

CITY OF BALTIMORE

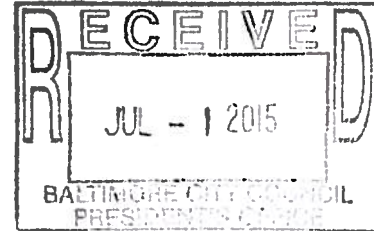
STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

July 1, 2015



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

Re: City Council Bill 15-0508 – Zoning – Conditional Use Conversion of 1-Family Dwelling Unit to a 2-Family Dwelling Unit in the R-8 Zoning District – Variance – 1806 West Baltimore Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 15-0508 for form and legal sufficiency. The bill permits the conversion of a 1-family dwelling unit to a 2-family dwelling unit at 1806 West Baltimore Street, which is in an R-8 Zoning district. Such conversions are permitted in R-8 only by ordinance. Zoning Code of Baltimore City (“ZC”), § 3-305(b)(2).

The bill also authorizes a variance from the requirements of the Zoning Code for off-street parking, specifically, to permit access to off-street parking from an alley that is less than the 15 feet width required by Section 10-306(a)(2). The Report from the Planning Department (“Report”), acknowledges that the alley does not meet this requirement, but “recommends that the City Council approve this bill including its off-street parking variance (as nearby properties have rear yard parking pads using the same alley).” Report at 2.

Section 15 of the Zoning Code, however, does not contain a provision authorizing a variance from Section 10-306(a)(2). See ZC § 15-102 (authority to grant a variance applies only to the specific purposes and only on the specific findings set forth in Subtitle 2 of this title). Section 2 of the bill, however, states that the parking variance is authorized under Section 15-214 of the Zoning Code titled “Unusable lots.” Under that section, the Mayor and City Council may authorize a variance not specified in Subtitle 2 of Article 15, if, in addition to 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.” Here, there are no facts in the Staff Report from the Planning Department (“Report”) to establish that the lot cannot reasonably be used as a single family dwelling without parking, or as a 2-family dwelling without parking. Thus, unless such a factual basis is established at the committee hearing, Section 15-214 is inapplicable.

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The Law Department notes that a variance from the requirement of 1 parking space to 0 would be permitted since the structure was built before 1971. *See* ZC §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). Under ZC Section 15-208(b), a variance may reduce by 75% the number of off-street parking spaces required. Here, that leaves a requirement of only 25% of a space, which may be reduced to 0 under Section 10-402(a), as long as the City Council makes findings of fact at the hearing to support the variance under this reasoning.

In any event, with regard to the conversion to 2 dwelling units, the Report applies the Title 14 considerations for conditional uses and concludes that the proposed use as a 2-family dwelling “would be consistent with residential use in the area; would not be detrimental to or endanger public health, security, general welfare, or morals; and would complete constructive re-use of a vacant structure that still retains considerable historic integrity.” *See* Report at 3.

Finally, 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.

In sum, if the City Council makes findings of fact at the hearing to support the application of Section 15-214 to the alley width variance, or if facts are presented to support the parking space variance, and assuming all the procedural requirements are met, the Law Department could approve the bill for form and legal sufficiency.

Sincerely,



Jennifer Landis
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Terval, Chief Solicitor
Hilary Ruley, Chief Solicitor