



Ordinance O-14-25 Is Unconstitutional

A Brief on the Facts and the Law

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Brief re Dock Street height exceptions, Ordinance 0-14-25 is unconstitutional.

I. Facts

In the historic district of Annapolis, buildings that have not been grandfathered, may not exceed 38 feet in height.

Proposed City Ordinance 0-14-25 First Reader at Council 7/28/25 (the Ordinance) proposes to amend height requirements for one small block of Dock Street. This block includes only 5 buildings, one of which already exceeds the height limits.

Over 5 years ago, the owners of 6 Dock Street proposed building a hotel, replacing the restaurant which is now at those addresses. The restaurant is named Latitude 38. The owners indicated at a public hearing 7 years ago, that the only way they could build such a “boutique” hotel and make a profit was if the height limit was raised to 65 feet so it would have enough rooms. After that hearing, the plan temporarily died.

Since that time, the only property owner on that block to request this zoning change are the owners of 6 Dock Street. At the Annapolis City Planning Commission hearing on June 5, 2025, Peter Fillat identified himself as the architect and partner for the proposed hotel which would be built at 6 Dock Street. The owner of 6 Dock Street also owns two other lots in the block covered by the Ordinance.

At the June 5th hearing, Mr. Fillat indicated his group has wanted to develop the site as a hotel since 2015. He praised the proposed City Ordinance, 0-14-25 and indicated: “We’ve asked for this legislation to be introduced.”

Further, he stated his group has been “negotiating with the Mayor (Buckley) for 5 years, hoping to get the zoning in the area changed to

Zone 3.” The Mayor has not agreed, so now Fillat’s group is satisfied with continuing in Zone 2 with the proposed height changes.

Mr. Fillat indicated his group’s desire for these changes is so the new hotel to be built would be financially successful and hopefully his group would make as much money as the owners of Choptank Restaurant (on Compromise Street, also along what is known as Ego Alley). He stated his belief that Choptank was making \$22,000,000 a year, was in part due to their rooftop dining. Mr. Fillat indicated he intends to put rooftop dining at the new hotel, thus the need for an elevator to the roof. He stated his hope to use the rooftop for an event and wedding venue. The Ordinance allows for “appurtenances,” and he expected that to include restrooms on the rooftop.

Mr. Fillat indicated that there is a strong need and market for another hotel in Annapolis and testified present occupancy rates for all hotels in the city on average is 73%, “very strong.” Mr. Fillat’s statement is contradicted by the Berkadia Hospitality Submarket Report on Annapolis with data through June of 2025. That report indicates that for the 32 Annapolis Hotel properties the average occupancy is 62%. The Berkadia report indicates the “luxury and upper upscale” 893 rooms have an average occupancy of 66.9% (below Fillat’s claim) and that the “upscale and upper midscale” 1866 rooms have an average occupancy of 63.4% while the “midscale and economy” 468 rooms have an average occupancy of 46.7%.

It should be noted that the City of Annapolis, before proposing this Ordinance, has not conducted itself, or had conducted on its behalf, a study of what impact another hotel in Annapolis would have on its existing hotel businesses. Mr. Fillat claimed, without providing the number of rooms his proposed hotel would have, that his group needs “a large number of rooms” to be financially successful. Such is contradicted by other successful boutique hotels in Annapolis which appear successful with as few as 8 rooms and 15 rooms.

While Mr. Fillat was testifying before the Planning Commission, he was asked in a roundabout way how many rooms could be built at the present height requirement and the hotel still be successful, but Mr. Fillat never answered that question. This is a “due diligence” issue because the City has not asked other hotel builders or architects to weigh in on whether what the 6 Dock Street owners are saying is reasonable, or not. Nor has the City required the present owners of 6 Dock Street to answer that question.

It should be noted that 6 Dock Street is owned by Harvey Blonder, a well-known landlord and restaurant owner in Annapolis. Apparently, Mr. Fillat is Mr. Blonder’s partner in this venture. In May of 2023 a jury in Anne Arundel County awarded over \$9.6 million in damages against Harvey Blonder (and his Ritz LLC), citing fraud, breach of contract, and breach of fiduciary duty. The verdict included compensatory and punitive damages, plus prejudgment interest. On June 18, 2025, the Appellate Court of Maryland upheld the \$9.6 million civil jury verdict against the Edgewater bar and restaurant owner for fraud, mismanagement, and self-dealing over a decade—a decision affirming the lower court's judgment against the owner, who is clearly identified as Harvey Blonder.

This issue regarding Mr. Blonder is raised because an expert on hotel financing has advised that because of his civil fraud case it would be unlikely that Mr. Blonder could get financing to build a hotel. If that is the case, and certainly Mr. Blonder and his partners would know this, the 6 Dock Street request for this ordinance is designed solely to enhance the value of the property if and when Mr. Blonder sells the property. This Ordinance would make it easier for Mr. Blonder to sell the property if zoning changes had already occurred making it possible to build a taller hotel on the property than present laws permit.

At the same June 5, 2025 Planning Commission hearing on 0-14-25, there was testimony from City employees. Eric Leshinsky, Chief of

Comprehensive Planning, testified that the purpose of this Ordinance was to enhance the value of the City Dock area. However, both Mr. Leshinsky and Chris Jukubiak, Director of Planning & Zoning, stated that discussion regarding these properties has related only to the building of a hotel at 6 Dock Street. A drawing was presented showing what could be seen by someone standing on Dock Street and looking up at the roof if the height requirement is changed. The drawing, prepared by Mr. Jukubiak's office, solely shows the property of the present restaurant and ice cream shop – 38 Latitude, also known as 6 Dock Street. They both stated that no present plans for the space had been presented to the City, but such statements were contradicted shortly thereafter by Mr. Fillat. Mr. Jukubiak stated that allowing for an elevator shaft the total height limit under the ordinance would be 53 feet. Such contradicts the statements of Mayor Buckley at the July 28 2025 City Council meeting and his column in the Capital that this Ordinance was in fact not raising the height limits for the property.

A careful review of all discussions regarding this proposed height increase will show that at NO point, not ever, has there been a request or need for any of the other properties in this small section of Dock Street covered by the Ordinance to have their height limit raised.

At the Planning Commission hearing, there was testimony from Sharon Kennedy, a former member of the Annapolis Historic Commission. She stated that obviously this entire Ordinance was designed solely for the purpose of building a hotel in place of 38 Latitude. No one from the City or the Commission disagreed with her.

Discussion of each building individually:

Sophies Crepes around the corner, will not and cannot benefit from this change. It is too small of a space and the language of the changes would be of no value to its landowners because the setback and green roof requirements would not work for their small site.

110 and 120 Dock Street are commercial office spaces. Again, their owners have expressed no interest in tearing down their building for the purpose of raising a higher building.

Finally, the last building that already exceeds the height limit and which is a commercial building: the owners would have to tear down their building and comply with the new lower requirement, lowering the present value of the building. As long as the property remains “as is,” the property is “grand-fathered” and does not have to remove its top floor.

A request for all City documents regarding the push behind the Ordinance will show that all discussion relates solely to 6 Dock Street.

Further evidence that this ordinance is solely for the benefit of the present owners of only one property on the block is that at no time during the past six years has the City solicited in any fashion expert views on whether a hotel could be built at that site, which would be profitable WITHOUT changing the height requirements. Thus, the City, in proposing this ordinance, has depended solely and entirely on the input from the present owners of 6 Dock Street as to why this change is necessary. THUS, this is further evidence that the only requestor for this change is from those owners and no one else.

Dock Street extends beyond the limits of the five buildings proposed in the Ordinance. There are another ten buildings further up on Dock Street which might benefit from having the height limit raised for all of Dock Street. For example, there are several buildings which contain restaurants which might benefit from being able to have rooftop bars or eating spaces (as proposed in the plan for 6 Dock Street) if they also could install an elevator to their rooftop but they are not included. Failure to include all of these other businesses is further proof that the Ordinance is designed solely at the request of and to assist the present owners of 6 Dock Street.

No other business has ever been mentioned in any discussions of the property. Nor can the City produce a single document that discusses how this would help the other buildings in this small block.

Testimony at City Council meeting in opposition to the Ordinance focused only on the hotel and thus, everyone clearly understands the purpose of the Ordinance is to benefit 6 Dock Street. No one from the City contradicted such arguments, other than to say the site would be of “great public benefit.”

THE LAW – the State Constitution forbids passing “special laws”, defined as those helping an individual or a limited number of individuals.

The Maryland Courts establish six factors (in the cases discussed below) which determine whether a law is a “special law” and thus violate the State Constitution. Those six factors as applied to the above fact relating to Ordinance 0-14-25:

1) (W)hether [the underlying purpose of the legislative enactment was actually intended to benefit or burden a particular member or members of a class instead of an entire class.

All of the facts listed above indicate that the all discussions relate only to building a hotel and that hotel to be built at 6 Dock Street. Further, Mr.

Fillat, a partner in 6 Dock Street admitted to being the sole force behind the request for this Ordinance. Therefore, this factor supports that the Ordinance is a “special law” because it benefits only the owner of one property.

2) (W)hether particular individuals or entities are identified in the statute

6 Dock Street is not named in the statute, although this factor under the caselaw is not decisive and can be ignored. Even though the owners are not named, they are factually the sole beneficiary of the Ordinance. Thus, the attempt of the Ordinance cover buildings other than 6 Dock Street is a sham and a pretext.

3) (T)he substance and "practical effect" of an enactment

The substance and practical effect of the enactment is solely to benefit the owners of 6 Dock Street. None of the remaining properties will benefit from this Ordinance and its change of the height requirement.

4) (I)f a particular individual or business sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation

The property owner admits to being the sole source for requesting this height requirement change. They admit to having for years attempted to get this change and admit to lobbying the Mayor to propose this change. The Mayor is one of the sponsors of the Ordinance. The owners of the remaining buildings in this small block of Dock Street receive no value or possible value from the Ordinance. The owners of the remaining 10 buildings further up Dock Street might benefit from such a change but they are discriminated against because their properties are not included in the Ordinance.

5) (T)he public need and public interest underlying the enactment, and the inadequacy of the general law to serve the public need or public interest

There is presently a law in Annapolis which sets standards for height

requirements of all buildings in the “Historic Annapolis” designated area. This Ordinance establishes a change in that law which serves no purpose to the general public. Neither the owner of the building in question nor the Mayor and City Government have explained or established why this change is necessary, other than to benefit the owners of 6 Dock Street who requested this change. True, it would be nice to have a hotel at that location but there is no evidence that this Ordinance change is necessary to build a hotel at this site. Yes, the owners say it is necessary to increase the height requirements for them to have a “successful” hotel, but they have presented no proof of such an assertion, and the City has failed to do its own “due diligence” to determine whether a hotel could be built on this property without raising the height limits. Passage of this Ordinance places the City in the position of creating a new law solely to provide additional financial gain for the owner of 6 Dock Street.

There has been strong public opposition to this Ordinance as the City cannot state a reason for altering the height requirements for what is basically a single property owner. Further, the City has not established or even argued that it needs another hotel, irrespective of height limits. All of the information presented at public hearings focuses solely on the requests of the owners of 6 Dock Street and thus, the Ordinance is an attempt to advantage one property owner to the disadvantage of others in the Historic District without establishing a “general” public need or interest. The present law is adequate to serve the public need and public interest without amendment.

6) (W)hether the legislative enactment is arbitrary and without any reasonable basis.

Because the Ordinance only arises at the request of one property owner and would be of no benefit to the other owners covered by the Ordinance and would be of no advantage and discriminate against other property owners further up Dock Street, the Ordinance by its nature is

arbitrary.

The City's failure to establish whether a hotel could be built at that location without raising the height limits proves the Ordinance has "no reasonable basis." Although not named in the Ordinance, it has been written and proposed solely for the benefit of the owners of 6 Dock Street, or by name, Mr. Harvey Blonder, a well-connected, longtime owner of businesses in downtown Annapolis and its environs.

THE MARYLAND LAW AND CASES DEFINING "SPECIAL LEGISLATION."

Maryland Constitution — Article III, § 33 states

The General Assembly shall not pass local or special laws in enumerated areas, as further detailed in the Constitution.

CITIES SERVICE COMPANY et al. v. GOVERNOR, STATE OF MARYLAND et al. Decided June 30, 1981, interpreted special laws and established factors for the Courts to consider if a proposed law is challenged as a "special law."

The case discusses state legislation which appeared to carve out rights for two entities establishing gas stations versus other entities which were prohibited from owning gas stations because they were manufacturers of gasoline.

The Court of Appeals pointed to the history of Article III Section 33 including:

In *M. & C.C. of Balto. v. U. Rwys. & E. Co.*, supra, 126 Md. at 52, the Court set forth one of the purposes underlying § 33 as follows:

"One of the most important reasons for the provision in the Constitution against special legislation *569 is to prevent one who has sufficient influence to secure legislation from getting an undue advantage over others. "

“Later, in Jones v. House of Reformation, supra, 176 Md. at 56, the Court stated that

"the constitutional provision was wisely designed to prevent the dispensation or grant of special privileges to special interests, through the instrumentality of special legislation, in conflict with previously enacted general legislation covering the same subject matter.....”

“If a particular individual or business sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation, this would support a conclusion that the Act constitutes a prohibited special law, Littleton v. Hagerstown, supra, 150 Md. at 183; M. & C.C. of Balto. v. U. Rwys. & E. Co., supra, 126 Md. at 51, 52. “

“In light of the principles set forth in the above-cited cases, the conclusion is inescapable that the mass merchandiser exemption to the Divestiture Law, with its limited qualifying dates, is a prohibited special law under Art. Ill, § 33. **The record in this case shows that the exemption was sought by Montgomery Ward, that the Legislature was advised that one business was the sole beneficiary, 7 that Montgomery Ward is the only subsidiary of a producer or refiner which can qualify, and that no other existing general *571 retail mass merchandiser could qualify in the future if it became a subsidiary of a producer or refiner.** “(Emphasis added)

HOWARD COUNTY, MARYLAND v. RUSSELL A. McCLAIN, ET AL.
ADKINS, SALLY D., J.

Circuit Court for Howard County Case No. C-13-CV-20-000647

Graeff, Kehoe, Adkins, Sally D. (Senior Judge, Specially Assigned),

JJ.

This case involves Glenelg Country School's obtaining of a zoning change from the Howard County Council to permit its right to build on certain properties adjacent to its school where the school had an easement for limited purposes.

After being denied a zoning change by a hearings examiner, GCS applied for a change in the law to the Howard County Council which was approved. The Council approval indicated it applied to all 24 private schools in Howard County.

"To determine whether a law is an impermissible special law that applies only to certain members of a class, the Court of Appeals has "pointed to various considerations and factors." CCI Ent., LLC v. State, 215 Md.App. 359, 396 (2013) (applying factors from Cities Serv. Co.). In addition to looking to the historical purpose of the constitutional provision, the factors a court considers are: (1) "whether [the underlying purpose of the legislative enactment] was actually intended to benefit or burden a particular member or members of a class instead of an entire class"; (2) "[w]hether particular individuals or entities are identified in the statute"; (3) "[t]he substance and "practical effect" of an enactment"; (4) "[i]f a particular individual or business sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation"; (5) "[t]he public need and public interest underlying the enactment, and the inadequacy of the general law to serve the public need or public interest"; and (6) "whether [the legislative enactment is] arbitrary and without any reasonable basis[.]" Cities Serv. Co., 290 Md. at 569-70 (cleaned up). No one factor is conclusive. Id. at 569."

“Laws that confer a benefit, rather than a detriment, on a single party at the time of its enactment are looked upon more harshly. See, e.g., *Beauchamp v. Somerset Cnty. Sanitary Comm'n*, 256 Md. 541 (1970) (finding a law that benefits one party an unconstitutional special law); *Days Cove*, 200 Md.App. at 272-73 (distinguishing enactments that benefit a particular entity from enactments that prohibit conduct now and in the future). The law at issue in *Beauchamp* accorded the benefit of a tax exemption to one American Legion Post. *Id.* at 543. Here, similarly, the law at the time of enactment provided only a benefit to GCS⁻ allowing it to gain approval of its conditional use petition. Thus, the law's underlying purpose was to confer a benefit on GCS, which weighs in favor of considering CB-9 an impermissible special law.”

“Particular individual or entity

This factor cuts against finding CB-9 to be a special law, as GCS was not named in the bill. We accord limited weight to this factor because it can be easily manipulated by using narrow descriptive criteria, such as utilized here. This may explain why it has rarely been considered the tipping point in the analysis.

Substance and "practical effect" of an enactment:

The third factor weighs strongly in favor of finding CB-9 to be a special law as CB-9 has the "practical effect" of solely benefitting GCS. GCS was the only private academic school that could take advantage of CB-9 at the time of its enactment and will likely be the only private academic school to take advantage of the enactment in the future.

Special advantages or considerations:

The special advantages factor weighs in favor of finding CB-9 a special law because GCS proposed the amendments to benefit themselves and received the benefit once CB-9 was enacted by the Howard County

Council.

The public interest factor also weighs in favor of finding CB-9 a special law. Appellants assert that CB-9 was supported by public interest because there was a specific public need to vary setback requirements for conditional uses...Similarly, the setback exemptions could have a justifiable public interest if GCS was not the sole beneficiary.

Arbitrary and without reasonable basis

Lastly, the Court weighs whether CB-9 was arbitrary and without reason. Howard County asserts that CB-9 is not arbitrary and has a reasonable basis because limiting CB-9 to apply solely to private academic schools helps combat the far-reaching scope of such a law. We are not persuaded. By narrowing CB-9 to such extent that it only applies to one property, the Council rendered CB-9 unreasonable.

In sum, all but one of the six Cities Serv. Co. factors cut in favor of declaring CB-9 to be an illegal special law. The one factor suggesting otherwise omission of GCS's name is so easy to manipulate in this context that we discount it altogether.

POTOMAC SAND GRAVEL v. GOVERNOR

Court of Appeals of Maryland.

Jul 6, 1972

Subsequent

References

CaseIQ (AI

Recommendations)

POTOMAC SAND GRAVEL v. GOVERNOR

266 Md. 358 , 380 (Jul 6, 1972) Copy Cite

In this case a law which prohibited all sand and gravel excavation in the Charles County was not a special law even though the only company at the time trying to do such was Potomac Sand and Gravel. The Court found since there was a serious general interest in not having any company presently or in the future from excavating along the shore that the statute would be of general public good to protect the shore and wetlands. This was an example of denying a right generally rather than granting a right to one entity.

BEAUCHAMP v. SOMERSET COUNTY

Court of Appeals of Maryland.

Feb 3, 1970

Subsequent

References

Case IQ (AI

Recommendations)

BEAUCHAMP v. SOMERSET COUNTY 256 Md. 541 , 552 (Feb 3, 1970).

This case involved a State law which exempted the American Legion from paying certain taxes from the Somerset County Sanitary Commission.

“the term ‘special law’ has . . . uniformly been interpreted to mean a special law for a special case.”

In Montague v. State, 54 Md. 481, 489 (1880), “

The exception applied to only one group, the American Legion Post and thus is a special law.