
CITY OF BALTIMORE

BRANDON M. SCOTT,
Mayor



DEPARTMENT OF LAW
EBONY M. THOMPSON,
ACTING CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

November 16, 2023

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

Re: City Council Bill 23-0409– Zoning – Conditional Use Conversion of a Single-Family Dwelling Unit to 3 Dwelling Units in the R-8 Zoning District – Variances – 2127 McCulloh Street

Dear President and City Council Members:

The Law Department reviewed City Council Bill 23-0409 for form and legal sufficiency. The bill would permit the conversion of a single-family dwelling unit to 3 dwelling units at 2127 McCulloh Street, which is in an R-8 Zoning district. The bill would also grant a variance for lot size. The ordinance would take effect on the date of enactment.

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 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(b). The Planning Staff Report (“Planning report”) recommends several amendments to CB 23-0409, and approval of the conversion of the property to three dwelling units.

Variance Standards

The bill contains a variance for lot area. In support of this variance the bill states:

the minimum lot size requirement for 3 dwelling units, in the R-8 Zoning District, is 2,250 square feet, and the lot area size is 1,736.8 square feet, thus requiring a variance of 22.8%.

The Planning report notes that under § 15-302 and Table 9-401 of the Zoning Code the lot size required in R-8 would be 750 sq. ft. per dwelling unit. The report further states that “1,875 square feet are required for three-dwelling units.” According to the Planning report, the lot at 2127 McCulloh Street has approximately 1,750 sq. ft. The Planning report states that a 125 sq. ft. variance, which is approximately 7%, would be required. Article 32, § 15-302 states “On a lot with 3 or more dwelling units, a fraction of the total area that is 50% or more of the required lot area factor counts as an additional permitted dwelling unit.” Therefore, for a dwelling with three units, the calculation of required lot area would not be 3 x 750 sq.ft., but rather 2.5 x 750 sq.ft. Planning has recommended an amendment to the lot area variance authorized.

Additionally, the Planning report notes that two off-street parking spaces are required by the Zoning Code (Table 16-406) to serve the two newly created dwelling units. The report notes that due to the width of the lot, only one off-street parking space is available. As a result, Planning recommends an amendment to include an off-street parking variance in a new Section 3 of the bill.

The Planning report states that an amendment to CB 23-0409 is also required 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 two-bedroom unit be 1,000 square feet. The Staff Report notes that the owner intends to create one one-bedroom unit on the first floor of the structure for which there is adequate floor area, and two two-bedroom units on the second and third floors of the structure for which floor area variances are required. The Planning report recommends adding a new Section 4 to the bill to include this amendment.

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(a). 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 report contains facts to support the necessary findings to approve variances for lot area, gross floor area, and parking. As discussed above, there is a discrepancy regarding the amount of the lot area variance required. 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 requires amendments to correct the amount of variance for lot area and include variances for gross floor area and for off-street parking. Assuming the amendments are 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,

A handwritten signature in black ink, appearing to read "Michele Toth". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Michele Toth
Assistant Solicitor

cc: Ebony Thompson
Nina Themelis
Tiffany Maclin
Elena DiPietro
Hilary Ruley
Ashlea Brown
Jeff Hochstetler
Teresa Cummings