
CITY OF BALTIMORE

BRANDON M. SCOTT,
Mayor



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November 15, 2023

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 23-0436 - Urban Renewal – Brooklyn–Curtis Bay – Renewal Area
Designation and Urban Renewal Plan

Dear President and City Council Members:

The Law Department reviewed City Council Bill 23-0436 for form and legal sufficiency. The bill repeals and replaces the Urban Renewal Plan (“URP”) for the Brooklyn-Curtis Bay Business Area. The bill recitals state that the URP was originally approved by the Mayor and City Council of Baltimore by Ordinance 852, dated December 21, 1982, as further amended by Ordinances 84-77, 03-503, and 04-863, at which time the Area was renamed as the Brooklyn–Curtis Bay Business Area, as further amended by Ordinances 06-314 and 11-568, and last amended by Ordinance 22-126, dated April 4, 2022. The bill provides for an immediate effective date.

Section 2-6(g)(l) of Article 13 of the City Code requires that any change to an Urban Renewal Plan be made by ordinance. This bill is the appropriate mechanism for repealing and replacing the Brooklyn-Curtis Bay URP. See, e.g., *Mayor and City Council of Baltimore v. Neighborhood Rentals, Inc.*, 170 Md. App. 671, 683 (2006) (nothing “prohibits, either expressly or impliedly, a future city council from lengthening or shortening the life of [any Urban Renewal] Plan or terminating it altogether.”).

The Law Department notes the following technical amendments to the bill:

- Page 10, line 4. The word “objections” should be “objectives”.
- Page 12, lines 18, 19, 22. This section on waiver states that a waiver request must be presented to and considered by the Charles North Community Association. Page 5 lines 24-29 of CB 23-0436 defines relevant community organizations for the Brooklyn-Curtis Bay URP. Charles North Community Association is not on this list. Presumably, the waiver request must be presented to one or more of the community organizations identified for Brooklyn-Curtis Bay.
- Page 16, line 15. The second word “materials” should be “material”.

Council Bill 23-0436, pg. 7-8, describes land use provisions in the URP, including uses that are prohibited in certain areas of the URP. *See, e.g., Donnelly Advertising Corp. of Maryland v. City of Baltimore*, 279 Md. 660, 665 (1977) (Use restrictions that are stricter than applicable zoning provisions have been upheld in urban renewal areas so long as they do not effectively rezone the property). One prohibited use in the R-6, R-7, and R-8 zones in the URP is for Residential Care Facilities of any size. See Table 1, pg. 8 of CB 23-0436. It appears that the Brooklyn-Curtis Bay URP Area includes areas of R-3 and R-5 zoning in addition to R-6, R-7, and R-8. It does not appear that residential treatment facilities are prohibited uses under the URP in the R-3 and R-5 areas. Districts R-6, R-7, and R-8 are multi-family districts. See Art. 32, § 6-204. Table 9-301 of the Zoning Code reveals that a residential care facility of 16 or fewer residents is a permitted use in R-6, R-7, and R-8, and a conditional use requiring Zoning Board approval in the same districts for facilities with 17 or more residents.

In *United States v. City of Baltimore*, 845 F. Supp. 2d 640, 651 (D. Md. 2012), the City's previous zoning code was challenged as violating the Fair Housing Amendments Act of 1988 ("FHA") and the Americans with Disabilities Act ("ADA"). The Court held that although local zoning laws are entitled to considerable deference, they are not "beyond the purview of federal statutory protections such as the ADA and the FHA." *Id.* Accordingly, the court required an amendment to the Zoning Code to allow smaller group homes in the residential zoning districts as a permitted use, and larger residential facilities as a conditional use requiring Zoning Board approval. *Id.*, pg. 652. Similarly, the protections in the ADA and FHA limit the City's ability to prohibit residential care facilities through use of an urban renewal plan. "The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws." *Joint Statement of The Department of Housing And Urban Development And The Department of Justice: State And Local Land Use Laws And Practices And The Application of The Fair Housing Act* ("Joint Statement") (2016), pg. 1. "The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act." *Id.*, pg. 2. For this reason, Paragraph B of the Brooklyn-Curtis Bay URP, entitled Land Use Provisions, must comply with the FHA and the ADA and the Court's requirement that the City permit small group homes in residential areas. Thus, to approve the bill for form and legal sufficiency, the prohibition on residential care facilities in Table 1, pg. 8 must be removed.

With the required technical amendments and the amendment to remove the prohibition on residential care facilities in Table 1, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,



Michele M. Toth
Assistant Solicitor

cc: Ebony Thompson
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