

CITY OF BALTIMORE

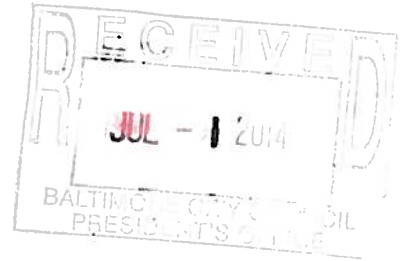
STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

July 1, 2014



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

Re: City Council Bill 14-0393 – Rezoning –2700 Rayner Avenue

Dear President and City Council Members:

The Law Department has been asked to review City Council Bill 14-0393 for form and legal sufficiency. The bill changes the zoning for the properties known as 2700 Rayner Avenue from the R-6 Zoning District to the O-R-2 Zoning District.

The Law Department's concern with this bill arises in two areas. First, the proposed rezoning raises issues of illegal spot zoning.

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

Tennison v. Shomette, 38 Md. App. 1, 8, 379 A.2d 187, 192 (1977)

The plat provided with Council Bill 14-0393 shows the site and all its abutting properties are zoned R-6. The proposed rezoning would place the site in a different zoning classification than all surrounding properties, satisfying the first criteria for spot zoning. To this end, the Planning Commission's Report ("Report") notes that the area is predominately residential. There is no mention that any property in the surrounding area is devoted to any form of office use. Nonetheless, the Report notes the rezoning would be consistent with the Comprehensive Maser Plan and the Greater Rosemount and Mondawmin Area Master Plan ("GRAMA"), a plan approved in 2012. In effect, while the rezoning would benefit the private interests of the

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applicant (Coppin Heights Community Development District) the rezoning would not solely benefit private interests but would serve to promote public health, safety and general welfare of the community as envisioned in GRAMA. For this reason, the Law Department does not view the proposed rezoning as illegal spot zoning.

Nonetheless, we note the rezoning may not meet the state-imposed standard for rezoning individual properties. "The City Council may grant the amendment to change the zoning classification based on a finding that there was: (i) a substantial change in the character of the neighborhood where the property is located; or (ii) a mistake in the existing zoning classification." MD LAND USE § 10-304. The Report does not support a finding under either criterion. There was no mistake in the original zoning nor, according to the Report, has a substantial change in the neighborhood occurred. Rather, the proposed rezoning is needed "to serve as a catalyst for the productive reuse of an historic property that will help achieve the goals established by GRAMA," according to the Report. Those are worthy ends, but they fall short of the legal standard for rezoning. Under the facts presented in the Report, those ends are better pursued under the comprehensive rezoning process now before the City Council.

For the above reasons, the Law Department will not approve Council Bill 14-0393 for form and legal sufficiency unless the City Council finds facts that meet the state-imposed rezoning criteria.

Sincerely yours,



Victor K. Tervala
Chief Solicitor

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