
CITY OF BALTIMORE

**CATHERINE E. PUGH,
Mayor**



**DEPARTMENT OF LAW
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October 12, 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 18-0203 – Zoning – Conditional Use Conversion of a
Single Family Dwelling Unit to 3 Dwelling Units in the R-7 Zoning District
- Variances - 301 East 28th Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0203 for form and legal sufficiency. Subject to certain conditions, the bills permits the conversion of a single-family dwelling unit to 3 dwelling units in the R-7 Zoning District on the property known as 301 East 28th Street and grants variances from certain bulk regulations (lot area) and certain off-street parking regulations.

Conditional Use Standards

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, Art. 32, § 9-701(2). To approve a conditional use, the City Council must find:

- (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.

Baltimore City Code, Art. 32, § 5-406(a). In making these findings, the City Council must be guided by 14 “considerations” involving 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.” Baltimore City Code, Art. 32, § 5-406(b).

Variance Standards

The bill also contains variances for lot area and off-street parking requirements. In general, dwellings in an R-7 must have a lot area of 3,300 square feet for 3 dwelling units and a gross floor area of 1,500 square feet. Baltimore City Code, Art. 32, §§ 9-401; 9-703(b). For a 3-bedroom unit, the dwelling must have 1250 square feet gross floor space per dwelling unit and one off-street parking space per dwelling unit. Baltimore City Code, Art. 32, §§ 9-703(c); 9-703(f). Since the property does not meet the applicable requirements, the bill seeks a variance from them.

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.” Baltimore City Code, 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.

Baltimore City Code, 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 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. It makes favorable conclusory findings concerning the conditional use standards for a 2-dwelling unit, rather than a 3-dwelling unit provided in the bill. The Report concludes that a 3-unit dwelling is not suited to the neighborhood, a conclusion also reached by the Planning Commission. The Planning Commission approved the Planning staff’s recommendation to amend the bill to provide for a 2-dwelling unit. *See discussion*, Report at 1-3.

The Report does not supply facts to support granting a conditional use for a 3-unit dwelling. Instead it supplies facts to support granting a conditional use for a 2-unit dwelling. If a 3-unit dwelling is to be approved, the City Council must establish the necessary facts at the bill’s public hearing. On the other hand, if the City Council intends to approve a conditional use for a 2-unit dwelling, the Report presents facts that can be relied on by the City Council to lawfully approve this conditional use.

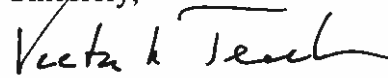
The Report also makes certain factual findings regarding the proposed variances. In particular, the Report presents facts to suggest that the uniqueness of the property makes it a proper candidate for a lot area variance. The Report also presents facts to suggest that practical difficulties would result if this variance is not granted. Thus, the City Council may rely on the facts presented in the Report to approve the lot area variance, if all the other conditions outlined in Article 32, § 5-308 of the Baltimore City Code are met.

Finally, the Report presents facts to suggest the off-street parking variance is needed because a practical difficulty would otherwise result. It presents no evidence, however, that the property’s need for an off-street parking variance is created by the uniqueness of the property. If the proposed off-street parking variance is to be lawfully granted, the City Council must establish these necessary facts at the bill’s public hearing and satisfy all the other conditions required by § 5-308.

Finally, certain procedural requirements apply to this bill beyond those discussed above because both conditional uses and variances are considered “legislative authorizations.” Baltimore City Code, 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. Baltimore City Code, Art. 32, §§ 5-504, 5-506, 5-602. Finally, certain limitations on the City Council’s ability to amend the bill apply. Baltimore City Code, Art. 32, § 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 a conditional use and variances have been met. Assuming the required findings are made at the hearing and all procedural requirements are satisfied, the Law Department approves the bill for form and legal sufficiency.

Sincerely,

A handwritten signature in black ink, appearing to read "Victor K. Tervala". The signature is fluid and cursive, with a prominent horizontal stroke at the top.

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
Hilary Ruley, Chief Solicitor
Ashlea Brown, Assistant City Solicitor