

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

July 10, 2017

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 17-0042 – Zoning – Conditional Use Conversion of 1 Unit
to 2 Dwelling Units in the R-8 Zoning District – Variance – 2304 North
Fulton Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0042 for form and legal sufficiency. The bill permits the conversion of 1 Dwelling Unit and to 2 Dwelling Units in the R-8 Zoning District on the property known as 2304 North Fulton Avenue. The bill also grants a variance. We point out that conversions are permitted in an R-8 Zoning District only by ordinance. Zoning Code of Baltimore City (“ZC”), § 3-305(b)(2).

This bill was introduced on March 20, 2017. Article 32, § 2-203 permits a development to be governed under the zoning code in effect prior to June 5, 2017 (Old Zoning Code) if certain conditions are met. Specifically, if an application is filed – in this case, an application for a conditional use by ordinance – prior to June 5, 2017, the effective date of Article 32, and the application is considered complete, the requirements of the Old Code govern the development. New Code, § 2-203(k). Pursuant to the Old Zoning Code, a bill proposing a conditional use is governed by Title 16. Old Zoning Code, § 14-208. Title 16 requires the applicant to submit a written statement that contains certain prescribed elements, which will inform the City Council and the public as to the intended uses and changes that are being sought. Old Zoning Code, § 16-202. From the information available to the Law Department, the required statement was made and completed prior to June 5, 2017. Therefore, this conditional use conversion can be governed under provisions of the Old Code.

The Law Department points out that, if this bill is to be adopted, 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). To this end, the Zoning Code requires the Planning Commission (“Commission”) and the Board of Municipal Zoning Appeals (“Board”) to report their findings of facts and considerations to the City Council in regard to a bill authorizing a conditional use. ZC § 16-302. The Zoning Code directs both entities to base their recommendations on considerations outlined in Title 14 of the Zoning Code. ZC § 16-304. Title 14 outlines the elements the Board must consider in regard to a proposed conditional use as well

the type of facts it must find before it can approve a conditional use. See ZC §§ 14-204 & 14-205. Title 14 does not address the duties of the Commission, but since the Zoning Code directs the Commission to make findings of fact and considerations with respect to those stated in Title 14, the Law Department concludes that the required considerations and findings of fact applicable to the Board apply to the Commission.

We note further that, pursuant to the Old Zoning Code, a bill concerning a conditional use 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.

As part of an ordinance authorizing a conditional use conversion, a variance from the requirements of the zoning code may be granted. Old Zoning Code § 15-101(2)(i). This bill provides for a variance from off-street parking requirements. Furthermore, the Planning Commission Report states that a variance is needed from the lot area requirement. The Planning Commission Report states that both variances are within the permitted limits for granting a variance.

In order for the City Council to grant these variances it must make certain findings of fact. The findings were not the subject of the Planning Commission's hearing. The required facts must therefore be adduced at the public hearing before the City Council in written or verbal form. Old Zoning Code §§ 15-218 and 15-219.

The Law Department further notes that the Planning Commission's Report provides necessary findings of fact in regard to the conditional use. If the City Council finds facts identical or similar to those found by the Planning Commission for the conditional use, and if facts to support the variance are adduced at the public hearing, the Law Department is prepared to approve the bill for form and legal sufficiency if all other procedural requirements are met.

Sincerely,



Victor K. Tervala
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Jennifer Landis, Assistant Solicitor