

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

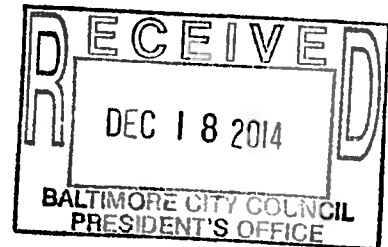


DEPARTMENT OF LAW

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

December 17, 2014

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



Re: City Council Bill 13-0302 – Zoning – Conditional Use Conversion of 1-Family Dwelling Unit to a 3-Family Dwelling Unit in the R-8 Zoning District – Variances – 1934 Wilkens Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 13-0302 for form and legal sufficiency. The bill permits the conversion of 1-family dwelling unit to a 3-family dwelling unit at 1934 Wilkens Avenue, which is in an R-8 Zoning district. Such conversions are permitted in R-8 only by ordinance. Baltimore City Zoning Code (“ZC”), § 3-305(b). This is the requisite ordinance to permit this change, for which there are no legal impediments.

In addition, the bill seeks to authorize variances for the required lot area size and required number of parking spaces, both of which are variances that this bill may permit pursuant to ZC Sections 15-101(2)(i), 15-202(a) and 15-208. However, the bill purports to have the “City Council” grant these variances. Since ordinances are passed by the Mayor and City Council and not the “City Council” alone, an appropriate amendment to correct this language is attached to this report. *See* City Charter, Art. III, §§11; 13.

For minimum lot area size, ZC Section 15-202(a)(1) provides that the bill may allow for a 25% variance in the applicable requirement. ZC Section 4-1106(a) requires principal use multi-family dwelling units to have 750 square feet per dwelling unit for a total of 2250 square feet total. However, ZC Section 4-105(c) has been interpreted to mean that for three or more dwelling units, the area required by the final unit is only half of the required feet. Thus, the total square feet needed for the proposed three dwelling units is 1,875. The bill provides that the current lot size is 1,758 feet. Therefore, a variance of 117 feet is required. Since 117 feet is a 6.24% difference from the required 1875 feet, the bill may authorize such a variance.

The Planning Report states that the lot coverage for this property is over ninety five percent and that the maximum allowable lot coverage in the R-8 District is 60%. *See* Report at 2. Thus, an amendment to the bill to add a variance for lot coverage is required. Section 15-202(b) of the Zoning Code provides that “[a] variance may authorize a lot coverage that is more than otherwise allowed by the applicable regulation.” The bill should be amended to state: “That pursuant to the authority granted by Title 15 of the Zoning Code of Baltimore City, specifically



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by §§ 15-101, 15-202(b), 15-218 and 15-219, permission is granted for a variance for lot coverage that is more than otherwise allowed by the applicable regulation." See ZC §§1-302, 1-303, 4-1106. An appropriate amendment is attached to this report.

The bill also seeks to grant a variance of the required parking spaces. ZC Section 15-208(b) provides that "a variance may reduce by no more than 75% the number of off-street parking spaces required by the applicable regulation." The requirement is one off-street parking space per dwelling unit, which equates to three spaces. ZC §10-405(1)(iv). However, if the building was lawfully erected prior to April 20, 1971, then "additional off-street parking facilities are mandatory only in the amount by which the requirements for the new use exceed those for the existing use." ZC §10-203(b). The State Department of Assessments and Taxation website indicates that the structure was erected in 1920. Since the new use requires three spaces and the existing use only requires one, then the amount of the difference is two spaces. Thus, only two parking spaces are required for the change to a multifamily dwelling unit. Although Planning states that there is an existing parking garage, it is unclear how many of the spaces in that garage will be counted under ZC Section 10-204. If both spaces can be counted towards the parking requirement, no variance is needed. If only one space can be counted, this is a 50% reduction in the number of required spaces and would come within the allowable variance amount under Section 15-208(b).

This parking variance can be permitted so long as facts are found to establish that "because of the particular physical surroundings, shape, or topographical conditions of the specific structure or land involved, an unnecessary hardship or practical difficulty would result, as distinguished from a mere inconvenience, if the strict letter of the applicable requirement were carried out." See ZC §§15-217, 15-218. There are also extensive additional findings of fact that must be made in order to grant this variance, including that the purpose for the variance will not be to increase the income potential of the property, and the variance itself is the minimum necessary. See ZC §15-219.

Additionally, there are certain procedures that must be followed. See ZC §§3-305(c), 14-208 (conditional uses must follow procedures in Title 16), 15-302 (variances in conjunction with conditional uses must follow procedures in Title 16); 16-101(c)(2), 16-101(d)(1) (conditional use is a type of legislative authorization, which is a type of zoning legislation); 16-203, 16-401, 16-402 (notice, posting and hearing requirements); 3-305(c), 16-301, 16-302, 16-304 (referral to certain City agencies, which are obligated to review the bill in a specified manner); 16-403, 16-404 (limitations on the City Council's ability to amend the bill, including a Third Reading hold-over before final passage because the bill includes variances, not just a conditional use); see also Md. Code, Land Use, §10-303.

Subject to the foregoing amendments and assuming all the procedural requirements are met and the appropriate findings of fact are made, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

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

CITY OF BALTIMORE
COUNCIL BILL 13-0302
(Law Department Amendments)

On page 1, line 22, strike “THE CITY COUNCIL GRANTS” and substitute “PERMISSION IS GRANTED FOR”

On page 2, line 3, strike “THE CITY COUNCIL GRANTS” and substitute “PERMISSION IS GRANTED FOR”

On page 2, line 4, before “SECTION” insert “SECTION 4. AND BE IT FURTHER ORDAINED, THAT PURSUANT TO THE AUTHORITY GRANTED BY TITLE 15 OF THE ZONING CODE OF BALTIMORE CITY, SPECIFICALLY BY §§ 15-101, 15-202(B), 15-218 AND 15-219, PERMISSION IS GRANTED FOR A VARIANCE FOR LOT COVERAGE THAT IS MORE THAN OTHERWISE ALLOWED BY THE APPLICABLE REGULATION.”

On page 2, line 4, strike “4” and substitute “5”