
CITY OF BALTIMORE

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November 9, 2023

Honorable President
Members of the City Council
c/o Natawna Austin, Executive Secretary
409 City Hall
Baltimore, MD 21202

RE: City Council Bill 23-0407– Zoning – Discontinuance or Abandonment of Nonconforming Use - Reporting

Dear President and Members,

The Law Department reviewed City Council Bill 23-0407 for form and legal sufficiency. City Council Bill 407 amends the Zoning Code, Article 32, Title 18 (Nonconformities), Subtitle 3 (Nonconforming Uses) for the purpose of establishing a process for a person to report to the Zoning Administrator that a nonconforming use, or any part of that use, has been discontinued for 12 consecutive months, or abandoned. Specifically, the bill would add Article 32, § 18-307(c) to the Zoning Code. The ordinance would take effect 30 days after enactment.

Under new § 18-307(c), a person who reasonably believes that a nonconforming use has been discontinued or abandoned can file a report with the Zoning Administrator. The bill describes the requirements for the content of such a report, and contains an additional section, (c)(3), entitled “Zoning Administrator to Investigate.” The Law Department has several issues with the wording of section (c)(3). Section (c)(3) provides:

(3) ZONING ADMINISTRATOR TO INVESTIGATE.

UPON RECEIPT OF A COMPLAINT ISSUED UNDER THIS SUBSECTION, THE ZONING ADMINISTRATOR SHALL INSPECT STRUCTURES AND USES OF LAND TO DETERMINE COMPLIANCE WITH THIS CODE AND, WHERE VIOLATIONS ARE FOUND, INITIATE ACTION TO SECURE COMPLIANCE.

New § 18-307(c) establishes a process by which an individual can file a report with the Zoning Administrator regarding a nonconforming use that he or she reasonably believes to have been discontinued or abandoned. The wording of § 18-307(c)(3), however, refers to “receipt of a complaint issued under this subsection.” As noted, subsection (c)(1) and (2) describe a report which can be filed with the Zoning Administrator. There is no other mention of a complaint. Moreover, subsection (c)(3) requires the Zoning Administrator to “inspect structures and uses of

land to determine compliance with this Code, and where violations are found, initiate action to secure compliance.” The subject matter of the new reporting system created in § 18-307(c) is the discontinuance or abandonment of a nonconforming use. As discussed below, a nonconforming use is by definition a lawful use of a property. Given the provisions of § 18-307(c)(1) & (2), presumably the intent of subsection (c)(3) is for the Zoning Administrator to investigate whether the statements contained in the report regarding the discontinuance or abandonment of a nonconforming use are accurate. The use of the word “violations” in subsection (c)(3) is unclear. Accordingly, the Law Department suggests the following amendment to proposed § 18-307(c)(3):

On page 2, line 12 delete the word COMPLAINT and insert the word REPORT in its place;

On page 2, line 14 insert a period after the word CODE and delete the remainder of line 14 and line 15.

A nonconforming use is “a lawfully existing use of a structure or of land that, as of the effective date of this Code (June 5, 2017) or the effective date of an amendment to this Code, does not conform to the use regulations applicable to the district in which it is located.” Zoning Code Art. 32, §18-201(d). Zoning Code §18-307 defines and regulates the discontinuance and abandonment of a nonconforming use. The discontinuance of a nonconforming use, or part of a nonconforming use, for a consecutive 12-month period constitutes an abandonment of the nonconforming use, and it may not be reestablished. Any future use must conform to applicable use regulations. This is true regardless of expressions of intent to resume operation of a nonconforming use, or not to abandon the use. See Art. 32, §18-307(a). If there is evidence of actual abandonment of the nonconforming use, which includes removal of structures, machinery or equipment or alterations indicating a change in the use of the land or structure, all rights to the nonconforming use are terminated immediately. Art. 32, §18-307(b).

The question of whether a nonconforming use of a property has been continuous is a question of fact. See 8A McQuillin Mun. Corp. § 25:263 (3d ed.). See also *Vogl v. City of Baltimore*, 228 Md. 283, 288 (1962) (“And whether a non-conforming use exists or has been abandoned are questions of fact to be decided by the Board.”); *Tuzeer v. Yim, LLC*, 201 Md.App. 443, 473 (2011) (A determination whether a use has been discontinued is a question of fact.). *Vogl* states that a finding by the Board of Municipal and Zoning Appeals of abandonment of a nonconforming use must be established by substantial evidence. *Id.* at 290. See also *Tuzeer*, *supra*.

The City’s zoning authority is derived from Title 10 of the Maryland Land Use Article. Section 10-401 authorizes the City to provide by ordinance for the enforcement of its zoning regulations. The changes made by Bill 23-0407 are designed to assist the City in determining when a nonconforming use has been abandoned or discontinued, so that any future use of the building, structure, or land would be required to conform to existing zoning regulations. Council Bill 23-0407 appears to establish one method by which the Zoning Administrator may be notified that a nonconforming use has been discontinued or abandoned.

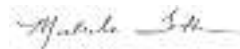
The Court of Appeals has recognized “Maryland’s well-established policy against the expansion of nonconforming uses.” *Trip Associates v. Mayor and City Council of Baltimore*, 392 Md. 563, 573 (2006).

“Indeed, in *Grant*, this Court stated, “[T]he earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned.” 212 Md. at 307, 129 A.2d at 365.” (citing *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301 (1957)).

Id. Simultaneously, however, “a ‘nonconforming use is a vested right entitled to constitutional protection.’” *Id.* at 574 (quoting *Amereihn v. Kotras*, 194 Md. 591, 601 (1950)); *Tuzeer*, supra, 201 Md.App. at 460. The Court in *Trip Associates* noted that a nonconforming use can be reduced to conformance or eliminated by ‘requiring its termination over a reasonable period of time [known as amortization], or “by ‘abandonment,’ *i.e.* non-use for a specific [period] of time.”’ *Id.* at 575. Under the zoning code provisions set forth above, abandonment can be established by non-use for a consecutive 12-month period, or evidence of actual abandonment of a particular use. As the *Trip Associates* court noted, “the abandonment or discontinuance must be active and actual.” *Id.* at 577.

Council Bill 23-0407 creates a system for reporting by a member of the public that a nonconforming use has been discontinued or abandoned. The bill also requires the Zoning Administrator to conduct an investigation based on a report filed regarding a discontinued or abandoned nonconforming use. Council Bill 23-0407 would create a means by which the Zoning Administrator can establish facts supporting the discontinuance or abandonment of a nonconforming use. As noted above, whether a nonconforming use has been discontinued or abandoned is a question of fact. Therefore, it is within the authority of the City Council to create a method for establishing required facts. The Law Department approves City Council Bill 23-0407 for form and legal sufficiency with the recommended amendment.

Sincerely yours,



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