

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

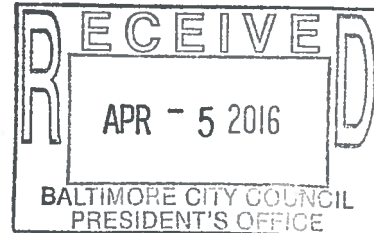


DEPARTMENT OF LAW

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

April 4, 2016

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 16-0618 – Zoning – Conditional Use Conversion of 2 Dwelling Units to 3 Dwelling Units in the R-8 Zoning District – 630 North Gilmor Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 16-0618 for form and legal sufficiency. The bill permits the conversion of 2 dwelling units to 3 dwelling units in the R-8 Zoning District on the property known as 630 North Gilmore. Such conversions are permitted in R-8 only by ordinance. Zoning Code of Baltimore City (“ZC”), § 3-305(b)(2).

The Law Department notes that, in accordance with the Zoning Code, one off-street vehicle parking spaces is required for each dwelling unit. ZC, § 10-405. The bill permits a 3-unit development. Thus, three parking spaces are needed. We have learned that two parking spaces for the property currently exist, but the Planning Commission Report (“Report”) notes that the physical conditions at the site prohibit the development of a third off-street parking space. Report at 2. For this reason, the Planning Commission recommends a variance to reduce the required number of parking spaces to two. *Id.*

The Zoning Code permits off-street parking requirements to be varied by as much as 75%. See ZC, § 15-208(b). The Report seeks a 75% variance from the required additional parking space, bringing the requirement down to ¼ parking space. Report at 2. According to the Zoning Code, any fraction of a space below ½ can be disregarded. ZC, §10-402(a). Consequently, if the City Council approves the variance, the applicant would not need to provide an additional off-street parking space.

According to the Zoning Code, a variance may be granted as part of a conditional use ordinance, such as that contained in this bill. ZC, § 15-101(2). Granting a variance, however, requires the City Council to make certain findings of fact: specifically, those required by §15-218 (findings of unnecessary hardship or practical difficulty; and §15-219 (other required

*Fav w/ comments*

findings). In addition, pursuant to § 16-304 of the Zoning Code, the City Council is required to include a finding that the Board of Zoning and Municipal Appeals and the Planning Commission have based their recommendations to the City Council on considerations required by ZC Title 14 (Conditional Uses).

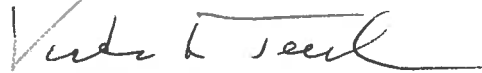
It is not clear that all the required facts are present in the Report. For this reason, adoption of the variance will require the necessary facts to be established orally or in writing as part of the testimony provided during the bill's committee hearing.

The Law Department further points out that findings of fact are required in a quasi-judicial proceeding such as granting a conditional use. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 713 (1977) Note, however, that the Report provides findings of fact that support the authorization of this conditional use conversion. *See* Report at 2-3. So long as the City Council approves these facts, or facts sufficiently similar to those in the Report, one of the legal conditions for approving the conditional use will have been satisfied.

Finally, we note further that, pursuant to the City Zoning Code, a bill concerning a conditional use is classified as a "legislative authorization." ZC § 16-101. Legislative authorizations require that certain procedures be followed in the bill's passage. Specifically, certain notice requirements apply to the introduction of the bill. *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 & 16-304. Additional public notice and hearing requirements also apply to the bill. *See* ZC § 16-402. Finally, certain limitations on the City Council's ability to amend the bill apply. *See* ZC § 16-403.

Assuming all the above procedural requirements are met, the Law Department will approve the bill for form and legal sufficiency as drafted. If the bill is amended to grant a variance, the Law Department will approve the amendment for form and legal sufficiency if the required facts for granting a variance are adduced at the bill's hearing. See the attachment for a list of the required fact finding.

Sincerely,



Victor K. Tervala  
Chief Solicitor

cc: George Nilson, City Solicitor  
Angela C. Gibson, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Hilary Ruley, Chief Solicitor  
Jenifer Landis, Assistant Solicitor

Variance – Necessary Findings of Fact  
(ZC §§ 15-218 & 15-219)

- (1) The particular physical surroundings, shape, or topographical conditions of the structure or land involved creates an unnecessary hardship or practical difficulty to the applicant if the strict letter of the zoning code is carried out.
- (2) The conditions on which the application is based are unique to the property and are not generally applicable to other property within the same zoning classification;
- (3) The unnecessary hardship or practical difficulty has not been created by the intentional action or inaction of any person who has a present interest in the property;
- (4) The purpose of the variance is not based exclusively on a desire to increase the value or income potential of the property;
- (5) The variance will not:
  - (i) be injurious to the use and enjoyment of other property in the immediate vicinity; or
  - (ii) substantially diminish and impair property values in the neighborhood;
- (6) The variance will not:
  - (i) impair an adequate supply of light and air to adjacent property;
  - (ii) overcrowd the land;
  - (iii) create an undue concentration of population;
  - (iv) substantially increase the congestion of the streets;
  - (v) create hazardous traffic conditions;
  - (vi) adversely affect transportation;
  - (vii) unduly burden water, sewer, school, park, or other public facilities;
  - (viii) increase the danger of fire; or
  - (ix) otherwise endanger the public safety;
- (7) The variance is not precluded by and will not adversely affect:
  - (i) any Urban Renewal Plan; or
  - (ii) the City's Master Plan;
- (8) The variance will not otherwise:
  - (i) be detrimental to or endanger the public health, security, general welfare, or morals; or
  - (ii) in any way be contrary to the public interest;
- (9) The variance is in harmony with the purpose and intent of the zoning code; and
- (10) The variance granted is the minimum necessary to afford relief, to which end a lesser variance than that applied for may be permitted.