

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

January 29, 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 13-0294 – Zoning – Conditional Use Conversion of a 1-Family Dwelling Unit to a 2-Family Dwelling Unit in the R-8 Zoning District – Variances – 1201 North Fulton Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 13-0294 for form and legal sufficiency. The bill permits the conversion of a 1-family dwelling unit to a 2-family dwelling unit at 1201 North Fulton Avenue, 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; and (2) the rear yard setback requirement of 18.75 feet; and (3) the requirement of one parking space per dwelling unit. The Planning Commission recommended passage of the bill. The Planning Staff Report (“Report”), however, recommended disapproval because the lot area variance was outside the 25% limit set forth in Section 15-202(a)(1), and found Section 15-214 regarding unusable lots, to be inapplicable. In so concluding, the Report utilized the bulk use regulations for permitted uses, not conditional uses, in the R-8 District.



Under Section 3-305 (b)(3), however, the conversion of a single family dwelling to additional dwelling units in the R-7 District may only be authorized by a conditional use ordinance. Thus, the conditional use bulk regulations for the R-8 District are the starting point for considering variances made part of a conditional use conversion ordinance. *See* ZC §3-305(c) (1) (all provisions of Title 14 regarding Conditional Uses apply to conditional use conversions).

Under the 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 1201 North Fulton Avenue is 1,050 square feet, substantially short of the required lot area. Under Section 15-214, however, the Mayor and City Council may authorize such a variance if 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.” Because Planning’s Report found Section 15-214 to be inapplicable, the City Council would have to make findings of fact at the hearing to support the granting of a variance for lot area under 15-214.

The bill also includes a variance for the number of parking spaces and for the rear yard setback. Under 10-405 (iv), one parking space per dwelling unit is required. However, under 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. Here, one space would be required. Thus, the variance requested is allowable pursuant to 10-402(a) and 15-208(b). Likewise, the variance for rear yard setback may be granted under Section 15-203.

In sum, the Report establishes sufficient facts for granting the conditional use and the variances for a reduction in the number of parking spaces and the rear yard setback. However, the City Council would have to make findings of fact to support a lot area variance under 15-214. Thus, if the City Council adopts the factual findings in the Report to support the conditional use and the variance for parking spaces and rear yard setback, and finds facts at the hearing to support the lot area variance under 15-214, the legal requirements would be met. As the bill is the appropriate method for the City Council to review the facts and make the determination as to whether the legal standards for the conditional use and variances have been met, and assuming the legal standards are met and all other procedural requirements are satisfied, the Law Department approves the bill for form and legal sufficiency.

Sincerely,



Jennifer Landis
Special Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor
Hilary Ruley, Chief Solicitor
Victor K. Tervalo, Chief Solicitor