
CITY OF BALTIMORE

CATHERINE E. PUGH,
Mayor



DEPARTMENT OF LAW
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October 16, 2017

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 17-0099—Conditional Use Banquet Hall - The Second
Floor Rear Area and the Adjoining Fenced-In Patio - 5604 York Road
(AKA 5609 Hess Avenue)

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0099 for form and legal sufficiency. The bill permits, subject to certain conditions, the establishment, maintenance, and operation of a banquet Hall on the second floor rear area and the adjoining fenced-in patio on the property known as 5604 York Road (aka 5609 Hess Avenue). The bill has an immediate effective date.

This property is zoned C-2, which requires banquet halls to be approved by ordinance. City Code, Art. 32, Table 10-301. Under the City Code, approval of a conditional use must be based on a finding that:

- (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.

Art. 32, § 5-406(a). Moreover, the finding must be guided by 14 “considerations” involving 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 resulting traffic patterns and adequacy of proposed off-street parking”; etc. *See* Art. 32, § 5-406(b).

The Law Department notes that the Planning Commission's Report ("Report") indicates that the Planning staff has reviewed and commented on the pertinent "considerations." Furthermore, the Report indicates that the Planning Commission found facts that would allow the conditional use to be granted; that is, facts required by Article 32, § 5-406(a). Whatever those facts may be, however, are absent from the Report. **For this reason, the City Council cannot rely solely on the Report to establish the necessary facts to lawfully approve this conditional use. Instead, the City Council must be presented and find the necessary facts at the public hearing.**

Law Department notes further that a bill that would authorize 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.

In conclusion, if the City Council finds the necessary facts at the public hearing and all procedural requirements are met, the Law Department is prepared to approve the bill for form and legal sufficiency.

Sincerely,



Victor K. Tervalo
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
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