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| FROM | NAME & TITLE | THOMAS J. STOSUR, DIRECTOR |
| | AGENCY NAME & ADDRESS | DEPARTMENT OF PLANNING 417 E. FAYETTE STREET, 8 th FLOOR |
| | SUBJECT | CITY COUNCIL BILL #09-0384/ ZONING - DWELLING UNITS - DEFINING "FAMILY". |

CITY of
BALTIMORE
MEMO



TO

DATE:
November 6, 2009

The Honorable President and
Members of the City Council
City Hall, Room 400
100 N. Holliday Street

At its regular meeting of November 5, 2009 the Planning Commission considered City Council Bill #09-0384, which is for the purpose of redefining an alternative element of what constitutes a "family" under the Zoning Code of Baltimore City; requiring for that purpose that persons unrelated by blood, marriage, or adoption and living together in a dwelling unit must be occupying the unit subject to a single lease, rental, or other occupancy arrangement applicable to the entire dwelling unit; and generally relating to the permitted and prohibited occupancy of dwelling units.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended disapproval of City Council Bill #09-0384. Thus, the Commission adopted the following resolution, six members being present (six in favor):

RESOLVED, That the Planning Commission concurs with the recommendation of its Departmental staff, and recommends that City Council Bill #09-0384 not be passed by the City Council.

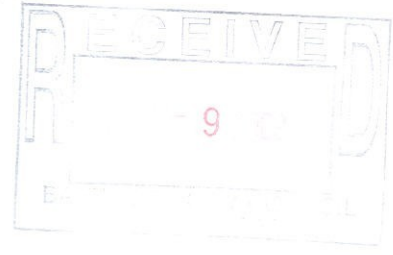
If you have questions, please contact Mr. Wolde Ararsa, Chief of the Land Use and Urban Design Division, at 410-396-4488.

TJS//WA/mf

Attachment

cc:

- Mr. Andrew Frank, Deputy Mayor
- Mr. Demaune Millard, Chief of Staff
- Ms. Angela Gibson, Mayor's Office
- The Honorable Rochelle "Rikki" Spector, Council Rep. for Planning Commission
- Mr. David Tanner, BMZA
- Mr. Geoffrey Veale, Zoning Administration
- Ms. Nikol Nabors-Jackson, DHCD
- Mr. Larry Greene, Council Services



Unfavorable



Sheila Dixon
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

STAFF REPORT



Thomas J. Stosur
Director

November 5, 2009

REQUEST: City Council Bill 09-0384 / Zoning – Dwelling Units – Defining “Family”

For the purpose of redefining an alternative element of what constitutes a “family” under the Zoning Code of Baltimore City; requiring for that purpose that persons unrelated by blood, marriage, or adoption and living together in a dwelling unit must be occupying the unit subject to a single lease, rental, or other occupancy arrangement applicable to the entire dwelling unit; and generally relating to the permitted and prohibited occupancy of dwelling units.

RECOMMENDATION: Disapproval. The current Zoning Code definition of “family” is one which is consistent with commonly-recognized definitions used in numerous other municipalities and local jurisdictions.

STAFF: Martin French

PETITIONER(S): Various City Council Members (Clarke, Henry, Middleton, Branch, Curran, Conaway, Kraft, and Cole)

SITE/GENERAL AREA: City-wide

HISTORY:

This portion of the Zoning Article of the Baltimore City Code, Section 1-142(a), Definitions, was last revised by Ordinance 99-547.

CONFORMITY TO PLANS

The Baltimore City Comprehensive Plan, approved by City Council Resolution November 21, 2006 recommended that the Baltimore City Zoning Code be updated and modernized. The Department of Planning is the lead city agency undertaking the task to rewrite the Baltimore City Zoning Code, which was last updated in 1971. The Planning Department started the Zoning Code Rewrite in December 2007, an effort known as TransForm Baltimore. The future schedule for this project is to release the draft revised/ rewritten Zoning Code in late 2009 or early 2010, only a few months hence, followed by a public input and comment period. The anticipated adoption of the new code would follow later in 2010.

The Planning Department recognizes that consideration of all zoning legislation cannot be halted until TransForm Baltimore is completed. The City Council should continue to pursue necessary zoning changes, Planned Unit Developments, conditional use approvals, and various other zoning legislation that allow for continued investment and better code enforcement in Baltimore City. Moreover, these matters must be addressed in a timely and expeditious manner. However, whenever possible, these matters may be considered as part of TransForm Baltimore and addressed as part of the City's Zoning Code Rewrite effort. City Council Bill #09-0384 fits into this category. However, because the City Council has requested that the Planning Commission provide its recommendation on CCB #09-0384 expeditiously, staff offers the following analysis.

ANALYSIS

City Council Bill #09-0384 proposes to add new language to the Definitions section of the current Zoning Code, under § 1-142. Family, (a), (3), (ii) which would read as follows: *(ii) subject to a single lease, rental, or other occupancy arrangement applicable to the entire dwelling unit.* This new language could prove problematic because it could be interpreted as involving landlord-tenant relationships, which are not best regulated by a zoning code.

A recently-issued Maryland Court of Appeals ruling has noted that multiple leases in or for a four-bedroom "suite" apartment were allowable because each tenant had rights to the entire apartment, shared access to the apartment, and had joint responsibility for care and maintenance of the apartment.¹ The Court noted that the phrase "single housekeeping unit" was the only relevant term in the current Zoning Code which was undefined, and considered the sharing of common facilities within an apartment, such as kitchen, bathroom or other common space, an indication that a single housekeeping unit existed in the apartment. Under the terms of the leases for each of four bedrooms, each bedroom's tenant was also paying a share of the rental rate associated with the non-bedroom spaces such as the kitchen, bathrooms, and other common spaces within the apartment. For these reasons, the Court ruled that the bedrooms were not rooming units, but were parts of 26 separate apartments which had been properly constructed within the constraints of the Zoning Code.

Further, as the Court of Appeals has determined that a "single housekeeping unit" can exist whether or not there are more than one lease simultaneously in effect for a specific premises, to impose the additional language proposed in City Council Bill #09-0384 would not by itself alter the operation of the definition of "family" already contained in the Zoning Code.


Additionally, City of Baltimore enforcement of a single lease requirement may prove difficult. By specifying "subject to a single lease, rental, or other occupancy arrangement applicable to the entire dwelling unit", City Council Bill #09-0384 would involve the City's Zoning Code enforcement efforts in regulation of rental agreements, a subject already controlled by State landlord-tenant relations law.² Because staff feels that CCB #09-0384 is inconsistent with the

¹ *Armstrong et al. v. Mayor & City Council of Baltimore*, Court of Appeals of Maryland, No. 106, September Term, 2008 (filed July 23, 2009)

² It should be noted that the Annotated Code of Maryland, § 8-203, "Security deposits", states at (b), "Maximum amount": "(1) A landlord may not impose a security deposit in excess of the equivalent of two months' rent, or

recent Court of Appeals decision, and that enactment of the proposed legislation would create significant enforcement obstacles, staff recommends that City Council Bill #09-0384 be disapproved.

Staff notified approximately 240 community and neighborhood associations registered with the Department of Planning, and Baltimore City Council Members, the Department of Housing and Community Development, the Board of Municipal and Zoning Appeals, and the Zoning Administrator, of this matter.



Thomas J. Stosur
Director

\$50, whichever is greater, per dwelling unit, *regardless of the number of tenants*" [emphasis added]. This could give a landlord indication that he has a prerogative to rent a dwelling unit to more than one tenant (a tenant being a person recognized by and through a lease as having a right to occupy the premises or a part thereof) simultaneously. The Court of Appeals decision cited here is consistent with this language.