

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

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February 7, 2019

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 18-0287 – Zoning – Conditional Use Conversion of a
Single-Family Dwelling Unit to 3 Dwelling Units in the R-8 Zoning District
– Variances – 1235 West Lafayette Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0287 for form and legal sufficiency. The bill would permit the conversion of a single-family dwelling unit to 3 dwelling units at 1235 West Lafayette Avenue, which is in an R-8 Zoning district. The bill would also grant variances for lot area, gross floor area per unit type, and off-street parking requirements.

Conditional Use Standards

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). 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 report contains information on these required findings.

Variance Standards

The bill also contains variances for lot area, gross floor area and off-street parking requirements. In general, dwellings in an R-8 district must have 750 square feet of lot area per dwelling unit, 1,000 square feet of gross floor area per 2 bedroom unit, and one off-street parking space per dwelling unit. Baltimore City Code, Art. 32, §§ 9-401; Tbl 9-401; 9-703(c), (f); 16-203, 16-602. Since the property does not meet these requirements, it needs a variance from them.

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) (emphasis added). It is important to note that ALL seven of these criteria must be found, in addition to the finding of unnecessary hardship or practical difficulty, as noted above. 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”) outlines the portions of the Zoning Article applicable to conditional uses and makes favorable conclusions. The Report also states the facts which are the basis for the variances requested. However, **while the Report does support that the property is unique with regard to lot coverage (see p. 4), the Report should be supplemented to explain how the property is unique with regard to gross floor area to justify the variance. The Report mentions that the property has a former alley behind it which is an integral part of the Green Network Plan and therefore should not be reopened for providing access for parking, but it**

is not clear whether this aspect of the property is unique. This should also be supplemented at the hearing to support the variance sought for off-street parking.

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 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. Assuming the required findings are made at the hearing and all procedural requirements are satisfied, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Ashlea Brown
Assistant Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor’s Office of Government Relations
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