

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

September 18, 2014

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

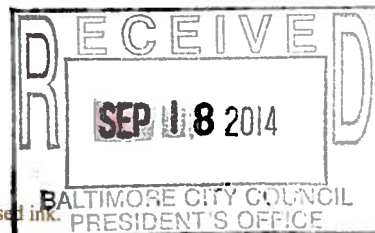
Re: City Council Bill 14-0379 – Planned Unit Development –
Designation – Remington Row

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 14-0379 for form and legal sufficiency. The bill approves the application of Miller's Square, LLC, Miller's Square Retail, LLC, and 211 W. 28th Street, LLC (collectively, the "Applicant"), their affiliates and assigns, who are either the developer, contract purchaser, potential owner and/or owner of the area consisting of the properties listed on Exhibit 1 attached and made part of the Ordinance, to have the Properties designated a Business Planned Unit Development. The bill also approves the Development Plan submitted by the applicant and provides for a special effective date.

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.* According to the Staff Report from the Planning Department ("Report"), the proposed designation satisfies this legal standard. *See Report at 7.* The Law Department further notes that the bill is consistent with Title 9, Subtitles 1 and 4 of the Zoning Code, which provide general and specific requirements for Business PUDs.

Prior to the Planning Commission hearing, the Land Use Division of the Law Department, at the request of Councilmembers Stokes and Clarke, prepared an opinion ("Opinion") to respond to claims made by the Remington Neighborhood Alliance regarding the proposed PUD.



The claims addressed were: (1) a Business PUD cannot count residentially-zoned properties in computing total acreage; (2) residential land may not be included in a business PUD; (3) in submission materials, the developer does not claim to own, have a contract for, or even represent owners of the glass company, Anderson Body Shop, or 7-Eleven properties; therefore there is no basis to ask the City Council to consider these properties as part of the PUD application; and (4) the stormwater plan was not submitted as a required part of the PUD application. *See* Opinion at 1, submitted with this bill report as Attachment 1.

With regard to the first two issues, the Land Use Division found that: (1) to prohibit the type of PUD proposed by this bill would run counter to the legislative purpose to provide flexible site planning where a variety of uses, spanning different zones, are allowed to co-exist; (2) Maryland case law supports the conclusion that property of one zoning category may be placed within a PUD of a different zoning category; (3) nothing in Title 9 of the Zoning Code prohibits the approval of a business PUD which contains a small portion of residentially zoned property; and (4) the Planning Department, the Planning Commission, and the City Council have consistently interpreted the PUD provisions of the Zoning Code to allow the type of PUD at issue here. *See* Opinion at 2, 6-12. The Land Use Division further found that the developer is not required to submit a “full-blown” Storm Management Plan as part of the Development Plan, and that the developer possesses sufficient interest in the real property proposed for the PUD. *See* Opinion at 12. These findings are equally applicable to the City Council’s consideration of the bill. The Law Department also notes that the Development Plan submitted as part of the application shows the existing storm drainage and states that there will be no changes to the drainage system as a result of the project. *See* Development Plan at C1.3.

With regard to certain sections of the bill, the Law Department notes that Section 7 states that “the existing billboards located within the Planned Unit Development shall be permitted to remain and may be relocated within the Planned Unit Development subject to the approval by the Planning Commission.” The Law Department requests an amendment to the bill to delete “subject to the approval by the Planning Commission” on page 5, line 13, and substitute “as allowed by Title 11 of the Zoning Code.”

With regard to parking, the Report states that “a mixture of structured and surface parking is proposed for the new residential and retail users, as well as some for public use.” *See* Report at 3. It also states that, in Area A, a parking garage will provide 171 spaces. *Id.* at 4. In Area B, “[t]he existing parking lot will be restriped for 28 spaces and 58 additional spaces will be accommodated within the building.” *Id.* In Area C, “the existing parking lot will be reduced and reconfigured to create a public green space.” *Id.* Section 8 of the bill states that in reviewing the final design plan, the Planning Commission may take into consideration “proposed uses that have different peak parking characteristics that complement each other, so that the parking spaces provided may reasonable be shared by proposed uses, and an excess of parking is not provided by strict cumulation of the parking requirements of the zoning code.”

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. ZC § 9-124. Thus, Section 8 may not be interpreted as waiving the off-street parking requirements for a Planned Unit Development.

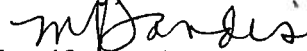
The Law Department also notes that it is unclear if the alleys discussed on page 10 of the Report are owned by the City or will continue to be owned by the City. If City owned, they may only be closed pursuant to the procedure in Article 26, Section 3-2 of the Baltimore City Code, by separate ordinance and with the required notice.

In addition, the Planning Commission recommends that Council Bill 14-0379 be amended as outlined in the Report. The Law Department has reviewed these proposals. If the City Council adopts the proposed amendments, the Law Department will approve them as legally sufficient.

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 Remington Row Planned Unit Development has been met. Thus, if the amendment to Section 7 is adopted, and all procedural requirements are met, the Law Department approves the bill for form and legal sufficiency.

Sincerely,



Jennifer Landis

Special 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

To: Baltimore City Planning Commission
The Honorable Mary Pat Clarke
The Honorable Carl Stokes

From: Sandra R. Gutman, Chief Solicitor *Sandra R. Gutman*
Adam S. Levine, Assistant City Solicitor *ASL*

Date: July 30, 2014

Re: Request for Legal Advice as to the Remington Row Planned Unit Development ("PUD")

The Inquiry:

You have asked for legal advice concerning certain arguments made against an application to designate certain properties as a Business Planned Unit Development known as Remington Row. The application has been filed with the Baltimore City Council as CC Bill 14-0379. The arguments made with regard to the PUD are set forth in a letter dated June 7, 2014 sent to Evan Morville, a representative of the Developer of Remington Row, from Joan Floyd, President of the Remington Neighborhood Alliance (the "RNA").

On June 23, 2014, Councilperson Mary Pat Clarke summarized these arguments as follows:

- 1) [It is] [i.e. the Remington Row PUD] a Business PUD which cannot count residentially-zoned properties in computing total acreage.
- 2) Residential land may not be included in a Business PUD.
- 3) In submission materials, [the] developer does not claim to own, have a contract for, or even represent owners of the glass company, Anderson Body Shop, or 7-Eleven properties; therefore, there is no basis to ask [the] City Council to consider these properties as part of the PUD application.
- 4) The stormwater plan was not submitted as a required part of the PUD application.

The Short Answer:

We believe that the application for the PUD is consistent with the relevant law as long as the Development Plan for the PUD includes the "proposed storm

drainage system showing basic topographic changes” as required by §§ 9-107 (9) of the Baltimore City Zoning Code (the “Zoning Code”).

On this point however, and in connection with Issue Number Four, we note that the storm drainage and topographical information in the Development Plan does not necessarily have to provide the same level of detail that the Baltimore City Department of Public Works (“DPW”) might require later as part of a Stormwater Management Plan (a “SWM Plan”) for the project as long as the two are consistent with one another.

In connection with the first three of the issues above, we summarize our conclusions as follows:

A) Beginning with Issue Number Two, we do not believe that the relevant law would preclude the approval of this application as a Business PUD simply because 3% of the total PUD area – i.e. 3,120 square feet of the total 99,752 square feet (or 2.29 acres)¹ - is zoned R-9, the remainder being zoned B-3-2. We conclude this because:

1) The primary purpose of a PUD is to provide a remedy to the rigidity of the traditional use districts through a form of flexible site planning where a variety of uses, spanning those of many different zones, are allowed to co-exist. To interpret the PUD provisions so as to prohibit the “mixed use” arrangement proposed here would run counter to this important legislative purpose;

2) In perhaps the earliest reported case in Maryland to deal with a type of PUD called a “floating zone”, the Court of Appeals affirmed the approval of an application whereby a residentially-zoned tract was reclassified to a manufacturing zone. The Court could not have reached this conclusion if residentially-zoned property could be placed *only* within a residential-type PUD;

3) Nothing within Title 9 of the Zoning Code, relating to PUD’s, prohibits the approval of a certain category of PUD made up in small part of property with a different underlying zoning designation; and

4) From the time of the adoption of the PUD provisions as part of the City’s Zoning Code in 1971 through the present day, the Planning Department, the Planning Commission, and the City Council have all consistently and repeatedly

¹ The total PUD area, which includes the public rights of way that will remain public, is identified on Page 1 of CC Bill 14-0379 in the first Recital as 4.2 acres. All of the sheets making up the Development Plan are identified on Page 2 of CC Bill 14-0379 in Section 2. The total PUD area either owned or to be owned by the Developer and developed in connection with the project is 2.29 acres which figure is identified in the PUD Density Calculations on Plan Number C1.2.

interpreted these regulations to allow the kind of arrangement proposed in this matter.

B) With regard to Issue Number One, for the reasons set forth above in (A), we find no impediment to calculating the total acreage for this PUD by including the 3,120 square feet of R-9-zoned property. However, even excluding the R-9 portion, there is still more than the 2-acre minimum needed to constitute a Business PUD under § 9-408 (c) (2) of the Zoning Code.

C) Finally, with regard to Issue Number Three, in a June 10, 2014 response to the RNA's June 7, 2014 letter, the Developer indicated that all of the properties within the PUD are either presently owned by the Developer or under contract of sale to be owned by the Developer. This is sufficient to satisfy the law with regard to the interest a Developer must have in the properties to be regulated by the PUD it is seeking.

We provide a more detailed consideration of these specific issues below.

Further Analysis:

Issues Numbers 1 and 2: The Inclusion of Residentially-Zoned Property in a Business PUD and Computing Acreage and Density.

Because Issues Numbers 1 and 2 are related, we discuss them together. In essence, the argument being made is that only commercially-zoned property can make up a Business PUD.² A related argument is also made that residentially-zoned property cannot be used to calculate whether the minimum acreage requirement is satisfied for a Business PUD, nor can it factor into the allowable density for a Business PUD.

To address these issues, we will: a) summarize the proposal, including the vision for the project; b) discuss the purpose behind the creation of the PUD as a zoning device, including the language of Title 9 of the City's Zoning Code on this point; c) review Maryland case law concerning PUD's; d) address the City's PUD provisions and how a court is likely to interpret them; e) consider the City's long-standing practice with regard to a PUD containing property of more than one zoning category; and f) address the application of the minimum acreage requirement as well as the density regulations to the Remington Row PUD.

² Following the logic of the argument, a Residential PUD would have to be made up exclusively of residentially-zoned property, an Office-Residential PUD would have to be made up exclusively of property zoned office-residential, and an Industrial PUD would have to be made up exclusively of industrially-zoned property.

A) Factual Background.

Remington Row is a mixed-use residential, office, and retail project consisting of three areas – Areas A, B, and C - to be developed in phases. Although the total area of the proposed PUD boundary is identified in the Development Plan as 4.2 acres, this includes public rights of way that will remain public. The total area of the PUD owned or to be owned by the Developer and to be developed is 2.29 acres.

Area A is comprised of the block bounded by 27th Street to the South, 28th Street to the North, Fox Street to the West, and Remington Avenue to the East. All of the properties making up Area A of the PUD are zoned B-3-2 with the exception of four small row-houses along Fox Street which are zoned R-9. The row-houses are each 12 feet wide by 65 feet long for a total of 3,120 square feet. As noted above, the total area of that part of the PUD to be developed is 2.29 acres, or 99,752 square feet.³ Thus, the area of the R-9 portion of the proposed PUD represents approximately 3% of the 2.29 acres to be developed.

The Developer intends to develop Area A as the first phase of the project. All of the buildings will be razed to make way for a five-story mixed-use structure which will include three levels of residential space - 108 apartment units, 48 of which will be efficiencies - one level of office space, one level of retail space, and a total of 175 parking spaces to serve these different uses.

Areas B and C, both of which are zoned B-3-2 in their entirety, will be developed in later phases. They are occupied presently by active tenants with multi-year leases. Area B is located just one block north of Area A and is bounded by 29th Street to the north. However, there are some existing row-house dwellings along 28th Street and Remington Avenue that will not be part of the PUD. As a result, Area A will physically connect with Area B through Fox Street and Remington Avenue as they travel north, as well as through an alley intersecting 28th Street (between Fox Street and Remington Avenue) which then travels north before it turns west to intersect with Fox Street.

Area B contains a two-story structure which is currently used as an automobile maintenance facility. The Developer intends to retain the existing structure, but renovate it to provide for offices and retail uses. A total of 86 parking spaces will be provided.

Area C is a triangular-shaped parcel located just east of Area A across Remington Avenue which is presently used as a 7-Eleven convenience store. In a future phase of the project, the Developer intends to renovate this existing structure. Some form of retail

³ One acre is equal to 43,560 square feet. The property addresses are identified in Exhibit 1 to CC Bill 14-0379 and are listed for each Area of the PUD. Plan number C1.1 of the Development plan shows a view of the "Entire Site", including the divisions of the Site into Area A, B, and C.

use will continue to be provided, but the Developer also plans to clear a sizable portion of paving in Area C and replace it with a grass lawn that will be used as open space.

The vision of the Developer for Remington Row is to create a unified project that will mix apartment living with offices, retail, parking, and potentially certain other small business- related uses, bringing all of these elements together to serve one another. The PUD offers the flexibility to accomplish this because the Developer can add up the total amount of apartments allowed for the entire 2.29 acres of the project, and rather than constructing them on a lot by lot basis, will be able to place them all in Area A.

Obviously, this makes the project more advantageous to the Developer, but this flexibility may also provide benefits to those who will live, work, recreate, and shop in the new development as well as to the community around them. Some of the public benefits of the project that the Planning Commission and the City Council may wish to consider during their respective reviews include:

- a) Furthering one of the goals of the City's current Comprehensive Master Plan, Live-Earn-Play-Learn, to "[c]reate zoning strategies which will match the zoning code to 21st Century land uses and patterns of economic and demographic development";⁴
- b) Removing part of the impervious surface from the 7-Eleven parking area to replace it with natural landscaping, thereby creating more open space;⁵
- c) Relocating a more traditionally industrial type use – the auto repair shop – from the upper part of the Remington neighborhood to replace it with offices and retail uses; and

⁴ Comprehensive Master Plan, Executive Summary, Page 21. This particular goal of the current Master Plan refers most directly to the effort to create a new Zoning Code currently before the City Council. However, in that the proposed new Zoning Code was designed to offer more flexibility, the PUD provisions of current law represent a precursor to the direction of the law now being considered by the Council.

The project also appears to be consistent with certain other goals of the Master Plan, including the following: "Live, Goal 1: Build Human and Social Capital by Strengthening Neighborhoods"; "Live, Goal 2; Elevate the Design and Quality of the City's Built Environment"; "Earn, Goal 1: Strengthen Identified Growth Sectors"; "Earn, Goal 2: Improve Access to Jobs and Transportation Linkages between Businesses"; and "Play: Goal 2: Improve Night Life, Entertainment, and Recreation Experiences for Residents and Visitors". Master Plan, Executive Summary, Pages 18-19.

⁵ In this regard, the project is consistent with another objective of the Master Plan, "Play, Goal 3: Increase the Attractiveness of Baltimore's Natural Resources and Open Spaces". Master Plan, Executive Summary, Page 19.

d) As noted above, providing in a single project, opportunities for living, working, small businesses, recreation, and shopping, both for the new residents of the proposed apartments, as well as for the larger community.

B) The Creation of the PUD as a Zoning Device Was Intended to Provide Flexibility to the Rigidity of the Traditional Zoning Districts.

Traditional or "Euclidean"⁶ zoning divides a jurisdiction into different use districts, each dedicated to a certain purpose, residential, commercial, or industrial, and often accompanied by other regulations relating to density that are applied on a lot by lot basis. While this system has many benefits, one of which is certainty, it also imposes the "handicap of rigidity." Rathkopf's *The Law of Planning and Zoning*, § 88.1 (4th ed.).

The Planned Unit Development or "PUD" arose as a remedy to what at times was a "straight jacket" effect of traditional use district zoning. As stated in McQuillan's *The Law of Municipal Corporations*:

The concept of planned unit development or planned development area involves the development of land as a unit where it is more desirable to apply *more flexible regulations* than those pertaining to other zoning classifications. In addition to *achieving flexibility*, the objectives of planned-unit developments are to provide a more desirable living environment than would be possible through the strict application of zoning ordinance requirement; *to encourage developers to use a more creative approach to their development of land*; to encourage a more efficient and more desirable use of open land; *and to encourage variety* in the physical development pattern of the city.

(Emphasis added.). 8 McQuillan Mun. Corp. § 25:101 (3d ed.). The earmarks of the PUD are flexibility, creativity, and variety as a remedy to the traditional use districts.

These same themes inspired the adoption of the PUD as part of the City's Zoning Code in 1971. In 1968, when the Zoning Commission for Baltimore City submitted its Summary of Final Report with regard to the City's last comprehensive rezoning effort, it noted that the "new Ordinance [which became the 1971 Zoning Code] provides for 'planned development' zoning which allows for *flexibility* in the development of a large

⁶ This is named after the case of *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926), where the Supreme Court upheld as constitutional a zoning ordinance that divided the town into different use districts.

tract so that differing, but harmonious uses, can be developed without a lot-by-lot regulation.”⁷ (Emphasis added.)

Drawing directly from the Zoning Commission’s recommendation, the City Council included as part of the 1971 Zoning Code the following language relating to PUD’s: “[t]he regulations established in this chapter are designed to permit and encourage sound and imaginative development.” (Emphasis added.) Ordinance No. 1051, Chapter 12, Planned Developments, Page 489 of Ordinances of the City Council, 1971. This same language appears in the current version of the Zoning Code as part of the “Regulatory Intent” at § 9-102 (a).

This background is important because the search for a law’s meaning is an effort to discover the purpose or aim of the law. *Kaczorowski v. Mayor and City Council of Baltimore*, 309 Md. 505, 513-514 (1987). (“The aim or purpose of the legislation against which we measure the words used, is ‘not drawn ... out of thin air; it is evinced in the language of the statute in light of other external manifestations of that purpose.’” *Id.*, quoting Justice Felix Frankfurter, 47 Colum. L. Rev. at 538-39)

The main aim of the PUD was to free development from the rigidity imposed by the traditional use districts. Historically, these use districts separated different kinds of uses from one another. The PUD was designed to allow opportunities to bring these uses together in a creative way. Thus, to preclude the establishment of a Business PUD because a small portion of the property is located within a residential district would be a return to the same rigidity that the PUD was designed to remedy.

This is not to say that the approval of a PUD is completely unfettered. Under § 9-107 of the Zoning Code, the PUD must include a detailed Development Plan with certain specific elements, and, pursuant to §§ 9-112, 14-204, and 14-205 of the Zoning Code, the proposal must be reviewed with regard to certain standards and factors so as to ensure that the project will conform to the character of existing and contemplated development in the area and that the uses contemplated will not cause an undue adverse impact.

However, assuming that the project is consistent with the standards and relevant factors as set forth in §§ 9-112, 14-204, and 14-205 of the Zoning Code,⁸ the fact that Remington Row will contain property some of which is residentially-zoned and some of which is commercially-zoned does not preclude the formation of both parts into a Business PUD. This is especially true given that the small part of the PUD zoned R-9

⁷ “Rezoning Baltimore City - Summary of Final Report – Zoning Commission – 1969”, “Statement of Mayor Thomas J. D’Alesandro, III,” March 22, 1968, Page i.

⁸ As to this point, we recommend that the Planning Department provide in its Staff Report an analysis of these standards and considerations for the benefit of both the Planning Commission and the City Council.

will actually be located in that area of the PUD devoted to the residential piece of the project.

C) *Maryland Case Law Supports the Idea that Property of one Zoning Category May be Used to Create a PUD of another Zoning Category.*

Although Maryland's appellate courts have never directly addressed whether the City's PUD provisions would allow property of one zoning category (e.g. residential) to be placed within a PUD of a different zoning category (e.g. a Business PUD), there are examples in Maryland where such an arrangement was approved of and upheld.

In *Huff v. Board of Zoning Appeals*, 214 Md. 48 (1957), perhaps the first reported case in Maryland to address a type of PUD, referred to there as a "floating zone",⁹ the Court of Appeals upheld the reclassification of an 18-acre rural tract from the lowest density of residential use to a new zone for restricted manufacturing uses so as to accommodate a plant that would make small precision instruments. Although not a mixed-zone PUD (i.e. a PUD comprised of properties from more than one zoning district), *Huff* involved land of one zoning category that was reclassified to a PUD with an entirely different use designation.¹⁰

In *Bigheno v. Montgomery County Council*, 248 Md. 386 (1968), the Court of Appeals affirmed the approval of an application relating to a residentially-zoned tract used as a farm whereby it was divided up into five different categories of floating zones, two of which were commercial, two of which were industrial, and the fifth and last one only remained residential in character. If indeed a property of one use category, whether residential, commercial, or industrial, could not become or make up a PUD or floating zone of a different use category, the projects at issue in *Huff* and *Bigheno* could not have gone forward.

The specific zoning ordinances for Baltimore County in 1957 and for Montgomery County in 1968 that were relevant to the cases above were admittedly different from the City's Zoning Code, but the concept that property located in one type of use district can

⁹ The name "floating zone" is derived from the fact that this type of zone is of an undetermined size and location and therefore "floats" over the Zoning Map until, pursuant to a particular application that receives approval, it is located in a particular place. *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.* 372 Md. 514, 539 (2002).

¹⁰ As explained in *Huff*, *supra*, 214 Md. at 62, the main difference between a reclassification of property as a floating zone or PUD and a traditional rezoning is that only the latter requires a finding of change in the neighborhood or mistake in the original zoning. In keeping with its emphasis on flexibility, a PUD principally involves consideration as to whether the project is compatible with the area or whether it would impose some particular negative impact such that it should not be approved, similar to a conditional use application.

be approved as a PUD to embrace a different category or type of use is in keeping with the objective of flexibility that the PUD was designed for. Indeed, the Remington Row proposal represents a much less drastic change than the proposals at issue in either the *Huff* or *Bigheno* cases.

D) *The Baltimore City PUD Provisions Do Not Prohibit The Remington Row Proposal.*

The provisions of Subtitle 4 of Title 9 in the Zoning Code refer to a “Business Planned Unit Development” as “being located in a Business District,” *but* they do not say that a Business PUD must be *exclusively* located in a Business District. § 9-401, Zoning Code.¹¹ Title 9 contains no prohibition as to the creation of a Business PUD which, consistent with § 9-401, is in fact located within a Business District (or overwhelmingly so), but that also incorporates in part a parcel located within a residential district. The City Council could have but did not provide that a Business PUD “shall *only* include property located in a Business District.”

In addition, while not addressing the question directly, the Court of Appeals has observed that a PUD in Baltimore City can be made up of property of different types of underlying zoning. *Maryland Overpak v. Mayor and City Council of Baltimore*, 395 Md. 16, 28 (2006). (“The PUD designation, acting as an overlay for a specific parcel or assemblage of properties, *is placed on top of the underlying zone or zones*, in the present case a Euclidian zone.”) (Emphasis added.)

Furthermore, because the adoption of the PUD was a form of remedial measure to encourage flexible and creative development, and consistent with the liberal way that remedial legislation is typically construed and applied, in interpreting Title 9 of the Zoning Code a court is unlikely to “permit ‘a narrow or grudging process of construction to exemplify and perpetuate the very evils to be remedied...’” *Neal v. Fisher, supra*, 312 Md. 685, 693-94, (1988), citing *Van Beeck v. Sabine Towing Co., Inc.*, 300 U.S. 342, 350-351 (1937). In the case of the PUD, the “evils to be remedied” were the constraints imposed upon development by the traditional use districts which had as their object the separation of different categories of uses. The Remington Row proposal simply seeks to bring together some of these different, but related, use categories - residential, office, and retail - as part of one project.

¹¹ The provisions relating to Residential, Office-Residential, and Industrial PUD’s each include similar language. Subtitles 2, 3, and 5, Title 9, Zoning Code.

E) The City's Long-Standing Practice Supports the Idea that a PUD may Contain Properties from Different Zones

There is one final but important reason to believe that a court would uphold the Remington Row proposal as consistent with the City's Zoning Code. This is because it has been the long-standing and consistent practice of the City Council to interpret Title 9 of the Zoning Code to allow for a PUD made up of property of more than one zoning category.

On April 24, 1972, just after the enactment of the 1971 Zoning Ordinance whereby the PUD was first added to the Zoning Code, the Mayor and City Council approved the Village of Cross Keys as a Residential PUD by passing Ordinance No. 38. The Cross Keys PUD is made up primarily of property zoned R-6, but a sizable portion of it is zoned B-3-2, and another portion is zoned Office-Residential. Thus, from the very birth of this feature as part of the Zoning Code in Baltimore City, PUD's have contained property of more than one zoning category.

This interpretation and practice has been followed many times since 1972. For instance, in 2006, the City enacted Ordinance No. 192 designating various properties in East Baltimore as a Residential PUD known as Greektown Redevelopment. Although most of the property comprising the PUD was located in the R-8 zoning district, a small portion of the project is located within the M-3 zoning district. In 2006, the City also enacted Ordinance No. 250 approving a Business PUD known as Brewers Hill along O'Donnell and Conkling Streets. Although most of that PUD is located in the B-2-2 district, a portion of the project is actually zoned R-8.¹² Finally, in 2009, the City Council enacted Ordinance No. 103 designating Tide Point as a Business PUD. Although Tide Point contains property located within the B-2-3 zoning district, it also contains property that is zoned R-8.¹³ For many years therefore, the City has approved PUD's that contained properties from a mix of zoning districts.

Because the City Council is the body which enacts and has control over the Zoning Code, its past interpretation of this Code to specific development proposals that come before it is entitled to strong deference. Indeed, the Court of Appeals has noted that

¹² This may in fact be the most comparable example to Remington Row in that Brewers Hill is a Business PUD partially comprised of residentially-zoned property.

¹³ Tide Point is also relevant because it represents an approved PUD wherein the different parcels making up the project were not all contiguous with one another. Although not specifically raised as an issue in the letter from the RNA, to the extent that a later argument is made that Remington Row is unlawful because Area B is physically connected to Area A only through the continuation of Fox Street, Remington Avenue and the alleyway in between, we do not believe that these facts would constitute a basis for rejecting the PUD application. Area B is located on the block directly north of Area A and the Developer's proposal connects these different parts of Remington Row by way of a mix of related uses that support one another.

"[a] long-standing administrative interpretation is particularly persuasive . . . when the administrative interpretation was established at the same time as the legislative enactment and continued uniformly thereafter." *Falik v. Prince George's Hospital and Medical Center*, 322 Md. 409, 416 (1991). We believe that this presents a strong case for adhering to the City's past practice that a PUD may be made up of property from different categories of zoning districts. This is because from the time of the Cross Keys PUD in 1972 to the present day, the City Council has adhered to this interpretation again and again.

For the reasons set forth above, we find no impediment to the inclusion of a small piece of property that is zoned R-9 in a Business PUD that is overwhelmingly made up of property zoned B-3-2.

F) The Acreage and Density Standards will be Satisfied by the Remington Row Proposal

As to Issue No. 1 of Councilperson Clarke's June 23rd inquiry - concerning the acreage computation for Remington Row - § 9-408 (c) (2) of the Zoning Code provides that in a B-3-2 District, "a Planned Unit Development must contain at least 2 acres." As noted before, Remington Row contains 2.29 acres of space to be developed. For the reasons cited above with regard to our answer to Issue Number 2, we find no obstacle to the inclusion of the four row-house properties as part of the total area for the PUD. However, even if one excludes the R-9 portion of the PUD constituting 3,120 square feet from the acreage calculation, the project would still contain over two acres of B-3-2-zoned property.

We similarly find no legal obstacle to the project as a result of the density standards applicable to Business PUD's. Under § 9-409 (a) (2) of the Zoning Code, the method of calculation for the permitted number of dwelling units for a Business PUD where the underlying zoning of the property is B-3-2 is 40 dwelling units per acre. Under § 9-409 (a) (1), an efficiency counts as .67 of a dwelling unit. The proposal for Remington Row involves an apartment building with 60 regular dwelling units and 48 efficiencies. If one multiplies the 48 efficiency units by .67 this equals 32 dwelling units. Adding this to the 60 regular dwelling units proposed produces a total density of 92 dwelling units.

The total area of the PUD to be developed is 2.29 acres. If one calculates the permissible density for the entire 2.29 acres on the basis of the language in § 9-409 (b) relating to property located in the B-3-2 zone (i.e. 2.29×40),¹⁴ the number of units permitted is 92, which is exactly what is proposed.

¹⁴ 2.29×40 equals 91.6, but rounding up, 92 units would be allowed.

Even assuming the density for the R-9 portion of the project must be calculated separately using the specific regulation applicable to the R-9 district, the proposal will still be consistent with the Zoning Code. Beginning with the 97% of the total acreage, or 2.22 acres, that is zoned B-3-2, the density allowed for this portion of the PUD under § 9-409 (b) would be 88.85 dwelling units.

To this would then be added the permissible number of dwelling units for the 3,120 square feet of property zoned R-9. The bulk regulation of § 4-1206 (a), which relates to property in the R-9 zone used for multiple family dwellings, permits one dwelling unit for each 550 square feet. Dividing the figure of 550 into the 3,120 square feet which is zoned R-9 would allow an additional 5.67 dwelling units. Adding this figure to the 88.85 dwelling units allowed as a result of the earlier calculation for the B-3-2 property results in a total of 94.52 units, which is greater than the 92 units actually proposed. Thus, regardless of the method used to calculate density, the proposed number of dwelling units will satisfy the applicable standard.

Issue Number 3 – The Developer has a Sufficient Interest in the PUD Property to Proceed.

As part of its application for the Remington Row PUD, the Developer completed a form entitled “Statement of Intent” describing its interest in the real property to be designated as a PUD. This form includes instructions and space for the applicant to indicate whether it owns the properties that will be subject to the proposed PUD, or whether it has a contract of sale to purchase the properties subject to the proposed PUD that is contingent on the PUD’s approval. In this case, the Developer owns some of the property to be designated as a PUD, but as to the remainder it represents that it possesses contracts of sale which are not contingent on PUD approval.

Apparently, in drafting the form, the City did not believe that such a scenario would present itself – i.e. a developer who will go through with its purchase regardless of the City’s approval or denial of the PUD – and omitted this possibility from the form. In any event, the Developer made clear the nature of its interest in all of the relevant properties in an e-mail dated June 10, 2014 which was sent to members of the Planning Department and copied to Councilpersons Carl Stokes and Mary Pat Clarke. Based upon this e-mail, it is clear that the Developer possesses a sufficient interest in the real property proposed for the Remington Row PUD.

Issue Number 4 – A Developer is not Required to Provide a Full-Blown Stormwater Management Plan as part of a Development Plan for a PUD.

As part of its application, a Developer is required to prepare a “detailed Development Plan.” § 9-105 (a) (2), Zoning Code. This Development Plan must include

a series of thirteen different elements, the ninth of which requires information concerning the "proposed storm drainage system showing basic topographic changes." § 9-107, Zoning Code. The Zoning Code does not require, however, that the Development Plan contain the same level of detail as a "Stormwater Management Plan" as that term is defined and used in Subtitle 22 ("Stormwater Management Plans") of Article 7 ("Natural Resources") of the Baltimore City Code.

The Department of Public Works ("DPW") is specifically responsible for administering and enforcing the provisions of the Natural Resources Article relating to Stormwater Management. § 21-5, Art. 7, Baltimore City Code. The Developer of Remington Row is of course required to submit and receive approval in due course for a Stormwater Management Plan consistent with the standards set forth in this part of the law before construction may be commenced. § 22-1, Art. 7, Baltimore City Code. However, § 9-107 of the Zoning Code does not require that this step must be completed as part of the submission of and review of a Development Plan for a PUD.

Accordingly, as long as the Development Plan for Remington Row sets forth the proposed storm drainage system the Developer intends to make use of, including basic information relating to proposed changes in the topography of the site, this will satisfy the requirement of § 9-107 (9) of the Zoning Code. Furthermore, if in order to satisfy § 9-107 (9), an addition or clarification to the Development Plan previously submitted as part of CC Bill 14-0379 has to be made, we do not believe that the bill must be withdrawn and/or submitted all over again. As long as the necessary information is available before the Land Use and Transportation Committee holds its hearing in this matter, and preferably at the time of the Planning Commission session, we believe that this requirement will have been met.

Please feel free to let us know should there be any further questions or concerns relating to the Remington Row project.

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