

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

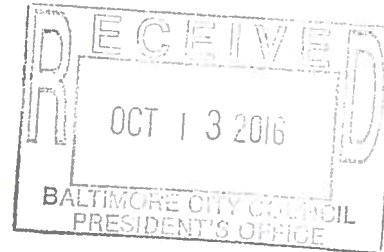


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

October 13, 2016

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 16-0757 – Planned Unit Development – Designation – Northwood Commons

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 16-0757 for form and legal sufficiency. The bill repeals the existing Development Plan for the Loch Raven Boulevard and Argonne Drive Planned Unit Development, and approves a new Development Plan for the property, to be known as Northwood Commons Planned Unit Development.

The criteria examined for approval of a Planned Unit Development (“PUD”) are “compatibility with a Master Plan, conformance to regulatory criteria, and an examination of potential deleterious effects *vis-a-vis* adjacent property and uses.” *Maryland Overpak Corp. v. Mayor and City Council of Baltimore*, 395 Md. 16, 31 (2006). A PUD “allows for additional uses on a property not provided for by the permitted or conditional uses designated in that underlying district, but which are adjudged, on a case-by-case basis, not to be incompatible or deleterious at a given location and within the contemplation generally of the applicable Master Plan (or other planning document) and the general purposes of the underlying zone, much like a conditional use.” *Id.* The Zoning Code of Baltimore City (“ZC”), in Section 9-112, sets forth governing standards which reflect the above cited case law.

The Staff Report from the Planning Department (“Report”) provides findings of fact to satisfy the above standard. *See* Report at 3-5. If, after its investigation of the facts, the Committee agrees with the findings in the Report or finds similar and/or additional facts to support the designation of the Northwood Commons Planned Unit Development, it may adopt these findings and the legal requirements for the PUD would be met. *See* ZC 9-110 (“The City Council may authorize the Planned Unit Development and approve the Development Plan in accordance with the procedures, guides, and standards of this title and of Title 14 {Conditional Uses} and Title 16 {Legislative Authorizations} of this article.”).

The Planning Commission recommends, however, that Council Bill 16-0757 be amended as outlined in the Report at page 5, and has attached an interlineated bill draft to their Report. Those amendments include the incorporation of a Memorandum of Understanding (MOU) between the applicants and several Neighborhood Associations.

*Fav w/ comments*

**The Law Department cannot approve the incorporation of the MOU since it contains matters outside of the City's zoning authority.**

“The very essence of zoning is territorial division [of land within a jurisdiction] according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the zone.” *Mueller v. People's Counsel for Baltimore City*, 177 Md. App. 43, 67–68, (2007), quoting *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 305 (1946). The adoption and administration of zoning procedures are exercises of the State's police power delegated to specific individual political subdivisions and municipalities of Maryland. See 23 M.L.E. Zoning and Planning § 6. The power of county or city authorities to zone is statutory and can be exercised only to the extent and in the manner directed by the State legislature. *Id.* Baltimore City derives its zoning power from the Land Use Article of the Maryland Annotated Code. See *Gino's of Maryland, Inc. v. City of Baltimore*, 250 Md. 621, 630–31, (1968). In other words, the City Council is limited by the authority granted to it in the Land Use Article when placing conditions on a PUD. There are many issues the City Council has legal authority to regulate in a general sense, that is, across the entire City via general laws, but which cannot be applied to one particular development in a piece of zoning legislation. See *Northwest Merchants Terminal v. O'Rourke*, 191 Md. 171 (1948) (citations omitted) (“On purely public or political questions regarding exercise of the police power, e.g., passage of general building, traffic or zoning laws, legislators may follow the wishes of their constituents. Such action is not subject to judicial review. But in restricting individual rights by exercise of the police power neither a municipal corporation nor the state legislature itself can deprive an individual of property rights by a plebiscite of neighbors or for their benefit. Such action is arbitrary and unlawful, i.e., contrary to Art. 23 of the Declaration of Rights and beyond the delegated power of the town.”).

As set forth above, Section 9-112 of the Zoning Code of Baltimore City contains land use factors which must be considered when approving a PUD. The City Council has the power to place restrictions on the development which mitigate any impact the development has on these types of land use issues. Planning lists on page 3 of the Report certain matters contained in the MOU, such as residential tenant priority and, hiring and retail preferences, which clearly do not mitigate the impact the development has on the land. The City has no legal authority to dictate these types of private business decisions in a PUD. To the extent the City Council wishes to include in the PUD other matters in the MOU which do relate to land use, it may do so. Anything outside the scope of these matters cannot be restricted in a PUD. Thus, the MOU, which is a private agreement between the parties and includes matters outside the Council's zoning authority, may not be incorporated as a whole, into Council Bill 16-0757 or the Development Plan.

Further, while the parties to the MOU are free to record it, the City Council may not require its recording as part of this bill. **Therefore, the Law Department cannot approve the following language included in Planning's amendments: (1) “in accordance with the terms of a Memorandum of Understanding with the local community associations that will be recorded among the Land Records of Baltimore City” on page 1, lines 23-24; (2) lines 2-6 on page 4; and (3) any reference to the incorporation of the Memorandum of Understanding in the October 6, 2016 plan and accompanying documents.**

The Law Department has no objection to Planning's other proposed amendments on pages 2-4 of the amended bill attached to the Report.

Finally, certain procedural requirements apply to this bill because the designation of a Planned Unit Development is deemed a "legislative authorization." ZC §§16-101(c)(3), 16-101(d). Specifically, special notice requirements apply to the bill's introduction and the bill must be referred to certain City agencies, which are obligated to review it in a specified manner. *See* ZC §§16-203, 16-301, 16-303. Additional public notice and hearing requirements apply to the bill, including advertising the time, place and subject of the hearing in a paper of general circulation for 15 days and posting the property conspicuously with this same information. *See* Md. Code, Land Use, §10-303; ZC §16-402. Finally, certain limitations on the City Council's ability to amend the bill apply, including a Third Reading hold-over before final passage by the Council. *See* ZC §§16-403, 16-404.

This bill is the appropriate method for the City Council to review the facts and make the determination as to whether the legal standard for the designation of the Northwood Commons Planned Unit Development has been met. **Thus, if the required findings are made at the hearing, and only those Planning amendments that are approved above are passed, the Law Department will approve the bill for form and legal sufficiency.**

Sincerely,



Jennifer Landis  
Assistant Solicitor

cc: David Ralph, Acting City Solicitor  
Angela C. Gibson, Mayor's Legislative Liaison  
Elena DiPietro, Chief, General Counsel Division  
Hilary Ruley, Chief Solicitor  
Victor Tervalva, Chief Solicitor  
Nancy Ray, Legislative Reference