

CITY OF BALTIMORE

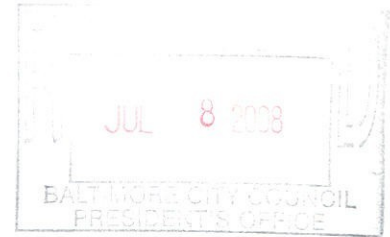
SHEILA DIXON, Mayor



DEPARTMENT OF LAW

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

July 8, 2008



The Honorable President and Members
of the Baltimore City Council
Attn: Karen Randle, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 08-0135 – Planned Unit Development – Amendment 4 – York Road and Belvedere Avenue (Belvedere Square)

Dear Madame President and City Council Members:

The Law Department has reviewed City Council Bill 08-0135 for form and legal sufficiency. The bill would approve certain amendments to the Development Plan of the Belvedere Square Planned Unit Development (“PUD”). Belvedere Holdings, LLC, wishes to amend the Development Plan, as previously approved by the Mayor and City Council, to add special events and the outdoor display and sale of merchandise as permitted uses, to modify the areas in which live entertainment and dancing are permitted, to provide a termination date for the ordinance and to grant any neighborhood association that is contiguous to the PUD the right to enforce the terms of the ordinance.

Section 2 of the bill makes changes to section 5 of ordinance 84-187, which controls the area of the PUD where live entertainment is permitted. In section 2 (E) of the bill, it provides that “AMPLIFICATION NOISE AT THE PROPERTY LINE SHALL NOT EXCEED 100 DB OR THE CITY’S NOISE LIMIT, WHICHEVER IS GREATER.” The Law department recommends deleting line 6 “WHICHEVER IS GREATER.” And revising line 5 to read as follows: “NOT EXCEED THE CITY’S NOISE LIMIT.” Allowing for a noise level that exceeds the City limit would violate City law.

Section 6 of the bill provides that neighborhood associations that are contiguous to Belvedere Square will have the right to enforce the terms of the ordinance. The Law Department recommends deleting this section, as it is in conflict with Maryland and City law. Current law already provides an administrative process with judicial review for aggrieved parties seeking to enforce a PUD. *See* Baltimore City Zoning Code, §§17 – 201 – 204 and §§17 – 301 - 305. Under current law, the Zoning Administrator has the authority to issue a zoning violation notice upon receipt of written notice detailing the unauthorized activity from two or more property owners. *See* Baltimore City Zoning Code, §17-101. Section 9-119 of the Zoning Code gives the Zoning Administrator authority to enforce the requirements of the PUD by either canceling the PUD and development plan or taking any other appropriate action. *See* Baltimore City Zoning Code, § 9-119 (c). Any person aggrieved by the decision of the Zoning Administrator may appeal to the zoning board. Baltimore City Zoning Code, § 17-201. Parties aggrieved by the zoning board’s decision may then appeal to Circuit Court. Baltimore City Zoning Code, § 17-302. Finally, parties to the Circuit Court proceeding may appeal that decision to the Court of Special Appeals. Baltimore City Zoning Code, § 17-305.

F/A



Maryland law requires that citizens exhaust their administrative remedies in zoning cases before they may bring any other legal action. *Josephson v. City of Annapolis*, 353 Md. 667, 674-8, 728 A.2d 690, 693-95 (1998). This ensures that the expertise of the zoning administrator and board are utilized initially, before the courts hear the case. *Maryland Reclamation Assoc., Inc. v. Harford County*, 382 Md. 348, 362, 855 A.2d 351, 359 (2004). Finally, enforcement of zoning violations is not legally delegable to citizens. The Baltimore City Charter has vested the authority of land development and redevelopment to the Mayor and City Council as acting through the Board of Zoning Appeals. See Baltimore City Charter, Art. II, § 15 and Art. VII § 83.

Otherwise, the bill is consistent with Title 9, Subtitles 1 and 4 of the Baltimore City Zoning Code, which provide general and specific requirements for Business Planned Unit Developments. Accordingly, subject to the above-mentioned revisions, the Law Department approves Council Bill 08-0135 for form and legal sufficiency.

Sincerely,



Ashlea Brown
Special Assistant Solicitor

cc: Honorable Bill Henry
George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Linda C. Barclay, Chief Solicitor
Elena DiPietro, Senior Solicitor
Deepa Bhattacharyya, Assistant Solicitor

City Council Bill 08-0135

Amendment No. 1

On page 4, in line 5, strike “100 DB OR”; change the comma to a period and delete line 6.