
CITY OF BALTIMORE

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Mayor



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October 12, 2018

Honorable President and Members
of the City Council of Baltimore
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Attn: Natawna B. Austin, Executive Secretary

Re: City Council Bill 18-0258 – Zoning – Conditional Use Conversion of a
Single-Family Dwelling Unit to 2 Dwelling Units in the R-8 Zoning District
– Variance – 417 East Lafayette Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0258 for form and legal sufficiency. Subject to certain conditions, the bills permits the conversion of a single-family dwelling unit to 2 dwelling units in the R-8 Zoning District on the property known as 417 East Lafayette Avenue and granting a variance from certain off-street parking requirements.

Conditional Use Standards

Under the Zoning Article of the City Code, 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).

Variance Standards

The bill also contains variances for off-street parking requirements. Off-street parking requirement provide that each dwelling unit must have an off-street parking space. Baltimore City Code, Art. 32, § 9-703(f). This bill, which provides for two dwelling units, requires two off-street parking spaces under the above provision. Since the property exists with merely a single off-street parking space, a variance must be sought from the two-space requirement.

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).

Hearing Requirements

The Land Use and Transportation Committee (the “Committee”) must consider the above law at the scheduled public hearing wherein it will hear and weigh the evidence as presented in: (1) the Planning Report and other agency reports; (2) testimony from the Planning Department and other City agency representatives; and (3) testimony from members of the public and interested persons. After weighing the evidence presented and submitted into the record before it, the Committee is required to make findings of fact with respect to the factors and considerations outlined above. If, after its investigation of the facts, the Committee makes findings which support

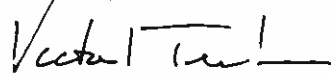
the conditional use and the variances sought, it may adopt these findings and the legal requirements will be met.

The Planning Staff Report (“Report”) outlines the portions of the Zoning Article applicable to conditional uses and makes favorable conclusory findings concerning the conditional use standards. The Report also mentions certain facts involving the requested variances. The Report does not, however, supply facts to support granting the requested variances. While the Report notes that a practical difficulty would result if a variance was not granted, it does not provide any facts to support a conclusion that the condition is unique to this property; nor does it articulate any facts related to the other five elements that allow for the approval of an off-street parking variance. **If this bill is to be lawfully approved by the City Council, it must: (1) find facts that are identical or similar to those presented in the Report to approve the conditional use; and (2) establish the facts at the public hearing that are needed to grant the variances.**

Finally, 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.

Sincerely,



Victor K. Terval
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
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Ashlea Brown, Assistant City Solicitor