
CITY OF BALTIMORE

CATHERINE E. PUGH,
Mayor



DEPARTMENT OF LAW
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April 2, 2018

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 17-0093– Zoning – Appeals to Zoning Board – Corrective

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0093 for form and legal sufficiency. The bill deletes certain court-imposed statutory provisions, since rendered inoperative by Ch. 596, Acts of 2017, and conforms the new Zoning Code (Article 32) to decades of City practice and procedures. The bill has an immediate effective date.

The City Charter contains a long-standing provision that prohibits decisions of the Planning Commission from being appealed to the Board of Municipal and Zoning Appeals. *See* City Charter, Art. VII, § 86. Given the prohibition, if any party is aggrieved by a decision of the Planning Commission, their avenue of appeal is to the Maryland courts. A 2016 court case, however, overturned the City's reliance on this Charter provision. The court held that State law required decisions of the Planning Commission to be appealable to the BMZA as well as to the courts. *See Viles v. Board of Municipal and Zoning Appeals*, 230 Md. App. 506 (2016)

The ruling raised a variety of City concerns, including the potential effect on the workload of the thinly-staffed BMZA. Given these concerns, the City sought legislative relief from the Maryland General Assembly in 2017. The City delegation introduced a bill that would allow appeals to the BMZA to be determined by local law and not State law. The effort was successful and the bill was signed into law as Chapter 596, Acts of 2017.

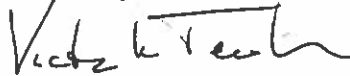
Before the State law was approved, however, a corrective bill to Transform Baltimore was approved by the Mayor and City Council. *See* Ord, 17-015. The corrective bill conformed the new Zoning Code (Article 32) to comply with the troublesome court order in *Viles*. Today Article 32 permits all administrative decisions involving the zoning code to be appealable to the BMZA.

CB 17-0093, in seeking to remove provisions in the City zoning code that provide an automatic right of appeal to the BMZA, yields two positive effects. First, as noted above, the City Charter already prohibits decisions of the Planning Commission from being appealed to the

BMZA. Article 32, however, expressly permits those appeals. The passage of CB 17-0093 will eliminate the overt conflict between the City Charter and the zoning code. Second, rather than having all administrative zoning decisions be automatically appealable to the BMZA, CB 17-0093 would, in accordance with the new State law, allow only those decisions that have been designated by local law to be appealable to the BMZA. To that end we note that, other than decisions of the Zoning Administrator, no local law currently permits administrative decisions to be appealed to the BMZA.¹ Thus, the passage of CB 17-0093 will protect the BMZA from having to deal with a certain set of administrative appeals that, until the *Viles* ruling in 2016, had never been candidates for a BMZA appeal. In effect, the passage of CB 17-0093 would return the City to the state of affairs that existed prior to *Viles*.

As there is no legal impediment to the passage of this bill, the Law Department is prepared to approve the bill for form and legal sufficiency as drafted.

Sincerely,



Victor K. Terval
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
Hilary Ruley, Chief Solicitor
Ashlea Brown, Assistant Solicitor

¹ Administrative decisions involving site plans, environmentally sensitive areas, design plans and landscape plans, all of which are made by the Planning Director, are first appealable to the Planning Commission and then to the Maryland courts under the rules of Administrative Mandamus.