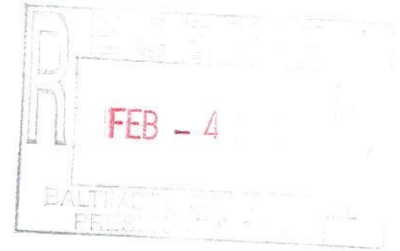




February 4, 2011

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



Re: City Council Bill 10-0592 – Urban Renewal – Oldtown – Amendment

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 10-0592, introduced for the purpose of amending the Urban Renewal Plan for Oldtown to allow a conditional use, upon approval by a separate ordinance, on the property known as 533/535 Oldtown Mall.

The underlying Urban Renewal Plan, originally approved by the Mayor and City Council by ordinance 70-760, prohibits pawnshops. According to the Planning Department's report, there is an existing pawnshop located at 529 Oldtown Mall which is a nonconforming use. According to Planning's report, the goal of this legislation is to move that nonconforming use to another property located nearby and amend the Urban Renewal Plan to reflect this change.

The Law Department has several concerns about this bill. First, the zoning code provides that a nonconforming use generally cannot be relocated unless authorized by the Board and only in certain districts. *See* Zoning Code §§13 – 208, 308 and 408. Therefore, moving the use via an Urban Renewal Amendment, rather than by Board authorization, would be inconsistent with these provisions. Although urban renewal legislation and zoning are different in many significant respects, the Law Department has concerns with this kind of piecemeal change to the way in which a “nonconforming use” would work, whether it occur in the zoning or urban renewal context.

Furthermore, any zoning ordinance that singles out a particular property within the limits of a certain district and then changes its zoning classification thereby permitting a use that is inconsistent with the uses permitted in the rest of the district is subject to a “spot zoning” challenge. *Cassel v. Mayor and City Council of Baltimore*, 195 Md. 348 (1950).

One possible way to achieve the goal of the bill could be to permit pawnshops in a very limited area. If a use is permitted in a small area and is not inconsistent with the use of the larger

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surrounding area, even though it may be different, it is not spot zoning if it does not conflict with the comprehensive plan, but is in harmony with the orderly growth of a new use for other property in the locality. *Id.* Assuming these criteria are met, the Law Department could work with the Planning department to draft a legally sufficient amendment which would permit the new pawnshop to operate within a designated area.

For the reasons stated above, the Law Department cannot approve the bill as drafted. However, the Law Department could approve an amendment meeting the standards set forth above.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Ashlea H. Brown'.

Ashlea H. Brown
Special Assistant Solicitor

Cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena R. DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Victor Tervalá, Assistant Solicitor