
CITY OF BALTIMORE

BRANDON M. SCOTT,
Mayor



DEPARTMENT OF LAW
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January 5, 2023

Honorable President and Members
of the City Council of Baltimore
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Attn: Natawna B. Austin,
Executive Secretary

Re: City Council Bill 23-0435 – Zoning – Modifications

Dear President and City Council Members:

The Law Department reviewed City Council Bill 23-0435 for form and legal sufficiency. The bill amends provisions of the Baltimore City Zoning Code (“Zoning Code”) relating to variances to conform to relevant State law; modifies the process of granting variances; clarifies provisions of the Zoning Code relating to nonconforming structures; and provides for a special effective date. The Law Department has identified several amendments that would clarify and remove potential concerns with the bill. The suggested amendments include the following:

- § 5-201(b): As currently drafted, this amendment leaves unclear whether an online application would satisfy the “in writing” threshold and whether the express authorization of an agent of the owner must be provided “in writing.” The Law Department recommends amending § 5-201(b)(2) to remove completely the phrase “in writing” and to state that the application must be filed by the property owner or an authorized agent of the owner.
- § 5-201(c): As currently drafted, Council Bill 23-0435 leaves unclear whether an applicant could first seek the guidance of the Zoning Administrator as to whether a variance is a major or minor variance. The Law Department recommends amending § 5-201(c) to state that a zoning interpretation would include a determination by the Zoning Administrator of whether a requested variance qualifies as a major variance and an application filed for any other reason not enumerated in the Code provision.
- § 5-301(b): The Law Department has no objection to the removal of the first sentence in existing § 5-301 (b) or to the new language to be added to this

subsection. The second sentence which is deleted by this amendment contains clarifying language enumerating items relating to signs to which the variance procedures are inapplicable. The City's Zoning Code, in Title 17, has extensive and detailed regulations relating to the number, size, design characteristics, and location of signs in the City. Removal of the second sentence in § 5-301(b) would appear to allow the granting of a variance to the sign provisions in Title 17. As noted in Planning's analysis of this bill, Title 17 contains some means for variance of the rules contained in Title 17, see e.g., § 17-206 and Title 17, Subtitle 5. The removal of the second sentence in § 5-301(b) would result in a conflict between the standards in Title 5 and those in Title 17. If it is the intent of the Council to apply the variance procedures in Title 5 to signs, additional amendment to the Code would be necessary to distinguish between a minor and major variance relating to signs and what types of sign variances could be sought. For these reasons, we recommend that the second sentence in existing § 5-301(b) should remain in the Code. We suggest that the new language being added to this section could be followed by a second sentence which states: "The variance procedure in this Title 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."

- § 5-302(b)(1)(vi): The proposed new subsection of § 5-302 makes all requested variances to bulk and yard regulations minor variances if the property is owner-occupied. Zoning laws that regulate based on the identity of the occupant or owner are typically disfavored. See Rathkopf's, *The Law of Zoning and Planning* § 81:4, § 81:7 (4th ed.). The Law Department recommends the following amendment: on page 4, remove the text in lines 1-6 and replace it with the following text: (VI) A VARIANCE TO BULK OR YARD REGULATIONS IF THE VARIANCE APPLICATION INVOLVES A SINGLE-FAMILY DWELLING WITHIN A RESIDENTIAL DISTRICT. The recommended amendment would expand the use of variances without raising the legal concerns imposed by adopting zoning standards based on the property's inhabitants.
- § 5-308(a): On page 4, line 14 the word "typographical" should be "topographical". The amendment of subsection (a) would remove the unnecessary hardship language as in amended § 5-301. Under the amendment, there must be a finding of conditions peculiar to the property or exceptional circumstances related to the structure or land which give rise to the practical difficulty.
- § 18-403(A)(2): On page 6, line 11 the code reference appears to be incorrect. It appears that the reference in line 11 should be changed to § 18-411, Therefore, Law recommends an amendment on pg. 6, line 11 to delete § 18-413 and replace it with § 18-411. The Law Department otherwise has no objection to the amendment of § 18-403.

Certain procedural requirements apply to this bill because an amendment of the Zoning Code is deemed a “legislative authorization.” Baltimore City Code, Art. 32, § 5-501(1). The bill must be referred for a written report and recommendations to specific agencies. See Art. 32, § 5-504. There are specific procedures that must be followed for the bill hearing. See Art. 32, § 5-506. Moreover, a text amendment must be evaluated by the standards set forth in the Zoning Code. See Art. 32, § 5-508(c). Notice of the City Council hearing must be given in accordance with the standards set forth in Art. 32, Title 5, Subtitle 6 for text amendments to the Zoning Code.

Assuming all the procedural requirements are met, and the recommended amendments are made to the bill, the Law Department approves the bill for form and legal sufficiency.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michele M. Toth", with a long horizontal flourish extending to the right.

Michele M. Toth
Assistant Solicitor

cc: Ebony Thompson
Nina Themelis
Tiffany Maclin
Elena DiPietro
Hilary Ruley
Ashlea Brown
Jeff Hochstetler
Teresa Cummings