CITY OF BALTIMORE
STEPHANIE RAWLINGS-BLAKE, Mayor

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

May 12, 2016

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 16-0644 – Zoning – Conditional Use Conversion of Single Dwelling Unit to a 2-Dwelling Unit in the R-8 Zoning District – Variances – 305 East Lafayette Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 16-0644 for form and legal sufficiency. The bill permits the conversion of 1 dwelling unit to a 2-dwelling unit at 305 East Lafayette Avenue, which is in an R-8 Zoning district. Such conversions are permitted in R-8 only by ordinance and "only as long as the number of dwelling and efficiency units to be allowed conforms with the applicable principal-permitted-use bulk regulations for the district in which the building is located." Baltimore City Zoning Code ("ZC"), §3-305(b)(2). This is the requisite ordinance to permit this change.

The bill also seeks several variances. ZC §§15-101(2)(i). The variance for lot area is required because in an R-8 there must be 750 square feet per dwelling unit. ZC §§4-105; 4-1106. Thus, the required square footage for 2 dwelling units would be 1500 square feet. This property has a lot area of 1408 or 94% of the required amount. Thus, a variance of 6% is required and would be permissible as a less than 25% reduction in the applicable requirement. ZC §15-202(a)(1). In order to permit the variance, the Mayor and City Council must find that there would be an unnecessary hardship or practical difficulty if the required square footage was imposed. ZC §15-218. The Planning Report provides facts to support this finding, which the City Council should take care to adopt or find other supporting facts.

The bill also seeks a floor area ratio variance because the floor area ratio in an R-8 is 2.0 and this property has a 2.1 FAR. ZC §§1-303; 4-1108. There may be up to a 75% increase in the floor area ratio. ZC §15-204(b). In order to permit the variance, the Mayor and City Council must find that there would be an unnecessary hardship or practical difficulty if the required lot coverage amount was imposed. ZC §15-218. The Planning Report provides facts to support this finding, which the City Council should take care to adopt or find other supporting facts.

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The lot coverage variance is legally required if too much of the 1408 square foot lot is covered by the existing structure. The existing structure is 16 by 62 feet or 922 square feet, which is 65% of the lot. The maximum lot coverage is 60% for single-family attached dwellings or per FAR for multiple family dwelling unit, neither of which are met in this case. ZC §4-1106. There is no limit on the amount of a variance from the lot coverage requirement. ZC §15-202(b). In order to permit the variance, the Mayor and City Council must find that there would be an unnecessary hardship or practical difficulty if the required lot coverage amount was imposed. ZC §15-218. The Planning Report does not address this required variance, nor does the language in the bill. Thus, the bill must be amended to include this variance for lot coverage. In addition, the City Council must make the required findings of fact for this variance.

An off-street parking variance is legally required if the property cannot provide the parking spaces needed under Section 10-405 of the Zoning Code. That section states that multiple family dwellings in an R-8 zoning district must have 1 space per dwelling unit. *See also* ZC §§10-201; 10-202(a). A variance of 75% of this requirement is permissible pursuant to Section 15-208 of the Zoning Code. In order to permit the variance, the Mayor and City Council must find that there would be an unnecessary hardship or practical difficulty if the required lot coverage amount was imposed. ZC §15-218.

A variance is not needed for the front, interior side or street corner yard spaces. ZC §4-1107. A variance would be needed for the rear yard if it cannot meet the 25 foot requirement. ZC §§3-208; 4-1107; 15-203. Since the rear area adjoins a 17 foot alley, a quarter of that width, or 4.25 feet, may be counted towards the required 25 feet. ZC §3-207(b). However, there appears to be ample space for the rear yard.

There are certain procedures that must be followed. *See* ZC §§3-305(c)(plans and advice required), 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,); *see also* Md. Code, Land Use, §10-303. A Third Reading hold-over before final passage is needed because the bill includes variances.

Additionally, it should be noted that the property is located in the Greenmount West Urban Renewal Plan (the "URP"). Pursuant to Sections B.2.b(2) and B.4.a(2) of the URP, the City's Department of Housing and Community Development ("HCD") has the authority to review and approve all changes in use for properties in the URP. This is in addition to the zoning requirements mentioned herein.

Assuming all the procedural requirements are met, the building is able conform with the applicable principal-permitted-use bulk regulations 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 Tervala, Chief Solicitor
Jennifer Landis, Assistant Solicitor