

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 <sup>TH</sup> FLOOR		
	SUBJECT	CITY COUNCIL BILL #23-0439 / ZONING – VARIANCE		

TO

The Honorable President and  
 Members of the City Council  
 City Hall, Room 400  
 100 North Holliday Street

DATE: December 1, 2023

At its regular meeting of November 30, 2023, the Planning Commission considered City Council Bill #23-0439, for the purpose of granting a variance from certain side yard regulations in the R-1E Zoning District for the expansion of a residential dwelling on the property known 6709 Western Run Drive (Block 4250, Lot 016), as outlined in red on the accompanying plat.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended conditional approval of City Council Bill #23-0439, and adopted the following resolution, with 9 members being present (9 in favor):

RESOLVED, That the Planning Commission concurs with the recommendation of its Departmental staff, and finds that because of its particular surroundings and shape of the specific structure, a practical difficulty would result if the strict letter of the applicable Zoning Code requirements were carried out; and therefore recommends that City Council Bill #23-0439 be **approved** by the City Council **following amendment of Baltimore City Zoning Code subsection 18-403 as proposed in City Council Bill #23-0435**. (Please refer to the separate Planning Commission report on City Council Bill #23-0435 for additional information.)

CR/ewt

Attachment

cc: Ms. Nina Themelis, Mayor's Office  
 The Honorable Eric Costello, Council Rep. to Planning Commission  
 Ms. Nikki Thompson, City Council President's Office  
 Mr. Colin Tarbert, BDC  
 Ms. Rebecca Witt, BMZA  
 Mr. Geoffrey Veale, Zoning Administrator  
 Ms. Stephanie Murdock, DHCD  
 Ms. Elena DiPietro, Law Department  
 Mr. Francis Burnszynski, PABC  
 Mr. Liam Davis, DOT  
 Ms. Natawna Austin, Council Services



Brandon M. Scott  
Mayor

## PLANNING COMMISSION

Sean D. Davis, Chair; Eric Stephenson, Vice Chair

### STAFF REPORT



Chris Ryer  
Director

November 30, 2023

**REQUEST:** City Council Bill #23-0439/ Zoning – Variance – Side Yard – 6709 Western Run Drive:

For the purpose of granting a variance from certain side yard regulations in the R-1E Zoning District for the expansion of a residential dwelling on the property known as 6709 Western Run Drive (Block 4250, Lot 016), as outlined in red on the accompanying plat.

**RECOMMENDATION:** Approval conditional upon adoption of City Council Bill #23-0435 amendment of §18-403 {"Expansion of structure"} of the Baltimore City Zoning Code (BCZC)

**STAFF:** Eric Tiso and Martin French

**PETITIONER:** Councilmember Schleifer, at the request of Hillel Tendler

**OWNERS:** Hillel and Marsha L. Tendler

### **SITE/GENERAL AREA**

Site Conditions: 6709 Western Run Drive is located on the north side of the street, between its intersections with Labyrinth Road and Clarks Lane. This property measures approximately 80' by 181'1" and is currently improved with a two-story detached L-shaped residential building measuring approximately 53' across its front by approximately 56' at its greatest depth. The building's L-shaped construction created an area in its western side yard hidden from view from the street and next to the adjoining property at 6711 Western Run Drive that the owner proposes to use for a one-story addition to the existing structure. This site is zoned R-1E and is located within the Cross Country community.

General Area: The Cross Country community is a completely residential area in the northwest portion of Baltimore City, and its northern boundary is the northern City limit. The community extends eastward from Park Heights Avenue along both sides of Western Run, which is a tributary to the Jones Falls further east of it, to Taney Road. The community is variously zoned for residential uses, with the majority of zoning districts being either versions of the R-1 District that does not allow multi-family dwellings, or the R-5 District that does allow multi-family dwellings.

### **HISTORY**

There are no previous legislative or Planning Commission actions regarding this site. This property and the area along the north side of Western Run were rezoned from R-1 to R-1E during the comprehensive rezoning process associated with adoption of the current Zoning Code which became effective on June 5, 2017.

## **ANALYSIS**

Background: On March 13, 2023 the applicant filed an application to construct an addition to the existing house using the western side yard of the property. The Zoning Administrator determined that a side yard setback variance would be required for approval of this. The applicant then filed a request for a zoning appeal hearing. The hearing was duly scheduled and advertised and the appeal (#2023-78) was heard on May 16, 2023. Following the hearing, the Board of Municipal and Zoning Appeals (BMZA) issued its Resolution dated June 20, 2023 that denied the requested variance (see discussion below). The applicant duly filed a request for a reconsideration by the BMZA, which was considered and denied by the BMZA on September 19, 2023. Although the Zoning Code (BCZC) provides that any person aggrieved by a decision of the BMZA may request judicial review of that decision within the time and in the manner required by law and the Maryland Rules of Procedure (per §19-302(b)(1) and §19-302(c)(1) of the Zoning Code), the applicant instead requested introduction of this bill for the purpose of authorizing the variance that the BMZA had twice disapproved.

### Zoning Analysis:

*Bulk Requirements:* The Zoning Code requires, for a property in the R-1E zoning district, a minimum interior-side yard [setback] of 10 feet for a dwelling, either detached or semi-detached (BCZC Table 8-401). According to the site plan provided with the original zoning appeal #2023-78 (referenced above) the existing house is at a distance of less than 10 feet from its western interior-side lot line that divides 6709 Western Run Drive from 6711 Western Run Drive. (The chimney on that side of the house may be as close as 4' to that lot line, according to the plat detail map accompanying this bill.) Both the 1971 Zoning Code and the current Zoning Code state that a detached dwelling must be at least 10 feet from its interior side lot line (§4-207(a) of the former Zoning Code and Table 8-401 of the current Zoning Code). This property, containing a dwelling constructed in 1953, thus is improved by a structure classified as nonconforming since 1971. Nonconformity was not created by construction of the house, but by later zoning code provisions that required a greater amount of interior side yard setback than was provided by the builder of the house.

The owner of 6709 Western Run Drive proposes to build a one-story side addition to the existing structure. Plans for that addition show that it would extend to within 4 feet of the western interior side lot line at its closest point, based upon a rearward extension aligned with the existing western side wall of the existing house. This setback would be occasioned by the fact that the western lot line is not perpendicular to the front lot line, as the front lot width is approximately 80 feet but the rear lot line, which is nearly parallel to Western Run Drive, measures approximately 65' according to the plat detail map.

*Prior Hearing and Resolution:* The BMZA considered the zoning appeal a request to approve a proposed addition to a nonconforming structure. BCZC §18-403 currently states in its entirety: "A nonconforming structure may not be expanded if the expansion would create a new nonconformity or increase the degree of any nonconformity." At the hearing it was testified that the purpose of the proposed building addition was to increase the habitable floor area of the existing house. The BMZA indicated during the hearing that it would be able to consider the variance request if the property was improved with a conforming structure, but would be

prevented from approving the same request if it was for a nonconforming structure. In its Resolution, the BMZA stated in part:

“According to the plain language of 18-403, the structure cannot be expanded if the proposed expansion increases the amount of existing nonconformity or creates a new nonconformity. The Board held that to allow Appellant’s client \* to build an addition along the existing nonconforming portion of the property would be to create a new nonconformity and to increase the amount of nonconformity.

\* (*Appeal #2023-78 was filed by an agent who for that purpose represented the property owner*)

“... As a matter of policy, the Board has interpreted section 18-403 to mean that any additional portion of a building that does not comply with the required setbacks is a new nonconformity. Though this project would maintain the same nonconforming setback line that has already been established, it would still increase the amount of the building that is nonconforming. To interpret the Code otherwise would mean that as soon as any nonconforming aspect of a building has been established, the owner is then allowed to build along that nonconforming line without a variance. This interpretation would not be not (*sic!*) consistent with the purpose and intent of the nonconformities section of the Code found in section 18-101(a), which says “[c]onsistent with the establishment of those districts, all uses and structures incompatible with allowed uses and structures must be *strictly regulated and properly controlled*” (emphasis added).”

*Interpretation:* Staff notes that this interpretation by the BMZA is a departure from many years of practice, where a nonconforming structure could be made further nonconforming by way of a variance, if it could meet the requirements for approval. That scenario occurred with some frequency both under the prior zoning code, and under the current code. It is our understanding that §18-403 is necessary to prevent a permit from being issued over the counter, and to instead be referred for a hearing. In part, City Council Bill #23-0435 was introduced by Councilman Schleifer two weeks before this bill was introduced to clarify the code requirements. If enacted, that bill would amend the Zoning Code to make it explicitly clear that a nonconforming structure could be expanded if a variance for that purpose is approved (see staff report on City Council Bill #23-0435, page 6). Once so amended, the Zoning Code would allow the BMZA to rehear the appeal #2023-78 and determine if a variance would be approvable for a structure classified as nonconforming by the Code. We believe that this is the appropriate means to confirm that the City Council and the BMZA have discretion to approve variances relating to nonconforming structures.

The Zoning Code authorizes the City Council to originate legislation to approve a major variance (BCZC Title 5, Subtitle 2) and provides requirements for approval of a variance by legislative authorization (BCZC Title 5, Subtitle 5). The City Council has on occasions included variances of the Zoning Code’s regulations in authorizations of residential conversions over a span of many years. This bill is unusual, in that staff believes that this will be the first time the provision of §5-305(b)(4) will be invoked to consider a variance (by itself and without any other related action) through a legislative authorization, thereby removing it from BMZA consideration.

Equity:

- Impact:
  - It is unclear what effect approval of this bill would have in the short or long term, because conditions in the Cross Country community may not be representative of existing residential development patterns in other communities in Baltimore. Given the particular situation of the existing dwelling structure on 6709 Western Run Drive and the nature and extent of the proposed side addition, its only short-term effect would not be readily visible to the remainder of the community outside of the owners of 6711 Western Run Drive.
  - This legislation would not impact existing patterns of inequity that persist in Baltimore.
  
- Engagement:
  - As was testified in the BMZA hearing of appeal #2023-78, the owner consulted with nearby residents, and particularly with the owner of 6711 Western Run Drive, before appealing the Zoning Administrator's decision to disapprove the application to construct an addition to the existing house.
  
- Internal Operations:
  - Approval or disapproval of this bill would have no effect upon operations of the Planning Department.

Notification: The Cross Country-Cheswolde Neighborhood Association and Councilman Schleifer have been notified of this action.

A handwritten signature in blue ink, consisting of a stylized, cursive 'C' followed by a horizontal line extending to the right.

**Chris Ryer**  
**Director**