

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

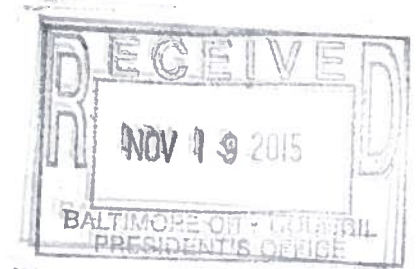


DEPARTMENT OF LAW

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

November 18, 2015

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 15-0553 – Planned Unit Development – Designation –
4701 O'Donnell Street

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 15-0553 for form and legal sufficiency. The bill approves the application of 4701 O'Donnell Street, LLC, owner of certain property located at 4701 O'Donnell Street, to have that property designated an Industrial Planned Unit Development. The bill also approves the Development Plan submitted by the applicant.

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") does not supply findings regarding these factors; therefore they will have to be established at the hearing and accepted by the City Council. *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.").

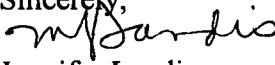
Further, the Planning Commission recommends that Council Bill 15-0553 be amended as outlined in the Report. The Law Department agrees that the zoning classification should be amended on page 2, line 17, to correctly reflect the current underlying zoning, and that the uses listed on page 2, lines 20 and 22 should be deleted if they do not exist in the current Zoning Code. Thus, the Law Department will approve these amendments as legally sufficient.

Fav w/ Comments

In addition, the proposed bill states as follows in Section 4 on page 2, lines 23-27, with regard to parking: "That when reviewing plans for final design approval, the Planning Commission may take into consideration proposed uses that have different peak parking characteristics that complement each other, so that the parking places provided may reasonably be shared by proposed uses, and ~~an excess of parking is not provided by strict cumulating of the parking requirements of the Zoning Code.~~" (emphasis added). Section 9-124 of the Zoning Code, however, requires that off-street parking in a Planned Unit Development be provided in accordance with the requirements of Title 10 of the Zoning Code, as they apply to the underlying district. *See also* ZC §10-405(19)(Planned Unit Developments)(number of off-street vehicle parking spaces required is "the required number set forth for each use, plus any additional spaces required by the City Council after considering written recommendations by the Board, the Department of Public Works, and the Planning Commission."). Thus, Section 4 may not be interpreted as waiving the off-street parking requirements for a Planned Unit Development. If the application of Section 4 results in fewer parking spaces than that required by the Zoning Code, it should be amended, or stricken. One way to amend may be to add the following at the beginning of Section 4: "Provided that the off-street parking requirements of Section 9-124 and Title 10 of the Zoning Code are complied with, the Planning Commission may, when reviewing plans for final design approval, take into consideration . . ."

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 4701 O'Donnell Street Planned Unit Development has been met. Thus, if the required findings are made at the hearing, and if the amendments proposed by the Planning Commission are passed and Section 4 of the bill is clarified, the Law Department will approve the bill for form and legal sufficiency.

Sincerely,

Jennifer Landis
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor