
CITY OF BALTIMORE

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Mayor



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August 30, 2024

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 24-0544 - Zoning – Harford Road Overlay District

Dear President and City Council Members:

The Law Department reviewed City Council Bill 24-0544 for form and legal sufficiency. The bill establishes the Harford Road Overlay District, delineates the boundaries of the district, creates applicable use regulations within the district, establishes bulk and yard regulations within the district, details other applicable standards within the district, and amends certain off-street parking requirements. The bill would take effect on the 30th day after its enactment.

The City Code describes overlay districts as comprising “a layer of regulations...superimposed on the regulations of an underlying district.” City Code, Art. 32, § 12-102. According to the City Code, overlay districts are “intended to modify or supplement the regulations of its underlying zoning districts in recognition of unique circumstances in the area, while maintaining the general character and purpose of the underlying zoning districts over which it is located.” *Id.* Maryland State law endorses the use of concepts such as overlay districts in stating that while “[z]oning regulations adopted by the Mayor and City Council of Baltimore City...shall be uniform for each class or kind of development throughout each district or zone...[z]oning regulations in one district or zone may differ from those in other districts or zones.” Md. Land Use, § 10-301. In applying this State law, the regulations affecting each R-8 District in the City, for example, must be identical to one another, but an R-8 District that is also subject to an overlay district is able to be governed by both types of district regulations.

Neither Maryland State law nor the City Code establish special procedures governing the use of overlay districts. General legal principles hold that “so long as the public purpose supporting enactment of a zoning district or classification furthers a legitimate zoning purpose substantially related to the use and development of land, the classification is unlikely to be held” unlawful, unless the exercise conflicts with the scope of authority delegated to a local government.¹ Rathkopf’s *The Law of Zoning and Planning* § 11:14 (4th ed.). “Special mapped and overlay zoning districts, as with other zoning classifications, are likely to be upheld so long as the

classifications established and restrictions imposed, and the resulting differing treatment of owners and lands, are supported by some rational relationship to a legitimate zoning purpose.”¹ Rathkopf’s, *The Law of Zoning and Planning* § 11:16 (4th ed.). Acceptable objectives of zoning have expanded to include the use of zoning to promote social, economic, cultural, aesthetic, and environmental goals. *Id.*, § 11:17.

In the absence of specific governing standards applicable to overlay districts, the City must rely on procedures derived from the City Code’s statement of purpose regarding the use of overlay districts and the above statement of general legal principles. The Zoning Code defines an overlay district as one “intended to modify or supplement the regulations of its underlying zoning districts in recognition of unique circumstances in the area, while maintaining the general character and purpose of the underlying zoning districts over which it is located.” City Code, Art. 32, § 12-102.

In addition to finding the above facts to support the approval of an overlay district, the City Council must also consider the following standards for amending the text of the zoning code:

- (1) Is the amendment consistent with the City’s Comprehensive Master Plan;
- (2) Does it promote the public health, safety, and welfare;
- (3) Is it consistent with the intent and general regulations of this Code;
- (4) Would it correct an error or omission, clarify existing requirements, or effect a change in policy; and
- (5) Would the amendment create nonconformities.

City Code, Art. 32, § 5-508(c).

Overlay districts are addressed in Title 12 “Special Purpose Districts” of the Zoning Code (Art. 32). There are currently 12 overlay districts each with a particular focus.¹ Each overlay district has “unique circumstances in the area” (Art. 32, § 12-102) which resulted in the City’s desire to overlay additional zoning requirements so that land was developed consistently within each type of overlay district. With respect to the Harford Road corridor, which is the subject of CB 24-0544, no unique circumstances of the corridor are identified in the council bill which would require the creation of an additional overlay district.

The Law Department has several issues with Council Bill 24-0544. First, the bill makes a place of worship a conditional use requiring Zoning Board approval in all zoning districts within the Harford Road overlay district. Under the bill, community centers and cultural facilities are both permitted uses in all zoning districts in the overlay district. The Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc-2000cc-5 protects places of worship and other religious institutions from discrimination in zoning laws. The law provides “No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C.A. § 2000cc(b)(1). See also *United States v. City of Troy*, 592 F.Supp.3d 591, 607 (2022) (“RLUIPA prohibits a municipality from applying a land use regulation ‘in a manner that imposes a substantial burden on ... religious exercise’ unless it demonstrates that the burden ‘is the least restrictive means of furthering [a] compelling governmental interest.’”). There is no apparent justification for the more restrictive treatment of places of worship under this bill. Accordingly,

¹In addition to the overlay districts in Title 12, the Zoning Code also contains open-space and environmental overlay districts in Title 7.

there is a risk that CB 24-0544 would be found to violate RLUIPA. The Law Department is in agreement with the amendment recommended by Planning which equalizes the permitted and conditional use standards for community centers, cultural facilities, and places of worship in the overlay district.

Second, the disallowance of any curb cut in the district would impair access to properties in the Harford Road Overlay District. The Planning report notes that after discussions with Councilman Dorsey, the disallowance of curb cuts would be limited to those on Harford Road. The bill removes off-street parking requirements in the overlay district. The removal of off-street parking requirements, however, does not fully address the problem caused by the prohibition on curb cuts. A new business or housing development may require a curb cut for customers, suppliers, or residents to gain access. The ban on all curb cuts, even if limited to properties on Harford Road, would require that a property could only be accessed from a side street. If side street access to the property is not be available, the prohibition on curb cuts effectively limits the use of the property. The prohibition on curb cuts should be removed from the bill.

Third, this bill would create an overlay district on land that is already governed by two separate Urban Renewal Plans (URP) (Lauraville Business and Hamilton Business), the Hamilton-Lauraville Main Street Program, the Harford Road Master Plan and Harford Road Corridor Study, and the underlying Zoning Code applicable to this area. If a conflict arises, for instance, between a requirement under one of the URPs and a requirement under the overlay district, which additional zoning restriction governs? According to the Planning Commission Report, the intent of the bill is that it would replace the Lauraville Business URP. The Lauraville URP is set to expire in October 2024. Although the overlay district may also ultimately replace the Hamilton URP as well, this would require action by the City Council to repeal the Hamilton URP.

Planning Commission Recommendation

The Planning Commission recommends approval of the Harford Road Overlay District; however, Planning recommends quite a few amendments to the zoning requirements for the district. The Planning Report states: “[t]he establishment of the Harford Road Overlay District is in line with many of the goals and objectives of these plans to make Harford Road and the surrounding neighborhoods a more livable and sustainable community by increasing density along Harford Road, improving the pedestrian experience, reducing auto-oriented uses and increasing access by other modes, promoting a sustainable mixed-use development, and increasing housing opportunity and diversity.” The Planning Report also notes the potential conflict with RLUIPA due to the need to get conditional use approval from the Zoning Board for a place of worship. The Report contains an equity impact analysis. The Planning Report does not clearly discuss the unique circumstances applicable to the area justifying the necessity for the overlay district. The City Council must adduce facts from testimony as to the existence of the unique circumstances of the area, as well as the standards for a zoning text amendment set out on page 2 of this bill report.

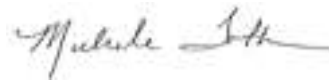
Process

A text amendment is deemed a “legislative authorization.” City Code, Art. 32, § 5-501(1). The City Code does not provide specific notices for the creation of overlay districts, but due process considerations suggest that notice requirements for comprehensive rezoning should apply. See City Code, Art. 32, § 5-601. Specifically, notice of the City Council hearing must be given by publication in a newspaper of general circulation in the City, by posting in conspicuous places

around the perimeter of the property and by first-class mail to each person who appears on the tax records of the City as an owner of the property to be rezoned. Art. 32, §5-601(b). The notice of the City Council hearing must include the date, time, place and purpose of the hearing, as well as the addresses of the properties and the name of the applicant. Art. 32, §5-601(c). The posted notices must be at least 3 feet by 4 feet in size, placed at a prominent location, and at least one sign must be visible from each of the property's street frontages. Art. 32, §5-601(d). The published and mailed notices must be given at least 15 days before the hearing; the posted notice must be at least 30 days before the public hearing. Art. 32, §5-601(e) and (f).

Council Bill 24-0544 is the appropriate method for the City Council to review the facts and determine whether the legal standards for amending the Zoning Code to establish an overlay district have been met. If the two amendments required by the Law Department are approved, the required findings are made at the hearing and that all procedural requirements are satisfied, the Law Department can approve the bill for form and legal sufficiency.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Michele Toth", written in a cursive style.

Michele M. Toth
Assistant Solicitor

cc: Stephen Salsbury
Nina Themelis
Tiffany Maclin
Elena DiPietro
Hilary Ruley
Ashlea Brown
Desiree Luckey
Ahleah Knapp