
CITY OF BALTIMORE

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Mayor



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February 23, 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 17-0114 – Zoning – Conditional Use Conversion of a
Single-Family Dwelling Unit to 2 Dwelling Units in the R-8 Zoning District
– Variances – 2938 Huntington Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0114 for form and legal sufficiency. Subject to certain conditions, the bill permits the conversion of a single-family dwelling unit to 2 dwelling units in the R-8 Zoning District on the property known as 2938 Huntingdon Avenue. The bill also grants variances from certain lot area size, lot area coverage, off-street parking, and gross floor area requirements.

Under the Zoning Article of the City Code, 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 (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 lot area per dwelling unit, gross floor area for the existing dwelling, gross floor area per dwelling unit, and off-street parking requirements. 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 Law Department notes that the Planning Staff Report ("Report") fails to provide any findings of fact that would allow approval of either the conditional use or the variances. Instead the Report concludes that: (1) the proposed use "does not support the goals, objectives and strategies contained in the Comprehensive Master Plan"; (2) the site "is not appropriate for the additional dwelling unit" and fails to meet applicable standards in the zoning code, which creates the need for substantial variances; and that (3) the variances required are "inappropriate in the context of protecting the existing community fabric...." Report at pages 2-3. Nonetheless, the memorandum from the Director of the Planning Department to the City Council, dated October 20, 2017, states that "the Planning Commission disagrees with the staff recommendation that City Council bill 17-0114 should not be recommended for approval, and therefore recommends approval of the bill."

The Law Department points out that, in the absence of any supporting facts supplied by the Report, CB 17-0114 cannot be lawfully adopted unless all the necessary facts are provided in oral or written testimony at the bill's public hearing; specifically, those required by Sections 5-406(a) and 5-406(b) to approve a conditional use; and those required by Sections 5-308(a) and 5-308(b) to approve the variances. The Law Department will be unable to approve the bill for form and legal sufficiency if those facts are absent from the record.

Lastly, we note that 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.

Sincerely,



Victor K. Tervala
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
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