



MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council
c/o Natawna Austin, Executive Secretary

From: Alice Kennedy, Housing Commissioner

Date: August 21, 2023

Re: City Council Bill 23-0407 Zoning - Discontinuance or Abandonment of Nonconforming Use – Reporting

The Department of Housing and Community Development (DHCD) has reviewed City Council Bill 23-0407 for the purpose of establishing a process for a person to report to the Zoning Administrator that a nonconforming use, or any part of that use, has been discontinued for 12 consecutive months or actually abandoned.

If enacted, City Council Bill 23-0407 would clarify what is needed to prove that a non-conforming use no longer is in use and allows individuals to report it. Currently, discontinuance occurs whenever the active and continuous operation of any nonconforming use, or any part of that use, has been discontinued for 12 consecutive months. This is either determined by the issuance of a VBN or by conducting monthly inspections of the subject property over the course of a year from the time a complaint is received and documenting that the non-conforming use is in fact, not taking place.

Title 18, Subtitle 3, Section 18-307 of the Baltimore City Zoning Code speaks to discontinuance or abandonment of use.

(a) Discontinuance of use.

Whenever the active and continuous operation of any nonconforming use, or any part of that use, has been discontinued for 12 consecutive months:

- (1) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use, regardless of any reservation of an intent to resume active operations or otherwise not abandon the use; and
- (2) the discontinued nonconforming use, or discontinued part of that use:
 - (i) may not be reestablished; and
 - (ii) any subsequent use of any part of the land or structure previously used for the discontinued use, or discontinued part of that use, must conform to the regulations of the district in which the land or structure is located.

There are several non-conforming uses around the city as a result of the city-wide comprehensive rezoning which went into effect on June 5, 2017. Non-conforming uses are comparable to “grandfathered in” uses. If there was a use on a property that does not fit with the new zoning, those uses can continue. If the use stops and is discontinued for 12 months, the new zoning designation takes over.

The challenge for some communities has been how to know if a use was discontinued for 12 months. Typically, if a property has a Vacant Building Notice the use has been discontinued. But not all buildings qualify for a vacant building notice when not in use. For instance, the property may have no open notices or citations, or the first floor of a building may not be in use but the second floor has a separate active use. Currently the zoning board and administrator uses a vacant building notice (VBN) to indicate a use is non-conforming for 12 months or by conducting monthly inspections when complaints are received.

DHCD would like to suggest two friendly clarifying amendments to City Council Bill 23-0407.

Amendment No. 1

On page 2, in line 2, strike “SHALL INCLUDE” and substitute

“MUST BE IN THE FORM THE COMMISSIONER OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT REQUIRES AND CONTAIN THE FOLLOWING INFORMATION:”.

Amendment No. 2

On page 2, in line 8, strike “AND”; and, on that same page, in line 10, strike the period and substitute “; AND”; and, on that same page, after line 10, insert:

“(VI) ANY SUPPORTING DOCUMENTS AND PHOTOGRAPHS THAT EVIDENCE THE DISCONTINUED OR ABANDONED USE.”

This legislation would allow for other factors like photos and affidavits from residents and additional research to be used to designate a discontinued use. DHCD would create a reporting form that will be accessible through our website. The online reporting form will be useful to constituents as a quick and easy way to provide all the needed information. This Bill, as amended, would support the work that DHCD presently undertakes.

DHCD **supports the amendment and passage** of Council Bill 23-0407 and respectfully request a favorable report.

AK/sm



cc: Ms. Nina Themelis, *Mayor's Office of Government Relations*