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CITY OF BALTIMORE

CATHERINE E. PUGH,  
Mayor



DEPARTMENT OF LAW  
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May 17, 2018

Honorable President and Members  
of the City Council of Baltimore  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Attn: Natawna B. Austin,  
Executive Secretary

Re: City Council Bill 18-0209 – Zoning – Modifications

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0209 for form and legal sufficiency. The bill makes improvements to certain provisions that, during the course of actively implementing the new Zoning Code, were discovered to be functionally impractical or otherwise in need of modification to abate previously unanticipated consequences. It also corrects various errors, omissions, and inconsistencies as well as clarifies and conforms various references and terminology.

The Law Department does not see any legal impediments to the adoption of the bill as drafted. Nonetheless, the Law Department seeks an amendment to the bill that would strike § 5-308 in its entirety. Among other things, these provisions propose to “reinstate” certain variance standards that were omitted from Transform. The reinstatement will prove problematic.

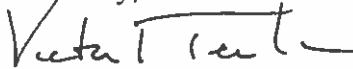
Today the City Council, as well as the Planning Commission and BMZA, struggle with finding sufficient facts and considerations from oral and written testimony required to be on the record in order to grant variances under the Zoning Code. To require more facts and considerations to be found is, we believe, excessively burdensome and unnecessary. The items being proposed for addition are not required by State law and have existed in the past only because, over the years, they crept into the City’s Zoning Code. It is our view that the additional standards add little to nothing that would not normally be discovered and considered in a comprehensive review of a proposed variance. Moreover, if the proposed items are included, we believe they will serve to provide more legal grounds on which to sue the City by a party aggrieved by the grant of a variance.

For this reason, we propose an amendment to strike § 5-308 from the bill. Specifically, the amendment would strike, beginning on page 6, line 12 thru lines 18 on page 7.

The Law Department notes further that a bill that authorizes a text amendment is a "legislative authorization." Art. 32, § 5-501. Legislative authorizations require that certain procedures be followed in the bill's passage. Specifically, certain notice requirements apply to the bill. *See* Art 32, § 5-601. The bill must be referred to certain City agencies, which are obligated to review the bill in a specified manner. *See* Art. 32, §§ 5-504, 5-506. Finally, certain limitations on the City Council's ability to amend the bill apply. *See* Art. 32 § 5-507.

Assuming all the procedural requirements are met, the Law Department will approve the bill for form and legal sufficiency.

Sincerely,



Victor K. Tervala  
Chief Solicitor

cc: Andre M. Davis, 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  
Ashlea Brown, Assistant City Solicitor