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CITY OF BALTIMORE

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Mayor



DEPARTMENT OF LAW

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March 9, 2022

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

Re: City Council Bill 21-0186 - Zoning – Conversion of Single-Family Dwelling Unit to 3 Dwelling Units in the R-7 Zoning District – Variance – 1635 Gwynns Falls Parkway

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0186 for form and legal sufficiency. The bill permits, subject to certain conditions, the conversion of a single-family dwelling unit to 3 dwelling units in the R-7 Zoning District on the property known as 1635 Gwynns Falls Parkway (Block 3235, Lot 030), as outlined in red on the accompanying plat. The bill also grants a variance from certain bulk regulations (lot area size)..

#### Conditional Use Standards

This property is zoned R-7, which requires the conditional use to be approved by ordinance. City Code, Art. 32, § 9-701. Under the City Code, approval of a conditional use must be based on a finding that:

- (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.

§ 5-406(a). Moreover, the above findings must be guided by 14 “considerations” involving, for example, 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.” Art. 32, § 5-406(b).

#### Variance Standards

The bill also contains variances from lot size area requirements. For a 3-bedroom unit in an R-7 Zoning District 1,100 square feet is required per dwelling unit. Art. 32, § 9-401 (Table 9-

401: Rowhouse and Multi-Family Residential Districts - Bulk and Yard Regulations). The property thus requires a lot size of 3,300 square feet to support a conversion, although the lot size is only 1800 square feet. In order to proceed with a conversion a variance is therefore required.

According to the Planning Commission report, dated January 14, 2022 (“Report”), the conversion must also contain a variance from off-street parking regulations and from minimum floor area requirements.

For off-street parking, the City Code requires at least 1 off-street parking space for each dwelling unit. Art. 32, § 9-703(f). According to the Report, this property only contains 2 parking spaces when 3 are needed. Report, page 2. For floor area, the City Code requires 1000 square feet gross floor area for a two-bedroom dwelling unit and 750 square feet for a one-bedroom dwelling unit. Art. 32, § 9-703(c). The Report states that this calculation is made for two different floors of this address and results in the need for a variance. Report, page 2.

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.” 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.

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

The Law Department notes that the Report provides facts sufficient to approve both the conditional use and the variances. Law Department notes further that a bill authorizing a conditional use is classified as a “legislative authorization.” Art. 32, § 5-501. Legislative authorizations require that certain procedures be followed in the bill’s passage. Specifically, certain notice requirements apply to the bill. See Art 32, § 5-602. The bill must be referred to certain City agencies, which are obligated to review the bill in a specified manner. See Art. 32, §§ 5-504, 5-506, 5-604. Finally, certain limitations on the City Council’s ability to amend the bill apply. See Art. 32 § 5-507.

Amendment Required

The purpose paragraph of CB 21-0186 correctly states on page 1, line 5 that this property is zoned R-7. Nonetheless, the bill incorrectly states that the property is zoned R-8 on page 1, lines 15 and 22. These should be corrected to reflect the correct zoning.

Assuming the bill is amended as noted above

and all the procedural requirements are satisfied, the Law Department is prepared to approve the bill for form and legal sufficiency.

Sincerely,

*Victor K. Tervala*

Victor K. Tervala  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Nina Themelis, Mayor’s Office of Government Relations  
Nikki Thompson, Director of Legislative Affairs  
Matthew Stegman, Director of Fiscal and Legislative Services  
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