


FROM	NAME & TITLE	CHRIS RYER, DIRECTOR	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 <sup>TH</sup> FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #23-0435 – ZONING CODE MODIFICATIONS		

TO The Honorable President and  
Members of the City Council  
City Hall, Room 400  
100 North Holliday Street

DATE: December 1, 2023

At its regular meeting of November 30, 2023, the Planning Commission considered City Council Bill #23-0435, for the purpose of amending provisions of the Baltimore City Zoning Code.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended amendment and approval of City Council Bill #23-0435 and adopted the following resolutions, with nine members being present (seven in favor):

RESOLVED, That the Planning Commission concurs with several of the recommendation of its departmental staff, adopts the findings and equity analysis outlined in the staff report, with consideration for testimony and facts presented in the meeting, and recommends that City Council Bill #23-0435 be **amended and approved** by the City Council without staff's proposed amendments #2, #3, and #5.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt

attachment

cc: Ms. Nina Themelis, Mayor's Office  
The Honorable Eric Costello, Council Rep. to Planning Commission  
Mr. Colin Tarbert, BDC  
Ms. Rebecca Witt, BMZA  
Mr. Geoffrey Veale, Zoning Administration  
Ms. Stephanie Murdock, DHCD  
Ms. Elena DiPietro, Law Dept.  
Mr. Francis Burnszynski, PABC  
Mr. Liam Davis, DOT  
Ms. Natawna Austin, Council Services



Brandon M. Scott  
Mayor

## PLANNING COMMISSION

*Sean D. Davis, Chair; Eric Stephenson, Vice Chair*

### STAFF REPORT



Chris Ryer  
Director

**November 30, 2023**

**REQUEST:** City Council Bill #23-0435/ Zoning Code – Modifications:

For the purpose of amending provisions of the Baltimore City Zoning Code relating to variances to conform to relevant State law; making modifications to the process of granting variances; clarifying provisions of the Zoning Code relating to nonconforming structures; providing for a special effective date; and generally relating to the zoning and land-use laws of the City of Baltimore.

**RECOMMENDATION:** Approval, with the following amendments:

1. On page 2, in line 17: delete “MAJOR VARIANCE”
2. On page 3, on lines 2 and 5: delete brackets in order to retain existing Zoning Code text
3. On page 3, in lines 8-11: delete the proposed new text in Lines 5-11.
4. On page 3, in lines 18-29: delete all of the brackets wherever they appear (*e.g.* around “10%”) and delete proposed new text (*e.g.* “25%” and around “or 2 feet, whichever is less”) wherever they appear.
5. On page 4, in lines 1-6: delete new text “(VI) A VARIANCE ... OCCUPY THE RESIDENTIAL PROPERTY.”
6. On page 4, in line 14: delete “typographical” and substitute “topographical”
7. Staff also recommends adoption of the additional amendments listed at the end of this staff report.

**STAFF:** Eric Tiso and Martin French

**INTRODUCED BY:** Councilmember Schleifer

### **SITE/ GENERAL AREA**

General Area: This legislation would affect the entirety of the City of Baltimore, with specific effects dependent upon characteristics of each individual property and the Zoning District in which it is located.

### **HISTORY**

Article 32 – *Zoning* (the Zoning Code) was adopted by Ordinances #16-581 and #17-015 which became effective on June 5, 2017. The Zoning Code was last amended by Ordinance #22-181, effective February 8, 2023. The current version of the Zoning Code was published online as of June 2, 2023.

## ANALYSIS

Background: This bill would modify certain provisions of the Zoning Code that may have obstructed re-use or limited continuing but expanded use of property within Baltimore City. The analysis which follows is organized in accordance with the bill's sections and line references as given in the First Reader version of the bill dated October 2, 2023. Additional amendments proposed by staff are appended at the end of this report.

### Applications and Authorizations – Introduction of proposed authorization.

This subsection would clarify that all applications must be filed in writing (§5-201(b)(2)) on Page 2, in Line 9 of the bill). This clarification would remove any doubt about whether someone acting as agent for a property owner needed to file the application in writing. The standard form titled “Application for Review” made available to all applicants includes at its bottom this declaration above the signature line:

“I declare under penalties of perjury that this application, including any accompanying plans, specifications, etc., has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of the work to be covered by this application. I also declare that I am the owner or have specific approval of the owner to act as agent for this application.”

Planning staff support this clarifying text change as supportive of this administrative form. Online-only applications may not have been created with this provision in mind, and staff would defer to the Department of Housing and Community Development (DHCD) and the Board of Municipal and Zoning Appeals (BMZA) for resolution of that concern.

The Zoning Code under §5-201(c)(1) already requires applications for conditional uses to be filed with the BMZA. We understand that this was a requirement desired by DHCD as part of an update to their internal processes. We also understand that as a practical matter that change of process has not yet occurred, and in the end that change may revert to having all applications originate with the Zoning Administrator. We defer to DHCD and BMZA in deciding what the best operational requirement may be. In any case, uses of property are separate from questions of how large a structure could be built upon a property, or whether sufficient off-street parking is to be provided on the property in support of its proposed use. These latter questions are subject to variance procedures.

§5-201(c)(1) would be amended on Page 2, in Line 17 of the bill to add a requirement that all applications for major variances be filed with the BMZA while applications for minor variances would continue to be filed with the Zoning Administrator (i.e., Zoning Administration). We understand that a problem with this requirement is that an applicant would be required to know in advance whether their request would be classified as a major variance or a minor variance. Despite good guesses by applicants familiar with the Zoning Code, for the less experienced it would be difficult at best to figure this out without first meeting with Zoning Administration staff for formal determinations. In the extreme, this text change could be interpreted to force an application containing requests with parts that could separately be major and minor variances to be forcibly split into two applications. That split would need to be processed through two separate offices, possibly requiring two separate fees for application, and requiring separate reviews. This would contradict the current service model of DHCD's “One-Stop Permit Shop” approach. Current practice requires all applications involving possible conditional uses and/or

variances to be reviewed by Zoning Administration, to determine if a variance could be approved administratively or if it needs to be referred to the BMZA. The need for a conditional use approval is also identified by the Zoning Administrator and then those applications are forwarded to the BMZA for their review.

Because a determination by the Zoning Administrator is appealable to the BMZA, this bifurcation could also result in an applicant needing to request two variance hearings, one for major variances, and the other for challenging Zoning Administration's disapproval of a minor variance if that decision was not placed on record prior to scheduling of the major variance hearing. This is in opposition to the current method, in which all variances exceeding the Zoning Administrator's discretionary authority and any minor variances disapproved by the Zoning Administrator can be and are appealed in a single appeal to BMZA. For these reasons, Planning staff recommend disapproval of this text change to the Zoning Code. We would defer to the BMZA and to the Zoning Administrator as the more directly impacted entities in the event they disagree with our recommendation.

#### Applications and Authorizations – Variances – Purpose.

§5-301(a) would be amended on Page 2, in Line 24 of the bill to correct a reference from “the Zoning Code” to “This Code” and also delete “unnecessary hardship” as a cause or reason for a variance. Staff understands that this language is generally used across Maryland as applying to use variances, but the City of Baltimore does not have a variance process for uses. For that reason, the reference to “unnecessary hardship” can be removed from the Zoning Code. Staff also understands that “practical difficulty” is generally applied across Maryland as the criterion for approvability of a variance. Planning staff recommend approval of these text changes.

On Page 3, in Lines 2 through 5 of the bill, §5-301(b) as now written would be replaced in its entirety. It currently appears as follows:

(b) *Application.*

The variance procedure applies only to changes in bulk and yard regulations and changes in signage, parking, and loading requirements. It does not apply to changes in the uses, the maximum quantity of signs, the location requirements of signs, or the types of signs allowed within a zoning district.

Removal of the second sentence presents a major policy shift. While the City of Baltimore has never authorized use variances (which is reinforced by the amendment), one effect of this amendment would be to remove constraints on the number and location of signs on a property. The concern over signage creating visual clutter was a topic carefully negotiated with various stakeholders and communities during crafting of the current Zoning Code text. The Zoning Code already includes in its §17-206 {“Special rules”} a series of specific relief measures relating to standards and regulations provided in Table 17-201 and related portions of the Code. These special rules allow variations such as some splitting of maximum sign area into more than one sign in some Commercial zoning districts, with a maximum 15% increase in total sign face area that is not subject to variance, for example. The Zoning Code also authorizes, in its Title 17, Subtitle 5, the creation of Areas of Special Signage Control (ASSCs) in a number of non-Residential zoning districts through a Legislative Authorization (*i.e.* an Ordinance by the Mayor

and City Council). An ASSC's purpose is to allow enhancement of the unique character of such areas by authorizing sign sizes, placements, and types that might not otherwise be readily approvable according to the remainder of the Zoning Code. The text amendment above would make it possible to avoid the need to establish an ASSC through a legislative authorization by simply applying for a variance instead.

The proposed change would alter the balance between the interests of a specific property owner or developer, the immediate community, and the larger community of the entire City of Baltimore. It would also render Areas of Special Signage Control unnecessary with perhaps the sole exception of authorizing new billboards. It would change the authorizing body (from Mayor and City Council to BMZA). Instead of approval by a positive authorization, those signage applications could instead be evaluated under the standards of a variance. Planning staff recognize that this is a public policy choice question to be decided by the Mayor and City Council. However, this would be a very significant change, and so it should instead be separated from this bill and be considered in a separate bill, after a comprehensive review and public input process.

The purpose of §5-301(c) which follows this is to clearly state the constraint on changes in uses, and to prevent use variances. If no changes are made to §5-301(b) then new §5-301(c) might not be needed, though staff supports clarifying that use variances should not be added to the Zoning Code. Both the Zoning Administrator and the BMZA are fully aware of the difference between a variance to bulk standards or other requirements, and a use variance. Historic practice is consistent with that understanding, but clarity in the text is always valuable. Planning staff thus recommend deletion of both new §5-301(b) and either the deletion, or perhaps simply a clarification of the new §5-301(c) from Page 3, in Lines 2-11 of the bill.

#### Applications and Authorizations – Variances – Minor and major variances distinguished.

This bill would alter the definition of a "Minor variance" at §5-302(b) by increasing it from a maximum 10% reduction in lot width, setback, and off-street parking spaces, or increase in bulk and density of a structure (plus introducing special consideration for owner-occupied residential properties, discussed separately below), to a maximum 25% reduction in lot width, setback, and off-street parking spaces, or increase in bulk and density of a structure. Major Variances (now greater than 10%) are now subject to BMZA hearings for which 21 days' public notice must be given. Minor Variances proposed for approval by the Zoning Administrator must only be publicly advertised for 10 days (BCZC §5-304(a) and §5-603(d)). This change would shorten the response time for surrounding property owners and community from 21 to 10 days, and would change the approval process from a public hearing to an administrative review. The standards subject to variances are in many communities the standards most critical to obtaining development or redevelopment that is compatible with desired patterns of development of a community. In short, Planning staff feels that the existing 10% limit is already generous, and so we recommend disapproval of this text change on Page 3, in Lines 18-29.

The bill would add a new subsection (vi) to §5-302(b) that would allow consideration of a "minor" variance request to be based upon tenure of a property in a residential zoning district. However, this proposed new subsection does not include any limitation on this proposed

category of variance such as the limitations expressed in subsections (i) through (v) of §5-302(b). There is no precedent for this approach: the Zoning Code distinguishes uses of property but does not and has never distinguished whether use is by an owner-occupant or a tenant of the property owner. Staff imagines the intention here was to differentiate between an owner-occupant and someone who is perhaps developing a property for future sale (*i.e.* for profit). That distinction misses some possible equity considerations because it provides a process benefit to one applicant solely because they are an owner-occupant. A tenant or even an owner that will hold the property (but not as a resident of that property) would not get this proposed benefit purely because of who they are. From the viewpoint of neighboring properties and the City of Baltimore as provider of public services (fire and police protection, water and sewer service, public roads, etc.) there is no need or basis for a Zoning Code distinction between demand from owner-occupants and demand from tenants; both are residents.

For this proposed subsection to be properly effectuated, any person claiming this basis for exemption from public BMZA hearing of a variance request would need to provide proof that the applicant is or intends to be the owner-occupant of the residence. Staff isn't sure what form that proof would need to take. Likewise, the owner-occupant could simply sell or move out of the property after obtaining approval. We defer to DHCD on potential problems with enforcement that this might create.

For these reasons deletion of proposed new §5-302(b)(vi) from Page 4, in Lines 1-6 of this bill is strongly recommended, and we further recommend deferral to the Law Department's consideration of whether there are legal obstacles to this approach.

#### Approval standards.

§5-308(a) would be amended to add "conditions peculiar to the property" as a criterion for approval of a variance, and add "exceptional circumstances related to the specific structure or land involved" as another criterion for approval of a variance. Together these become criteria for the Zoning Administrator or the BMZA to consider when determining that a variance request is approvable. §5-308(b)(1) would be removed to delete the existing standard that conditions unique to the property for which the variance is sought must be identified in order for the variance to be approvable. Collectively these changes of text make the Zoning Code more workable in the context of Baltimore's historic development patterns, particularly in rowhouse communities. This is because "unique" means one of a kind, and there is seldom something truly "one of a kind" about a rowhouse that was constructed in the 19<sup>th</sup> or early 20<sup>th</sup> Centuries as part of a row of similar or even identical houses. This "uniqueness" provision has proven to be an obstruction to renovation and return to active use of many abandoned rowhouses in various parts of the city. The bill would provide the BMZA latitude to examine both conditions of a property and circumstances relating to that property in determining whether a requested variance would be appropriate. Planning staff recommend approval of this portion of the bill.

In §5-308(a) on Page 4, in Line 14, delete "typographical" and replace it with "topographical" (to correct an error in transcription from existing Zoning Code text).

### Time limits for utilization.

On Page 5, in Lines 9-12, the bill would amend §5-309(a) to provide a two-year period for making use of a BMZA approval of variances, which is an increase from the current one-year period. Likewise, on Page 5, in Lines 18-23, a companion amendment of §5-407(a) of the Zoning Code would provide a two-year period for making use of a BMZA approval of a conditional use, in lieu of the current one-year period.

Experience in recent years has shown that unpredictable financial, real estate, labor, and building materials market conditions can cause considerable delays in bringing to fruition what an applicant has received BMZA approval for. Planning staff support these amendments to the Zoning Code as a practical means of facilitating renovation and redevelopment within the City of Baltimore. It is noted that all recipients of conditional use approvals and variances retain the option of requesting extensions of time from the BMZA (§5-309(b) and §5-407(b)).

### Nonconformities – Expansion of structure.

In the Zoning Code, §18-403 “Expansion of structure” has a general provision that expansion of a nonconforming structure cannot create a new nonconformity or increase the degree of nonconformity (§18-403(b) in this bill). This is necessary so that permits cannot be granted over the counter (*i.e.* by-right), and this provision will be retained. The bill amends §18-403 to add a new paragraph (a) in order to explicitly allow variances approved either under the variance procedures in Title 5 “Applications and Authorizations” (typically by a variance) or under a specific rule in §18-413 relating to Hospital zoning districts. Adding this clarification will resolve one possible interpretation that no nonconforming use could ever be subsequently expanded (which ran counter to decades of zoning practice).

### Additional Amendments Proposed by Staff:

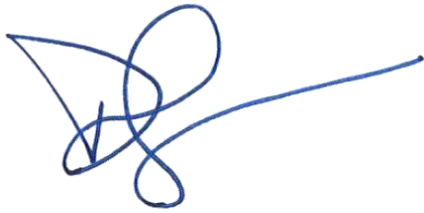
Continuing with Planning’s intention upon enactment of the current zoning code, to continuously monitor the performance of the Zoning Code and propose amendments in instances where they may be needed to clarify intent, fix mistakes, or to make adjustments to the code based on lived experience, suggested amendments attached at the end of this report are believed to be uncontroversial and should be included in this bill to improve the Zoning Code.

### Equity:

- **Impact:** Staff believes that the proposed modifications to the Zoning Code will serve to reduce established patterns of inequity in Baltimore, specifically by clarifying how nonconforming structures may be expanded. The bill may have different effects on some communities depending on the age of structures, the prevalence of redevelopment activity, and their real estate submarkets.
- **Engagement:** Planning staff sent notifications of this action to over 18,500 unique subscriber addresses on the City’s GovDelivery e-mail list.

- Internal Operations: While Planning Department operations would not be affected directly by passage of this bill, there may be effects on operations of the Zoning Administration and BMZA offices that should be considered.

Notification: Notification of this item was sent to over 18,500 unique subscribers on the City's GovDelivery service.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

**Chris Ryer**  
**Director**



### **Additional Amendments Proposed by Staff:**

- On Page 1, before line 17, insert a new amendment to Title 1, Subtitle 2 of the Zoning Code:  
Strike paragraph (a) from § 1-205 in its entirety. That striking of text will make the existing subsection (b) below it become the only remaining part of §1-205, which would require changing the descriptor of §1-205, and require changing the enumeration of the remaining text as appropriate.

#### **Title1. General Provisions**

##### ***Subtitle 2. Rules of Interpretation***

#### **§ 1-205. [Tables.] Use symbology.**

- [(a) In general.**
  - (1) Except for the Cumulative Table of Uses, the “Tables” contained in this Code and the statutory references to them are part of this Code and of the laws enacted by it.
  - (2) The Cumulative Table of Uses that accompanies this Code:
    - (i) is for convenience of reference only, intended as a guide to this Code; and
    - (ii) is not law and is not to be taken as affecting the meaning or effect of the law.
- (b) Use symbology.]**

**Explanation:** This text was retained from the prior Zoning Code in error. Before the comprehensive re-write of the Zoning Code, the use tables at the back of that edition were unofficial and for readers’ convenience only, which made such a declaration in §1-208 of that former code necessary. As a part of the comprehensive overhaul of the Zoning Code, the tables were adopted as part the official code, and so this outdated reference to the previous Cumulative Uses Table, now under §1-205, is no longer needed and should be removed.

- On Page 1, following the amendment above, insert a new amendment to Title 1, Subtitle 3 of the Zoning Code:

#### **Title1. General Provisions**

##### ***Subtitle 3. Variances***

#### **§ 1-307. “Government facility” to “Industrial boat repair”.**

- (a) Government facility.**
  - (1) In general.  
“Government facility” means a structure or land that is operated by a government agency.
  - (2) Inclusions.  
“Government facility” includes agency offices, storage yards, public works facilities, recreation: indoor, **RECREATION: OUTDOOR**, and utility facilities.

**Explanation:** This clarifies a question from the BCRP that recreational centers are intended to be included under the definition of “Government facilities.”

- On Page 5, before line 18, insert the following:

#### **§ 5-406. Approval standards.**

- (a) Evaluation criteria.**  
As a further guide to its decision on the facts of each case, the Board of Municipal and Zoning Appeals **OR THE CITY COUNCIL**, must consider the following, where appropriate:

...

**Explanation:** This adds an omitted reference, as conditional uses are approved both by the BMZA and by the City Council, depending on the zoning district. This would conform the text to the following paragraph in §5-406(b) which refers to both approval bodies.

On Page 6, before line 18, add the following table amendments:

- In Table 10-401, in the Minimum Lot Area section, amend the listing for Residential-Care Facility (Age-Restricted) to strike the specification for (Age-Restricted). Strike the minimum lot area requirement for Residential-Care Facility in the C-4 zone.

<b>TABLE 10-401: COMMERCIAL DISTRICTS (C-1 TO C-4) – BULK AND YARD REGULATIONS</b>						
CATEGORIES	SPECIFICATIONS (PER DISTRICT)					
	C-1	C-1-VC <sup>1</sup>	C-1-E	C-2	C-3	C-4
<b>MINIMUM LOT AREA</b>						
Dwelling: Live-Work, Multi-Family, or Rowhouse	300 sq.ft/du	5,000 sq.ft /du	550 sq.ft /du	225 sq.ft /du	300 sq.ft /du	300 sq.ft /du
Residential-Care Facility (Age-Restricted)	200 sq.ft/du	200 sq.ft/du	200 sq.ft/du	120 sq.ft/du	120 sq.ft/du	120 sq.ft/du
Rooming House	None	2,500 sq.ft/ru	None	None	None	N/A
All Other Uses	None	None	None	None	None	None

**Explanation:** Staff was made aware that there is a general need for clarifying how Age-Restricted facilities should be handled, but that will require a more substantial amendment. For the moment, removing the unnecessary use limitation will conform to the rest of the Zoning Code. Likewise, that use is not listed as allowed in the C-4 district, so the minimum lot area requirement should be removed from that zone.

- In Table 12-402, in the Commercial use group, add “P” for Animal Clinics for the TOD-2 zone.

	<b>TOD-1</b>	<b>TOD-2</b>	<b>TOD-3</b>	<b>TOD-4</b>	
<b>COMMERCIAL</b>					
Animal Clinic	P	P	P	P	Per § 14-317
Art Gallery	P	P	P	P	

**Explanation:** The TOD use list has Animal Clinics as “P” (a permitted use by-right) for TOD-1, TOD-3, and TOD-4 zones, but it was omitted for TOD-2 in error.

List continues on the next page...

- In Table 15-601, amend the fence height permitted in front or corner side yards to be 4' in height.

“Fence or wall (Front or corner-side yard – No more than [3.5'] 4' high”:

TABLE 15-601: PERMITTED ENCROACHMENTS INTO REQUIRED YARDS			
PERMITTED ENCROACHMENTS	FRONT YARD/ CORNER-SIDE YARD	INTERIOR- SIDE YARD	REAR YARD
Accessibility ramp	x	x	x
Alternative energy system, solar, ground-mounted – As in § 15-517	x	x	x
Alternative energy system, wind – As in § 15-518			x
Fence or wall (Front or corner-side yard) – No more than 3.5' high	x		
Fence or wall (Rear or interior-side yard) – No more than 6' high		x	x
Fire escape	x Corner-side yard only	x	x

**Explanation:** Fence heights allowed in front and side yards have been 3.5' for decades, but Planning staff have heard that there is a practical problem in meeting this requirement, since the most commonly available fence materials are typically offered in 4' and 6' heights. Strict compliance with the existing requirement would require shortening the stock fence materials by six inches.