



## MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council  
c/o Natawna Austin, Executive Secretary

From: Alice Kennedy, Housing Commissioner

Date: January 9, 2024

### Re: City Council Ordinance 23-0435 Zoning Code – Modifications

The Department of Housing and Community Development (DHCD) has reviewed City Council Ordinance 23-0435 for the purpose of amending provisions of the Baltimore City Zoning Code relating to variances to conform to relevant State law; making modifications to the process of granting variances; clarifying provisions of the Zoning Code relating to nonconforming structures; providing for a special effective date; and generally relating to the zoning and land-use laws of the City of Baltimore.

If enacted, Council Ordinance 23-0435 would update, by repealing and re-ordaining with amendments, the Baltimore City Zoning Code, enacted June 5, 2017, related to the application process for: non-conforming structures, minor variances, and property ownership authorization.

#### Analysis

Presently, the Office of the Zoning Administrator receives, files, and forwards to the BMZA applications for conditional uses, variances, appeals, and other matters on which the Board is required to act. Related to DHCD, the Ordinance would amend the Code to add a requirement that all applications for major variances be filed with the BMZA, while applications for minor variances would continue to be filed with the Zoning Administrator.

Current practice requires all applications involving possible conditional uses and/or variances to be reviewed by the Zoning Administrator to determine if a variance could be approved administratively or if it needs to be referred to the BMZA. The variance procedure currently applies only to changes in bulk and yard regulations and changes in signage, parking, and loading requirements. The “use” of a property is a separate question and most appropriately considered by BMZA.

In their review, the Zoning Administrator sometimes identifies the need for a conditional use approval in the application and those applications are forwarded to the BMZA for review. All variances exceeding the Zoning Administrator’s discretionary authority and any minor variances disapproved by the Zoning Administrator can be appealed to the BMZA.

Additionally, this Bill would clarify that all applications must be filed in writing. DHCD is supportive of this change.

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The bill would also alter the definition of a “Minor variance” by increasing it from a maximum 10% reduction to a 25% reduction, in lot width, setback, and off-street parking spaces, or increase in bulk and density of a structure.

The Bill would shorten the response time for surrounding property owners and community members from 21 to 10 days and would change the approval process from a public hearing to an administrative review. Major variances that are presently subject to BMZA hearings require 21 days’ public notice and minor variances must be publicly advertised for 10 days.

The Bill goes on to add a new subsection that would allow consideration of a “minor” variance request to be based upon special consideration for owner-occupied residential properties based on the tenure of a property owner in a residential zoning district. DHCD recommends that the Law Department weigh in on this approach. Distinguishing owner-occupant and tenant status could create inequity in land use protections currently afforded to applicants.

The Bill would provide the BMZA additional flexibility when examining both conditions of a property and circumstances relating to that property in determining whether a requested variance would be appropriate by adding “conditions peculiar to the property” as a criterion for approval of a variance and add “exceptional circumstances related to the specific structure or land involved” as another criterion for approval of a variance. DHCD is not opposed to this change as additional discretion in the administration of the Code would make it more workable when applying it to Baltimore’s landscape of development.

At its regular meeting of November 30, 2023, the Planning Commission concurred with the recommendation of its departmental staff and recommended that City Council Ordinance 23-0435 be amended and approved by the City Council. DHCD supports the Planning Commission’s amendments to clarify intent, fix mistakes, or to make other adjustments to the code through this modification process.

### Conclusion

The Bill amends several areas of interest to DHCD within the Zoning Code, specifically concerning the Office of the Zoning Administrator, who is responsible for ensuring that construction activity and land uses comply with the City's Zoning Code.

While in support, it is worth noting that questions may arise with the practical application of the Bill, whereby an applicant may not know in advance whether their request would be classified as a major variance or a minor variance, or an applicant may need to file separate applications with the Zoning Administrator and the BMZA for a single project. The dual track created by this legislation could add additional development costs and extend project timelines for applicants and bifurcate an otherwise streamlined process.

DHCD appreciates the intent of this legislation. Overall, the changes proposed in the Bill seek to streamline interactions and provide flexibility between the Zoning Administrator and the BMZA.

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DHCD's Office of the Zoning Administrator works closely with the Department of Planning and the Board of Municipal and Zoning Appeals to identify changes and make suggestions based on their hands-on application of the code. DHCD appreciates the goal of keeping the Zoning Code up-to-date and is not opposed to the changes outlined in City Council Ordinance 23-0435. These changes may help to promote the health, safety and welfare of the city and its residents by updating and aligning the code to make process improvements.

DHCD **supports** the passage of City Council Ordinance 23-0435 and respectfully requests a favorable report.

AK/sm

cc: Ms. Themelis, Nina, *Mayor's Office of Government Relations*

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