
CITY OF BALTIMORE

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April 13, 2023

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

Re: City Council Bill 22-0325– Zoning–Conditional Use Conversion of a Single-Family Dwelling Unit to 2 Dwelling Units in the R-7 Zoning District – Variances– 466 Hornel Street

Dear President and City Council Members:

The Law Department reviewed City Council Bill 22-0325 for form and legal sufficiency. The bill would permit the conversion of a single-family dwelling unit to 2 dwelling units at 466 Hornel Street, which is in an R-7 Zoning district. The bill would also grant variances for lot size and off-street parking. The ground floor of the property has been approved (neighborhood commercial: personal services) for use as a barber shop. See BMZA Appeal 2021-245 Resolution, April 19, 2022.

Conditional Use Standards

The conversion of a single-family dwelling to a multi-family dwelling in an R-7 District requires conditional-use approval by ordinance. Baltimore City Code, Art. 32, § 9-701(2). To approve a conditional use, the City Council must find:

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.

Baltimore City Code, Art. 32, § 5-406(a). In making these findings, the City Council must be guided by 14 “considerations” involving 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.” Baltimore City Code, Art. 32, § 5-406(b). The planning Staff Report recommends an amendment to CB 22-0325, and approval of the conversion of the property to two dwelling units.

Variance Standards

The bill contains variances for lot area and off-street parking. In general, dwellings in R-7 must have a minimum lot area of 1,100 square feet per dwelling unit or 2,200 square feet for two dwelling units. The bill states that the lot size of the property is approximately 1,714 sq. ft., requiring a 22.1% variance. The Planning Staff report states that the lot size of the subject property is 1,717 sq. ft., requiring a 22% variance. The Law Department recommends the following amendments to the bill: Page 2, Line 5 delete 1,714 and substitute 1,717; Line 6 delete 22.1% and substitute 22%.

Since this property does not meet the requirement for lot area a variance is needed. Additionally, a variance for off-street parking is required since the newly created structure will require an off-street parking space that will not be provided.

The Planning Staff Report states that an amendment to CB 22-0325 is required to include a variance for gross floor area under Art. 32, §§ 9-703 (b) & (c). Section (b) requires that the original single-family structure contain at least 1,500 square feet of gross floor area, not including any basement area. Section (c) requires that the gross floor area of the converted structure for a two-bedroom unit be 1,000 square feet. The Staff Report notes that the owner intends to create one two-bedroom unit on the first floor of the structure, and another two-bedroom unit on the second floor of the structure. The first and second floors each provide approximately 800 square feet of gross floor area. As a result, an amendment to the council bill is required to include a variance for gross floor area.

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.” Baltimore City Code, 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.

Baltimore City Code, Art. 32, § 5-308(b). It is important to note that all seven of these criteria must be found, in addition to a finding of unnecessary hardship or practical difficulty. Baltimore City Code, Art. 32, § 5-308(a). The variance will not be legal if the conditions requiring this variance are generally applicable to other properties in the same zoning classification.

The Planning Staff Report ("Report") contains facts to support the necessary findings to approve variances for lot area and parking. The Staff Report does not contain facts relating to the suggested amendment for gross floor area so the necessary facts must be established at the hearing on this bill. The Staff Report also provides facts in support of the conditional use standards for the requested conversion. Finally, the Staff Report contains an analysis of the equity considerations relating to the proposed conversion of this dwelling to two units.

Hearing Requirements

Certain procedural requirements apply to this bill beyond those discussed above because both conditional uses and variances are considered "legislative authorizations." Baltimore City Code, Art. 32, § 5-501(2)(i) and (ii). Specifically, notice requirements apply to the bill, and the bill must be referred to certain City agencies which are obligated to review the bill in a specified manner. Baltimore City Code, Art. 32, §§ 5-504, 5-506, 5-602. Finally, certain limitations on the City Council's ability to amend the bill apply. Baltimore City Code, Art. 32, § 5-507.

The bill is the appropriate method for the City Council to review the facts and make the determination as to whether the legal standard for a conditional use and variances have been met. The bill requires amendments to the amount of lot area and to include the variance for gross floor area. Assuming the amendments are approved and the required findings are made at the hearing and all procedural requirements are satisfied, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,



Michele Toth
Special Solicitor

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