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CITY OF BALTIMORE

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DEPARTMENT OF LAW

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October 13, 2021

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 21-0098- Conditional Use Conversion of a Single-Family Unit to 5 Dwelling Units in the R-8 Zoning District –Variances- 1100 West Lafayette Ave.

The Law Department has reviewed City Council Bill 21-0098 for form and legal sufficiency. The bill permits, subject to certain conditions, the conversion of a single-family dwelling unit to 5 dwelling units in the R-8 Zoning District on the property known as 1100 West Lafayette Avenue. The bill also grants permission for a variance from the requirements of § 9-703(c), although the variance is not mentioned in the purpose clause. It appears from the agency reports filed that a revised floor plan submitted by the applicant eliminates the need for a variance.

#### 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-8 District requires conditional-use approval by ordinance. Baltimore City Code, Art. 32, § 9-701(2). Further, approval of a conditional use must be based on the following findings:

- (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. § 5-406(a).

Moreover, the above findings must be guided by 14 “considerations” involving, for example, 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.” Art. 32, § 5-406(b).

### Variance Standards

The bill also grants a variance for residential conversion standards contained in 9-703 (c) of the Zoning Code. If the variance is no longer needed for the revised floor plan, this language should be deleted from the bill. If, however, a variance is needed because the original plans are being implemented, the following standards must be met:

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.” 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. 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 3 outlined above. If, after its investigation of the facts, the Committee makes findings which support the conditional use and the four variances sought, it may adopt these findings and the legal requirements will be met.

The Law Department notes that the Report provides facts sufficient to approve the conditional use but does not consider the factors for the approval of a variance such as uniqueness of the property, unnecessary hardship or practical difficulty caused by the Code requirements, and whether the variance is based exclusively on the desire to increase the value or income potential of the property. This is likely because the revised plans eliminate the need for the variance and it will be deleted from the bill.

Law Department notes further that a bill authorizing a conditional use is classified as a “legislative authorization.” Art. 32, § 5-501. Legislative authorizations require that certain procedures be followed in the bill’s passage. Specifically, certain notice requirements apply to the bill. See Art 32, § 5-602. The bill must be referred to certain City agencies, which are obligated to review the bill in a specified manner. See Art. 32, §§ 5-504, 5-506, 5-604. Finally, certain limitations on the City Council’s ability to amend the bill apply. See Art. 32 § 5-507.

Assuming that all of the procedural requirements are satisfied and that there is additional testimony regarding the considerations for approval of the variance OR the variance is deleted from the bill as no longer needed, the Law Department is prepared to approve the bill for form and legal sufficiency.

Sincerely yours,



Ashlea H. Brown  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Matthew Stegman, President's Office  
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