hearing requirements. *See* Baltimore City Zoning Code, §§16-401 & 16-402.

If all the legal standards are met during the City Council's deliberation of this bill, the Law Department will approve it for form and legal sufficiency

Sincerely yours,



Victor K. Tervala
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, Opinions & Advice
Hilary Ruley, Chief Solicitor
Jennifer Landis, Assistant Solicitor