

CITY OF BALTIMORE
COUNCIL BILL 23-0435
(First Reader)

Introduced by: Councilmember Schleifer

Introduced and read first time: October 2, 2023

Assigned to: Economic and Community Development Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Housing and Community Development, Planning Commission, Board of Municipal and Zoning Appeals, Baltimore Development Corporation, Department of Transportation

A BILL ENTITLED

AN ORDINANCE concerning

Zoning Code – Modifications

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.

BY repealing and re-ordaining, with amendments

Article 32 - Zoning

Sections 5-201(b), 5-201(c)(1), 5-301, 5-302(b), 5-308, and 18-403

Baltimore City Code

(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 32. Zoning

Title 5. Applications and Authorizations

Subtitle 2. Applications

§ 5-201. Introduction of proposed authorization.

(b) Introduction by application.

(1) Notwithstanding subsection (a) of this section, a person must file an application under this subsection to request:

(i) a minor variance;

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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- (ii) a major variance that at the time of filing, is not the subject of legislation before the City Council;
- (iii) a conditional use that, at the time of filing, is not the subject of legislation before the City Council;
- (iv) a use permit;
- (v) a zoning appeal; and
- (vi) a zoning consultation.

(2) An application for a variance, conditional use, use permit, or zoning appeal must be filed IN WRITING by:

- (i) the owner of property to which the application applies; or
- (ii) a person expressly authorized by the owner [in writing].

(3) An application for a zoning interpretation must be filed by:

- (i) an owner of any property in the City;
- (ii) a person expressly authorized by a property owner in writing; or
- (iii) any City Councilmember or other official of City government.

(c) *Filing.*

(1) An application for a conditional use, conditional sign, MAJOR VARIANCE, or appeal from the Zoning Administrator must be filed with the BMZA. All other applications must be filed with the Zoning Administrator.

Subtitle 3. Variances.

§ 5-301. Purpose.

(a) *In general.*

The purpose of the variance procedure is to afford a property owner relief from certain regulations of [the Zoning Code] THIS CODE when [unnecessary hardship or] practical difficulty exists.

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1 (b) *Application.*

2 [The variance procedure applies only to changes in bulk and yard regulations and changes
3 in signage, parking, and loading requirements. It does not apply to changes in the uses,
4 the maximum quantity of signs, the location requirements of signs, or the types of signs
5 allowed within a zoning district.] THE ZONING ADMINISTRATOR OR THE BOARD OF
6 MUNICIPAL AND ZONING APPEALS MAY GRANT VARIANCES OR MODIFICATIONS FROM THE
7 PROVISIONS OF THIS CODE PURSUANT TO THE STANDARDS SET FORTH IN THIS SUBTITLE.

8 (C) THE VARIANCE PROCEDURE PROVISIONS SET FORTH IN THIS SUBTITLE SHALL NOT BE
9 CONSTRUED TO PERMIT THE ZONING ADMINISTRATOR OR THE BOARD OF MUNICIPAL AND
10 ZONING APPEALS TO AUTHORIZE A USE OF LAND NOT OTHERWISE PERMITTED UNDER THE
11 GUISE OF A VARIANCE.

12 **§ 5-302. Minor and major variances distinguished.**

13 (a) *In general.*

14 This Code allows for 2 types of variances that may be granted under this subtitle, minor
15 variances and major variances.

16 (b) *Minor variances.*

17 (1) Minor variances comprise the following specified variances:

- 18 (i) a reduction in lot width by no more than [10%] 25% of the applicable
19 minimum lot width requirements;
- 20 (ii) a reduction in required yards and setbacks by no more than [10%] 25% [or
21 2 feet, whichever is less];
- 22 (iii) a reduction in the number of off-street parking spaces by no more than
23 [10%] 25% of the applicable minimum requirements;
- 24 (iv) a reduction in the required alley width for access to off-street parking;
25 [and]
- 26 (v) a variance to bulk or yard regulations if:
- 27 (A) the parcel of land is improved with a nonconforming structure
28 that has been in existence for at least 50 years;
- 29 (B) the variance would not permit more than a [10%] 25%
30 cumulative increase in the bulk and density of a structure that
31 has been in existence for 50 or more years; and
- 32 (C) in the opinion of the Zoning Administrator, the application
33 complies with all applicable approval criteria for variances[.];
34 AND

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(VI) A VARIANCE TO BULK OR YARD REGULATIONS IF:

(A) THE VARIANCE APPLICATION INVOLVES AN OWNER OCCUPIED PROPERTY WITHIN A RESIDENTIAL ZONING DISTRICT; AND

(B) THE LEGAL OWNER OF THE PROPERTY SUBMITS A NOTARIZED AFFIDAVIT ATTESTING TO THE FACT THAT THEY OWN AND OCCUPY THE RESIDENTIAL PROPERTY.

(2) The Zoning Administrator OR THE BOARD OF MUNICIPAL AND ZONING APPEALS may grant minor variances from the regulations of this Code.

§ 5-308. Approval standards.

(a) *Required finding of [unnecessary hardship or] practical difficulty.*

[In order to] TO grant a variance, the Zoning Administrator, the Board of Municipal and Zoning Appeals, or the City Council, as the case may be, must find that, because of the CONDITIONS PECULIAR TO THE PROPERTY, INCLUDING particular physical surroundings, shape, or typographical conditions of the specific structure or land involved, OR BECAUSE OF EXCEPTIONAL CIRCUMSTANCES RELATED TO THE SPECIFIC STRUCTURE OR LAND INVOLVED, [an unnecessary hardship or] A practical difficulty, as distinguished from a mere inconvenience, would result if the strict letter of the applicable requirement were carried out.

(b) *Other required findings.*

The Zoning Administrator, the Board of Municipal and Zoning Appeals, or the City Council, as the case may be, must also find that:

[(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;]

(1) [(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;

(2) [(3)] the purpose of the variance is not based exclusively on a desire to increase the value or income potential of the property;

(3) [(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;

(4) [(5)] the variance is not precluded by and will not adversely affect:

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(i) any Urban Renewal Plan;

(ii) the City's Comprehensive Master Plan; or

(iii) any Historical and Architectural Preservation District; and

(5) [(6)] 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.

§ 5-309. [Expiration of approval] TIME LIMIT FOR UTILIZATION OF VARIANCE; EXTENSIONS.

(a) *Exercise [within year] of approval required.*

A variance lapses and becomes void [1] 2 years from the date of its final [approval] ORDER GRANTING SAME, unless A USE PERMIT UNDER THIS CODE AND AN OCCUPANCY PERMIT UNDER THE BALTIMORE CITY BUILDING CODE [substantial construction has] HAVE BEEN OBTAINED [occurred within that year].

(b) *Extension by BMZA.*

The Board of Municipal and Zoning Appeals may grant an extension of this period for both minor and major variances, on written application and for good cause shown, without notice or hearing.

Subtitle 4. Conditional Uses.

§ 5-407. [Expiration of approval] TIME LIMIT FOR UTILIZATION OF CONDITIONAL USE; EXTENSIONS.

(a) *Exercise [within year] OF APPROVAL required.*

A conditional use and a conditional sign approval lapses and becomes void in [1] 2 years from the date of its final [approval] ORDER GRANTING SAME unless, within that [year] PERIOD:

(1) a use permit under this Code and an occupancy permit under the Baltimore City Building Code have been obtained for that use;

(2) the erection or alteration of a structure for that use has lawfully begun;

(3) the use has lawfully begun; or

(4) a building permit under this Code and any other applicable Codes has been obtained for THE USE OR the sign, AS THE CASE MAY BE.

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(b) *Extension by BMZA.*

The Board of Municipal and Zoning Appeals may grant an extension of this period on written application and for good cause shown, without notice or hearing.

Title 18. Nonconformities

Subtitle 4. Nonconforming Structures

§ 18-403. Expansion of structure.

(A) *SCOPE.*

THIS SECTION APPLIES TO ALL EXPANSIONS OF A NONCONFORMING STRUCTURE, EXCEPT AS MAY BE SPECIFICALLY AUTHORIZED UNDER:

(1) TITLE 5, SUBTITLE 3 {"VARIANCES"} OF THIS CODE; OR

(2) § 18-413 {"EXCEPTIONS - ADMINISTRATIVE BULK ADJUSTMENTS"} OF THIS CODE.

(B) *RESTRICTION ON EXPANSION.*

A nonconforming structure may not be expanded if the expansion would[,] create a new nonconformity or increase the degree of any nonconformity.

SECTION 2. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is enacted.