
CITY OF BALTIMORE

BRANDON M. SCOTT,
Mayor



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May 22, 2024

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

Re: City Council Bill 24-0514 – Zoning - Conditional Use Conversion of Single-Family
Dwelling Units to 2 Dwelling Units in the R-7 Zoning District - Variances - 3040
Barclay Street

Dear President and City Council Members:

The Law Department reviewed City Council Bill 24-0514 for form and legal sufficiency. The bill would permit, subject to certain conditions, the conversion of a certain single family dwelling unit to 2 dwelling units in the R-7 Zoning District on the property known as 3040 Barclay Street (Block 357A8, Lot 033); and granting variances for lot size area and off-street parking requirements. The ordinance would take effect on the date of its enactment.

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(b). In making these findings, the City Council must be guided by fourteen “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(a).

Variance Standards

The bill contains variances for lot size and off-street parking requirements. In support of the lot size variance the bill states:

the minimum lot size requirement for 2 dwelling units, in the R-7 Zoning District, is 2,200 square feet, and the lot area size is approximately 1,406 square feet, thus requiring a variance of 36.09%.

The lot size is noted in the Staff Report as 14'8" x 95. Accordingly, the lot size is approximately 1,394 sq. ft., which aligns with the Zoning Administrator's memo noting the lot square footage as approximately 1,390. In support of the lot size variance, the Staff Report notes that four neighboring properties are also multi-unit dwellings.

Additionally, the Planning report notes that two off-street parking spaces are required by the Zoning Code (Table 16-406) to serve the proposed two dwelling units. The report notes that no off-street spaces are provided. The Staff Report recommends the granting of a variance for off-street parking. In support of the variance the Report notes that the subject property lies outside of a Residential Parking Program, does not have a history of competitive parking, is adjacent to a commercial corridor whose hours of demand for parking differ from residential demand, and has immediate adjacent access to bus transit on York Road.

The Staff Report notes that the proposed square footage for the unit composed of the main and upper levels is 1,470 square feet and the proposed square footage for the ground floor/basement unit is 830 square feet. The community letter of support indicates that the subject property will be converted into a three-bedroom dwelling of approximately 1,500 square feet and a lower level two-bedroom apartment of approximately 850 square feet. No floor plans are in the bill file confirming the planned number of bedrooms in each dwelling unit. Assuming the lower-level apartment will have two bedrooms CB 24-0514 must be amended to include a variance for gross floor area under Art. 32, §§ 9-703(c). Section (c) requires that the gross floor area of the converted structure for a three- bedroom unit be 1,250 square feet and for a two-bedroom unit be 1,000 square feet. Adequate floor area appears to exist for the upstairs unit; however, if the ground floor unit will have two bedrooms the gross floor area is insufficient to meet Code requirements. If the lower-level unit will have two or more bedrooms, the Law Department recommends adding a new Section 4 to the bill to include this amendment and renumbering current sections 4 and 5. The Staff Report notes that the subject property is an end unit, and that the lower level/basement has windows and exterior doors.

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(b). 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 Department Staff Report ("Staff Report") supports the conversion of this property to two dwelling units and supports the required variances. Based on the Staff Report, the Planning Commission adopted a resolution recommending approval of Council Bill 24-0514. The Staff Report notes that approval of the property conversion to two dwelling units would codify the historical use of the property. The Planning report contains facts to support the necessary findings to approve variances for lot area, and parking. The Staff Report does not address a variance for gross floor area, and does not discuss whether there are facts containing this type of variance. The Planning report also provides facts in support of the conditional use standards for the requested conversion. Finally, the Planning report contains an analysis of the equity considerations relating to the proposed conversion of this dwelling to three units.

Hearing Requirements

Certain procedural requirements apply to this bill beyond those discussed above because an ordinance that authorizes a conditional use or a variance is considered a "legislative authorization." 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 for variances have been met. The bill may require an amendment to include a variance for gross floor area if it is confirmed that the lower-level unit will have two or more bedrooms. Assuming the amendment is approved, 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 yours,

A handwritten signature in dark ink, appearing to read "Michele Toth". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michele M. Toth
Assistant Solicitor

Cc: Stephen Salsbury
Nina Themelis
Tiffany Maclin
Elena DiPietro
Hilary Ruley
Ashlea Brown