

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

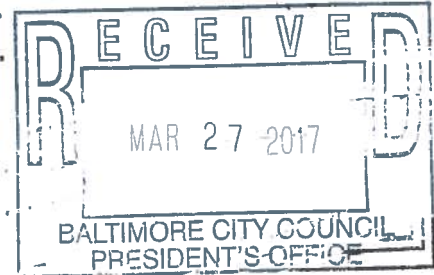


DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

March 24, 2017

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 17-0016 – Zoning – Conditional Use Conversion of 1 Unit to 1 Dwelling Unit and 1 Efficiency Dwelling Unit in the R-8 Zoning District – 2823 Huntingdon Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0016 for form and legal sufficiency. The bill permits the conversion of 1 Dwelling Unit and 1 Efficiency Dwelling Unit in the R-8 Zoning District on the property known as 2823 Huntingdon Avenue. Conversions are permitted in an R-8 Zoning District only by ordinance. Zoning Code of Baltimore City (“ZC”), § 3-305(b)(2).

The Law Department notes that for this conversion the Zoning Code requires the following standards to be met:

- a minimum lot area coverage of 1,250 square feet (ZC, § 4-1106(a));
- an interior side yard of at least 10 feet (ZC, § 4-1107);
- a rear yard setback of 25 feet, which may be reduced by 20% given the size of the depth of the rear yard (ZC, §§ 4-1107(a) & 3-208);
- a maximum floor area ratio of 2.0 (ZC, § 4-1108(a)); and
- at least 2 off-street parking space unless, as in this case, the pre-1971 parking requirements apply, which reduces the requirement to 1 parking space (ZC, § 10-404).

According to the Planning Department’s Report filed for this bill (“Report”), the property meets or exceeds all but the last of the above zoning code requirements. Report, page 2. The Report, however, does not clearly establish that at least one off-street parking space currently exists. The facts regarding this matter must be established before this bill can be approved. If a parking space has yet to exist, the bill should be amended to state that no occupancy permit may be

Fav w/ Amend

granted until the property owner provides proof that the a parking space is available for use of a resident of 2823 Huntingdon Avenue. The attached amendment can serve that purpose.

The Law Department points out that, if this bill is to be adopted, 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). To this end, the Zoning Code requires the Planning Commission (“Commission”) and the Board of Municipal Zoning Appeals (“Board”) to report their findings of facts and considerations to the City Council in regard to a bill authorizing a conditional use. ZC § 16-302. The Zoning Code directs both entities to base their recommendations on considerations outlined in Title 14 of the Zoning Code. ZC § 16-304. Title 14 outlines the elements the Board must consider in regard to a proposed conditional use as well the type of facts it must find before it can approve a conditional use. *See* ZC §§ 14-204 & 14-205. Title 14 does not address the duties of the Commission, but since the Zoning Code directs the Commission to make findings of fact and considerations with respect to those stated in Title 14, the Law Department concludes that the required considerations and findings of fact applicable to the Board apply to the Commission.

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.

Aside from the parking issue discussed above, the Law Department is prepared to approve the bill for form and legal sufficiency if all the procedural requirements are met and substantiated before the City Council. If the facts suggest that the parking requirement has yet to be fulfilled, the bill must be amended to require one. The suggested amendment is attached.

Sincerely,



Victor K. Tervalo
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Karen Stokes, Director, Mayor’s Office of Government Relations
Kyron Banks, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Jennifer Landis, Assistant Solicitor

**AMENDMENTS TO COUNCIL BILL 17-0016
(1st Reader Copy)**

By: Law Department
{To be offered to the Land Use and Transportation Committee}

Amendment No. 1

On page 1, in line 17, strike “condition that the” and substitute “following conditions:”

1. No use or occupancy permit may be issued by the Department of Housing and Community Development until the property owner provides proof that a parking space is available for use by a resident of 2823 Huntingdon Avenue.
2. The”;

and, in line 17, strike “complies” and substitute “must comply”.