

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, City Solicitor
101 City Hall
Baltimore, Maryland 21202

October 4, 2018

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 18-0257 – Zoning – Conditional Use Conversion of a
Single-Family Dwelling Unit to 4 Dwelling Units in the R-8 Zoning District
– Variances – 310 East Lanvale Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0257 for form and legal sufficiency. The bill would permit the conversion of a single-family dwelling unit to 4 dwelling units at 310 East Lanvale Street, which is in an R-8 Zoning district. The bill would also grant variances for lot area 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 and off-street parking requirements. In general, dwellings in an R-8 must have 750 square feet per dwelling unit and one off-street parking space per dwelling unit. Baltimore City Code, Art. 32, §§ 9-401; Tbl 9-401; 9-703(f); 16- 203, 16-602. Since the property does not meet these requirements, it needs a variance from them.

In addition, to qualify for this type of conversion, the existing dwelling must have at least 1,500 square feet in gross floor area total and the converted dwelling must have at least 1,250 square feet per dwelling unit since the applicant seeks conversion to 4 dwelling units. Baltimore City Code, Art. 32, §§ 9-703(b), (c). Since the property does not meet these requirements, it needs a variance from them. The bill does not contain the language necessary to grant this type of variance although Planning's report addresses it. Thus, the Law Department recommends the bill be amended to contain this variance. A suggested amendment is attached.

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. **As an end of group rowhome, next to approximately ten other similar structures on similar lots with similar parking, it is critical for the City Council to find that this property is, in fact, unique.**

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, **the Report does not address any of the considerations for the variances required. The Report makes no mention of how the property is unique or different from other properties in the same zoning classification, such that a variance is permissible. The City Council must address how this property is unique in its findings of fact for the bill to be legally sufficient.**

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,



Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Avery Aisenstark

AMENDMENTS TO COUNCIL BILL 18-0257
(1st Reader Copy)

Proposed by: Law Dep't
(To be offered to the Land Use and Transportation Committee)

Amendment No. 1

On page 2, after line 4, insert:

SECTION 4. AND BE IT FURTHER ORDAINED, That pursuant to the authority granted by §§ 5-201(a), 5-305(a), and 5-308 of Article 32 – Zoning, permission is granted for a variance from the gross floor area requirements of § 9-703(b) and § 9-703(c), as there is a lack of required gross floor area per dwelling unit.

On page 2, in lines 5 and 13, strike “4” and “5”, respectively, and substitute “5” and “6” respectively.