

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

March 31, 2014

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

Attn: Karen Randle
Executive Secretary

Re: City Council Bill 13-0299 – Zoning – Conditional Use Conversion of a 1-Family Dwelling Unit to a 2-Family Dwelling Unit in the R-8 Zoning District – Variances – 2642 McElderry Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 13-0299 for form and legal sufficiency. The bill permits the conversion of a 1-family dwelling unit to a 2-family dwelling unit at 2642 McElderry Street, which is in an R-8 Zoning District. Conversion of a 1-family dwelling unit to a 2-family dwelling unit is permitted in an R-8 Zoning District only by ordinance. Zoning Code of Baltimore City ("ZC"), §3-305(b)(3).

As part of an ordinance authorizing a conditional use conversion, a variance from the requirements of the City's Zoning Article may be granted. ZC § 15-101(2)(i). Further, certain procedures must be followed for any conditional use, including conversions to 2-family dwelling units. See ZC §§14-208, 16-101(c)(2), 16-101(d)(1) (conditional use is a type of legislative authorization); ZC §§16-203, 16-402 (notice and posting requirements); ZC §16-301 *et. seq.* (referral to certain City agencies, which are obligated to review the bill in a specified manner); ZC §16-403 (limitations on the City Council's ability to amend the bill); see also Md. Land Use Code Ann., §10-303.

This bill authorizes variances from: (1) the lot area requirement; (2) the rear yard setback requirement of 25 feet; and (3) the requirement of one parking space. The Planning Commission recommended passage of the bill. The Planning Staff Report ("Report"), however, recommends disapproval because the lot area variance is outside the 25% limit set forth in Section 15-202(a)(1), and because the required number of off-street parking spaces is lacking.




In considering the lot area variance, the Report utilized the bulk use regulations for principal permitted uses in the R-8 District. Under the current language of Section 3-305 (b)(3), however, the conversion of a single family dwelling to additional dwelling units in the R-8 District may only be authorized by a conditional use ordinance, and the principal conditional use bulk regulations must be applied. A bill has been introduced to revise Section 3-305(b) to state that the principal permitted use bulk regulations apply to conditional use conversions. See Council Bill 14-0336.

Council Bill 13-0299, however, fails under either set of bulk regulations. Under the *principal conditional use* bulk regulations for lot area in the R-8 District, a lot area of 5,000 square feet would be required. ZC §4-1106 (c) (with exceptions for certain uses, “[p]rincipal conditional uses in the R-8 District must comply with the minimum lot area and the maximum lot coverage requirements for single-family detached dwellings”). A variance would allow a reduction in the 5,000 square feet by 25%, see ZC §15-202(a)(1), bringing the lot area requirement to 3,750 feet. The lot area of the property at 2642 McElderry Street is 1,072.5 square feet, substantially short of the required lot area. Under the *principal permitted use* bulk regulations, as the Report points out, a lot area of 1,500 square feet is required, necessitating a variance which is outside the 25% discretionary range the City Council may authorize. See ZC §15-202(a)(1).

The bill also includes a variance for the number of off-street parking spaces and for the rear yard setback. Under Section 10-405(1)(iv), one parking space per dwelling unit is required. Here, no off- street parking is provided. For this additional reason, the Report recommends disapproval. The Law Department notes, however, that under Section 10-203(b), changes to structures built before April 20, 1971 must provide off-street parking, but only in the amount by which the requirements for the new use exceed those for the existing use. If this structure was built prior to April 20, 1971, one space would be required. Thus, the variance requested may be allowable pursuant to Section 10-402(a) and 15-208(b) if the City Council makes findings of fact at the hearing to support the variance under this reasoning. The variance for rear yard setback may be granted under Section 15-203.

In sum, the Law Department cannot approve this bill as written. Under Section 15-214, however, the Mayor and City Council may authorize variances outside the limits set forth in Title 15 if, in addition the findings under Sections 15-218 and 15-219, it finds as a matter of fact that: “(1) the lot cannot reasonably be used for any of the permitted or conditional uses set forth for the zoning district in which it is located; (2) the use or bulk regulations applicable to the lot have the effect of depriving the owner of all reasonable use of the lot; and (3) the variance is necessary to avoid arbitrariness.” The City Council would have to make findings of fact at the hearing to support the granting of the lot area variance under 15-214, and would have to make findings of fact at the hearing to support the granting of the off-street parking variance under Sections 10-203(b), 10-402(a), and 15-208(b), or under 15-214.

Sincerely,


Jennifer Landis

Special Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
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