

MAY 2015

PUBLISHED QUARTERLY BY THE BAR ASSOCIATION OF BALTIMORE CITY

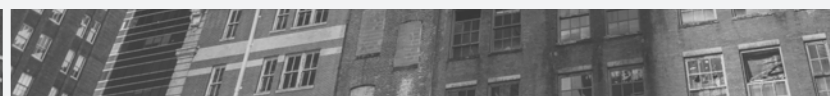
VOL 5 | NO 2

# *the* BARRISTER

## REAL ESTATE



PRODUCED BY ZEST SOCIAL MEDIA SOLUTIONS



## In case you've Zoned Out, the Transformation of the City's Zoning Code is Nearing Completion

*Justin A. Williams, Esq.*

As a modernization effort commenced over seven years ago, the process of rewriting the Baltimore City Zoning Code has been lengthy and protracted, and even the keenest observers of new developments in City land use and zoning would be forgiven for zoning out on the process. However, as of late, the pace of the Zoning Code rewrite has accelerated as the City Council races to adopt the new Zoning Code prior to 2016 primary election season.

The zoning code rewrite, referred to as Transform Baltimore, is a comprehensive effort that aims to replace the entire zoning code and zoning maps, as they are known today, with a new code and maps that reflect the modern realities of development in Baltimore.

In 2013, the Planning Commission approved the draft of Transform Baltimore with hundreds of recommended amendments. Just last month, the Land Use and Transportation Committee of the City Council finished going through every line of all 343 pages of draft text of the new Zoning Code proposing hundreds of additional amendments and will soon review the permitted uses within each Zoning District. It is hoped that a review of the zoning maps will occur thereafter so that Transform Baltimore can be formally adopted by the end of 2015.

If you are in need of a refresher: zoning is essentially the DNA of a City. It defines what businesses are permitted to go where, what streets look like, how many residential units can be constructed on a piece of property, how far walls are from the sidewalk, and when and how late certain establishments are permitted to be open. Baltimore's current zoning code, written in 1971, reflects the development trends of the time: separation of residential and industrial uses, streets designed for automobiles, low density dwellings. It also contains an-

tiquated uses. (Want to open a public bath? Check out Section 6-306(36)). More modern approaches to development, which it is hoped the new Zoning Code will promote, such as mixed-use projects or the adaptive reuse of an old mill, often rely on workarounds to fit within the Code.

However, it is not only developers who will be impacted by the new Zoning Code. The changes in the new Zoning Code will impact a number of those with an interest in real property in the City. As the process for the zoning code rewrite advances toward the end zone, it is vitally important to consider how existing development, uses, and approvals would be protected (e.g., by way of grandfathering provisions) and review how future development will be impacted.

Some of the major changes to the Zoning Code are summarized below.

### New Industrial Zoning Districts

The residential zoning districts in the new Zoning Code will remain largely similar to those under the current Zoning Code, however, the industrial districts are being overhauled. New districts such as "Office Industrial Campus," "Bio-Science Campus," and "Industrial Mixed-Use" have been created to allow for various forms of mixed-use development, including some residential uses. Owners of industrial properties should assess whether one of these new districts might better suit their current and future needs than their existing designation.

### New Commercial District Regulations

The new Zoning Code will continue to have five major commercial categories and encourages increased residential development by reducing the lot area required for new apartments to be built. Additionally, the new Zoning Code eliminates floor area ratio (FAR) requirements from commercial zones, replacing them with height limits. However, the new height limits may cause a number of existing structures to become nonconforming. As described below, the treatment of nonconforming structures is changed in Transform Baltimore.

### **Nonconforming Uses and Structures**

Once the City is rezoned, there will be a number of instances where a building or the use of a building will not meet the requirements of its new zoning district, and thus, will be nonconforming. The proposal that has garnered the most controversy among nonconforming uses is the mandatory termination of nonconforming liquor stores and taverns. However, what has received less attention is the impact on nonconforming structures and uses and how they will be treated under the new Zoning Code. While nonconforming structures and uses (other than liquor stores and taverns) will be permitted to continue under the new Zoning Code, the new Zoning Code takes a stricter approach to nonconforming structures and uses than under the current Zoning Code and imposes rigorous standards on expansion, relocation, and rebuilding. Owners of structures that are, or will become nonconforming, or that contain, or will contain, nonconforming uses should carefully review the provisions of the Code related to expansion, relocation, or rebuilding as it may create difficulties in refinancing the property or otherwise financing capital improvements. The Planning Commission proposed several amendments to ease the burden on nonconforming structures and uses; however, it remains to be seen if the Land Use and Transportation Committee will accept these amendments.

### **Planned Unit Developments**

There are major changes to the current Zoning Code's provisions governing Planned Unit Developments (PUDs). Most significantly, under the new Zoning Code, new PUDs would expire two years from the date of approval unless building permits for improvements under the PUD have been issued. Although extensions are available, the possibility that an approved development plan could expire two years following the date of approval is likely to have a considerable impact on a project's financing. Although existing PUDs will not immediately be subject to the new regulations, any amendment to an existing PUD would subject the PUD to Transform Baltimore's new requirements, including the two-year expiration date. Transform Baltimore would also modify the approval process for PUDs, adding several additional public hearings,

including a Planning Commission hearing, before the City Council Bill to authorize the PUD is even introduced. Over the past year, a number of amendments have been proposed in Land Use and Transportation Committee hearings that further modify the PUD approval process. Property owners and developers contemplating amending or developing new PUD projects should closely monitor the status of the approval process to determine if timelines will be impacted to the degree that financing may be jeopardized.

### **Transit Oriented Development without the Red Line**

Following urban development trends around the country, the new Zoning Code seeks to promote transit oriented development (TOD) and encourages intensifying and mixing land uses around transit stations. TOD zoning districts are proposed for many of the properties located within ½ mile of all existing and proposed transit stations and a number of property owners are developing plans that intend to take advantage of the increased density and reduced parking requirements that a TOD zoning designation brings. However, as Councilman Jim Kraft asked rhetorically in a recent committee hearing in light of the uncertain status of the Red Line in Governor Hogan's plans, "what happens if there is no 'T' in the TOD"? The answer, for now, appears uncertain, but it is an issue that will be addressed by the Council going forward. Owners of property slated to be zoned TOD because of its proximity to proposed Red Line stations should closely monitor the status of their zoning designations to be prepared in the event that Governor Hogan chooses not to proceed with the construction of the Red Line.

The Land Use and Transportation Committee is continuing to hold meetings on Transform Baltimore and several scheduled through the month of April. More information on upcoming meeting dates, as well as the latest draft of the Zoning Code, is available through the City Council's website: [baltimorecitycouncil.com](http://baltimorecitycouncil.com).

*Justin A. Williams is an Associate at Rosenberg Martin Greenberg, LLP. He advises clients on all aspects of entitlement and permit processes and also assists clients in securing zoning and development approvals for real estate development projects in Baltimore City and Baltimore County.*