

CITY OF BALTIMORE

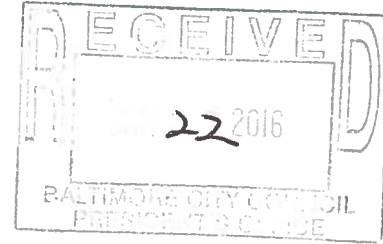
STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

June 22, 2016



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 16-0630 – Zoning – Conditional Use Conversion of a 1-Family Dwelling Unit to a 1-Family Dwelling Unit and 1 Efficiency Unit in the R-8 Zoning District – Variances – 317 West 30th Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 16-0630 for form and legal sufficiency. The bill permits, subject to certain conditions, the conversion of a 1-family dwelling unit to a 1-family dwelling unit and 1 efficiency unit in the R-8 Zoning District on the property known as 317 West 30th Street. Such conversions are permitted in R-8 only by ordinance. Zoning Code of Baltimore City (“ZC”), § 3-305(b)(2). The bill also grants variances from certain lot area size, off-street parking, and floor area ratio requirements

The Law Department notes the Zoning Code requires a lot area of 1250 sq. ft for one dwelling unit plus a 500 sq. ft. efficiency unit. ZC, § 4-1106. The Planning Commission Report (“Report”) notes that the total lot area of the lot in question is only 1020 sq. ft.; that is, 18% less than the required lot size. To be lawful, a variance from the City’s Zoning Code therefore is required before the City Council can approve the proposed development. The Zoning Code allows a variance as much as 25% to reduce the required lot size. ZC, § 15-202. The proposed variance therefore will be lawful.

The Zoning Code requires a floor to area ratio (FAR) of 2.0 for a multi-family structure in an R-8 Zoning District. ZC, § 4-1108. The FAR on this property is only _____. If this was to be legal, a variance of 55.2% from the 2.0 FAR standard would need to be granted. In fact, the Zoning Code allows a variance to increase the floor area ratio factor by up to 75%. ZC, § 15-204. Accordingly, the proposed variance for the FAR will be lawful.

The property currently has one off-street parking space. The Zoning Code requires the developed property to have two off-street parking spaces. ZC, § 10-405. The Report notes that the property cannot meet the tow-space requirement and therefore needs a variance. The Zoning Code allows as much as a 75% variance to meet parking-space requirements. ZC, § 15-208. A

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variance of 75% will reduce the parking space requirements to 1/2 space. According to the Zoning Code, any fraction of 1/2 or more counts as one parking space. ZC, § 10-402. The proposed variance for a parking space therefore will be lawful.

According to the Zoning Code, a variance may be granted as part of a conditional use ordinance, such as that contained in this bill. ZC, § 15-101(2). Granting a variance, however, requires the City Council to make certain findings of fact: specifically, those required by §15-218 (findings of unnecessary hardship or practical difficulty; and §15-219 (other required findings). In addition, pursuant to § 16-304 of the Zoning Code, the City Council is required to include a finding that the Board of Zoning and Municipal Appeals and the Planning Commission have based their recommendations to the City Council on considerations required by ZC Title 14 (Conditional Uses). The Law Department further points out that findings of fact are required in a quasi-judicial proceeding such as granting a conditional use. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 713 (1977)

We note, however, that the Report provides findings of fact that support the authorization of this conditional use conversion as well as the granting of the proposed variances. *See* Report at 2-4. So long as the City Council approves these facts, or facts sufficiently similar to those in the Report, the above legal requirements for approving the conditional use as proposed will have been satisfied.

Finally, the Law Department points out that, pursuant to the City Zoning Code, a bill a conditional use authorization is classified as a "legislative authorization." ZC § 16-101. Legislative authorizations require that certain procedures be followed in the bill's passage. Specifically, certain notice requirements apply to the introduction of the bill. *See* ZC § 16-203. The bill must be referred to certain City agencies, which are obligated to review the bill in a specified manner. *See* ZC §§ 16-301, 16-302 & 16-304. Additional public notice and hearing requirements also apply to the bill. *See* ZC § 16-402. Finally, certain limitations on the City Council's ability to amend the bill apply. *See* ZC § 16-403.

Assuming all the above procedural requirements are met, the Law Department will approve the bill for form and legal sufficiency as drafted.

Sincerely,



Victor K. Tervala
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Jenifer Landis, Assistant Solicitor