

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

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February 17, 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 17-0155 – Zoning – Conditional Use Conversion of a
Single-Family Dwelling Unit to 2 Dwelling Units in the R-7 Zoning District
– Variances – 2415 W. Lexington Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0155 for form and legal sufficiency. The bill permits the conversion of a single-family dwelling unit to 2 dwelling units in the R-7 Zoning District on the property known as 2415 Lexington Street. According to the Planning Report variances are also needed for gross floor area of the existing dwelling, and the pr unit gross floor area. The bill would need to be amended to provide for approval of these variances

Under the Zoning Article of the City Code, the conversion of a single-family dwelling to a multi-family dwelling in an R-7 District requires conditional-use approval by ordinance. Baltimore City Code (BCC), Art. 32, § 9-701(2). Further, approval of a conditional use must be based on the following findings:

(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.” § 5-406(b).



The bill also contains variances for gross floor area for the existing dwelling, and gross floor area per dwelling unit. 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. § 5-308(a). The City Council 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; (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. § 5-308(b).

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 Planning Staff Report ("Report") outlines the portions of the Zoning Article applicable to conditional uses (§ 5-406(a) and (b)) and makes unfavorable conclusory findings regarding the Section 5-406(b) considerations. *See* Report at 2. The Report also states the facts which are the basis for the variance amendments noted in the Report. (*see* Report at 2-3). **The Report does not supply facts to support each of the findings required by law for both the conditional use and for the variances requested. If this bill is to be lawfully approved by the City Council, the facts required by Sections 5-406(a), 5-308(a) and 5-308(b) as well as the "considerations" in Section 5-406(b) must be reviewed and established at the bill's public hearing.**

Finally, certain procedural requirements apply to this bill beyond those discussed above because both conditional uses and variances are considered "legislative authorizations." BCC 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. §§ 5-

504, 5-506, 5-602. Finally, certain limitations on the City Council's ability to amend the bill apply. § 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 conditional use and variances have been met. Provided appropriate amendments for the needed variances are offered and assuming the required findings are made at the hearing and all procedural requirements are satisfied, the Law Department could approve the bill for form and legal sufficiency.

Sincerely,



Elena R. DiPietro
Chief Solicitor
Practice Group Chief

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
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