

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

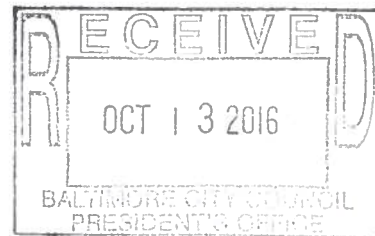


DEPARTMENT OF LAW

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 16-0750 – Planned Unit Development – Amendment –
Mt. Washington Mill

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 16-0750 for form and legal sufficiency. The bill approves certain amendments to the Development Plan of the Mt. Washington Planned Unit Development.

The Law Department’s concern with this bill is that sufficient facts in the record do not yet exist to allow this PUD to be lawfully amended. With the exception of certain minor modifications, every deviation from a PUD must be processed and approved, under Title 9 of the Zoning Code of Baltimore City (ZC), as a new application. ZC §9-118(a). To be lawful, proposed changes to a PUD cannot make it incompatible with the surrounding neighborhood or negate the purposes for which the PUD was originally created. *See Maryland Overpak Corp. v. Mayor and City Council of Baltimore*, 395 Md. 16, 30-31 (2006) (“[A] PUD partakes more of the characteristics of a conditional use than any other zoning construct or mechanism recognized in Baltimore City The hallmarks examined for their approval generally are compatibility with a Master Plan, conformance to regulatory criteria, and an examination of potential deleterious effects vis-a-vis adjacent property and uses.”). Title 9 of the Zoning Code, in particular, Section 9-112, sets forth governing standards which reflect the above cited case law. *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 Law Department points out that in *Maryland Overpak Corp.*, 395 Md. at 43-44, the Court of Appeals made clear that the process in Baltimore City for the approval of PUDs and amendments thereto is quasi-judicial in nature. A quasi-judicial proceeding requires findings of fact by the City Council after consideration of reports and testimony from governmental agencies. The Court stated: “A quasi-judicial proceeding in the zoning context is found where, at a minimum, there is a fact-finding process that entails the holding of a hearing, the receipt of

Fav w/ comments

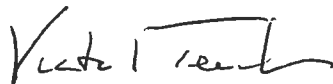
factual and opinion testimony and/or forms of documentary evidence, and a particularized conclusion, based upon delineated statutory standards, for the unique development proposal for the specific parcel or assemblage of land in question.” *Id.* at 53

The required findings of fact - those outlined in ZC 9-112 - however, are absent from any written report examined thus far by the Law Department, including the Staff Report from the Planning Department attached to the Planning Commission’s report. Therefore, in order for this zoning action to be lawful, the necessary facts must be established by the City Council prior to its passage of the legislation.

Other procedural requirements apply. 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.

Assuming the above procedures are met and provided that testimony is given that shows that the considerations in Section 9-112 were taken into account, the Law Department will approve the bill for form and legal sufficiency as drafted and is prepared to approve the bill if amended in accordance with amendments contained the Planning Commission’s Report.

Sincerely,



Victor K. Tervala
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief, General Counsel Division
Hilary Ruley, Chief Solicitor
Jennifer Landis, Assistant Solicitor