
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
ANDRE M. DAVIS, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

September 27, 2019

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 19-0392 - Zoning – Conditional Use Conversion of a Single-Family Dwelling Unit to 2 Dwelling Units in the R-8 Zoning District — Variance — 2132 West Baltimore Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0392 for form and legal sufficiency. The bill permits, subject to certain conditions, the conversion of a single-family dwelling unit to 2 dwelling units in the R-8 Zoning District on the property known as 2132 West Baltimore Street. It also grants a variance from certain bulk (lot area size) regulations.

Conditional Use Standards

Under the Zoning Article of the City Code, the conversion of a single-family dwelling to a multi-family dwelling in an R-8 District requires conditional-use approval by ordinance. Baltimore City Code, Art. 32, § 9-701(2). Further, approval of a conditional use must be based on the following findings:

- (1) the establishment, location, construction, maintenance, or operation of the conditional use would not be detrimental to or endanger the public health, safety, or welfare;
- (2) the use would not be precluded by any other law, including an applicable Urban Renewal Plan;
- (3) the authorization would not be contrary to the public interest; and
- (4) the authorization would be in harmony with the purpose and intent of this Code.

§ 5-406(a). Moreover, the above findings must be guided by 14 “considerations” involving, for example, such things as the “nature of the surrounding area and the extent to which the proposed use might impair its present and future development,” “the character of the neighborhood,” and “the resulting traffic patterns and adequacy of proposed off-street parking.” Art. 32, § 5-406(b).

Variance Standards

The bill also contains variances from off-street parking requirements. For a 2-bedroom unit, the dwelling must two off-street parking space. Art. 32, § 9-703(f). Since the property does not meet the applicable requirements, the bill seeks a variance from the requirement.

To grant a variance, the City Council must find that, “because of the particular physical surroundings, shape, or topographical conditions of the specific structure or land involved, an unnecessary hardship or practical difficulty, as distinguished from a mere inconvenience, would result if the strict letter of the applicable requirement were carried out.” Art. 32, § 5-308(a). The City Council must also make seven other findings:

- (1) the conditions on which the application is based are unique to the property for which the variance is sought and are not generally applicable to other property within the same zoning classification;
- (2) the unnecessary hardship or practical difficulty is caused by this Code and has not been created by the intentional action or inaction of any person who has a present interest in the property;
- (3) the purpose of the variance is not based exclusively on a desire to increase the value or income potential of the property;
- (4) the variance will not: (i) be injurious to the use and enjoyment of other property in the immediate vicinity; or (ii) substantially diminish and impair property values in the neighborhood;
- (5) the variance is in harmony with the purpose and intent of this Code;
- (6) the variance is not precluded by and will not adversely affect: (i) any Urban Renewal Plan; (ii) the City’s Comprehensive Master Plan; or (iii) any Historical and Architectural Preservation District; and
- (7) the variance will not otherwise: (i) be detrimental to or endanger the public health, safety, or welfare; or (ii) be in any way contrary to the public interest.

Art. 32, § 5-308(b).

Hearing Requirements

The Land Use and Transportation Committee (the “Committee”) must consider the above law at the scheduled public hearing wherein it will hear and weigh the evidence as presented in: (1) the Planning Report and other agency reports; (2) testimony from the Planning Department and other City agency representatives; and (3) testimony from members of the public and interested persons. After weighing the evidence presented and submitted into the record before it, the Committee is required to make findings of fact with respect to the factors and considerations outlined above. If, after its investigation of the facts, the Committee makes findings which support the conditional use and the four variances sought, it may adopt these findings and the legal requirements will be met.

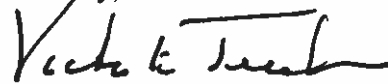
The Law Department notes that the Planning Staff Report (“Report”) provides facts sufficient to approve the conditional use. The Report, however, does not provide facts sufficient to approve the lot area variance or Planning’s proposed variances for floor area and parking spaces. Missing are facts to support assertions that the conditions on which the application for these variances are based are unique to the property for which the variances are sought and are not generally applicable to other property within the same zoning classification.

These missing facts must be supplied for each requested variance at the public hearing before they can lawfully be granted.

Law Department notes further that a bill authorizing a conditional use is classified as a “legislative authorization.” Art. 32, § 5-501. Legislative authorizations require that certain procedures be followed in the bill’s passage. Specifically, certain notice requirements apply to the bill. See Art 32, § 5-602. The bill must be referred to certain City agencies, which are obligated to review the bill in a specified manner. See Art. 32, §§ 5-504, 5-506, 5-604. Finally, certain limitations on the City Council’s ability to amend the bill apply. See Art. 32 § 5-507.

Assuming all the procedural requirements are satisfied, and the missing fact elements discussed above are supplied, the Law Department is prepared to approve the bill for form and legal sufficiency.

Sincerely,



Victor K. Tervala
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Nicholas Blendy, MOGR
Matt Stegman, Mayor’s Legislative Liaison
Caylin Young, President’s Legislative Director
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Assistant Solicitor