



May 20, 2015

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

Re: City Council Bill 15-0506 – Planned Unit Development –
Designation – 5601 Eastern Avenue

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 15-0506 for form and legal sufficiency. The bill approves the application of TRP-MCB 5601 Eastern LLC, owner of certain property located at 5601 Eastern Avenue, to have that property designated a Business Planned Unit Development. There is a companion bill associated with this bill that proposes rezoning the property from M-3 to B-2-3(City Council Bill 15-0505).

To be lawful, the proposed PUD “must be compatible with the surrounding neighborhood, it must further the purposes of the proposed reclassification, and special precautions [must] be applied to insure that there will be no discordance with existing uses.” *Bigenho v. Montgomery County Council*, 248 Md. 386, 391 (Md. 1968). The report by the Planning Commission generally indicates that proposed changes satisfy this legal standard but notes several potential legal concerns that this report will address.

The Report of the Planning Commission recommends that Council Bill 15-0506 be amended as outlined in the Staff Report, attached to the Planning Commission’s bill 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.

The Law Department has concerns about several components of the bill. First, Section 5(e) is inconsistent with the Zoning Code provisions on uses within PUD’s. It appears that Section 5(e) is attempting to make a text amendment to the Zoning Code’s general rules for business PUD’s. The Zoning Code already has rules for permitted and conditional uses in a PUD. Sections 9-402 through 9-404 provide for those rules. Section 5(e) should therefore be amended to comply with the underlying standards in Subtitle 9. This is consistent with the intent of the law and the standards which are intended to:

(1) insure that a Planned Unit Development conforms to the character and nature of the

- district in which it is located;
- (2) achieve maximum coordination between the Planned Unit Development and neighboring land uses;
- (3) promote the intent and purposes of this article; and
- (4) encourage the most appropriate use of land within the area of the Planned Unit Development.

Second, on page 5, line 50, the bill specifies “urgent care centers, defined as facilities providing medical treatment without appointment to patients needing immediate care but without a life-threatening condition warranting a hospital emergency room visit” as a permitted use. “Urgent care center” is not a use under the City Zoning Code. Such a facility would come under the “Clinics: health care” category in the Zoning Code. In order to accomplish the purpose of the bill’s language, the Law Department advises that page 5, line 50 be amended to insert before “Urgent” the following “Clinics: health care but only facilities providing medical treatment without appointment to patients needing immediate care but without a life-threatening condition warranting a hospital emergency room visit.” To make clear this limitation, page 6, line 38 should also be amended to insert after “care” the following “except for facilities providing medical treatment without appointment to patients needing immediate care but without a life-threatening condition warranting a hospital emergency room visit, which are permitted.”

The Law Department’s next concern is the prohibition against “homes for the care and custody of homeless persons.” This language has the potential to be in violation of the Fair Housing Act and the Americans with Disabilities Act as it makes no distinction between homes that provide additional services to homeless persons with disabilities and those that do not. A large number of individuals experiencing homelessness are likely to also suffer from physical and mental disabilities. Homes for the homeless often include services for the treatment of disabilities. To exclude these types of homes when other residential uses are permitted makes the bill discriminatory as applied to those serving homeless persons with disabilities and therefore in violation of the Fair Housing Act and the Americans with Disabilities Act.

The Law Department is also concerned about Section 6 of the bill that proposed to regulate the number of liquor licenses permitted in the PUD. Art. 2b of the Maryland Ann. Code regulates the sale of alcoholic beverages in the State. Sec. 9-201 states (a) The Board of License Commissioners for any county or for Baltimore City by regulation may:

- (1) Limit and restrict, in accordance with a definite standard, the number of licenses which they consider sufficient for any neighborhood;
- (2) Regulate and limit the use of mechanical music boxes and other sound-making devices; and

(3) Divide the city or county, as the case may be, into districts, and prescribe areas in which no licenses may be issued.

The General Assembly has also legislated specific restrictions on the issuance of liquor licenses in Sections 9-204 through 9 -204.3. Section 9-204.1 contains provisions that specifically refer to the issuance or transfer of liquor licenses within certain planned unit developments. Courts have ruled that “the General Assembly has chosen to closely control by statute even the more detailed aspects of the alcoholic beverage industry. Regardless of the reason for its enactment, the result of such a comprehensive statutory scheme is that the authority of the administering agencies necessarily is more circumscribed than the typical administrative agency.” *Board of Liquor License Com'rs of Baltimore City v. Hollywood Prod. , Inc.*, 344 Md. 2 (1996). If the General Assembly has chosen to so closely control local liquor boards it follows that, unless explicitly granted by State statute, local governments do not possess authority over the granting of liquor licenses, an area subject to state statutory control. The Mayor and City Council has no such authority under State law, public local law or its Express Powers granted by the General Assembly. The authority to grant licenses has by statute been vested in the local liquor boards.

Section 6 should therefore be amended to reflect the authority of the Liquor Board with respect to licenses. Sections 6 (c) and (d) already contain the phrase “that may qualify under applicable law for such licenses.” Section (a) and (b) should be amended to add that phrase and delete the numbers “1” and “3” at the beginning of each of those sections.

Finally, the bill lists “residential substance abuse treatment center” as a prohibited use. The underlying zoning provisions were specifically amended by order of the Court to allow for RSATC’s as permitted uses if housing 16 or fewer residents and as a conditional use by ordinance if housing 17 or more residents. *See U.S. v. City of Baltimore*, 845 F.Supp.2d 640 (Md. 2012). The restrictions under the former language of the City’s Zoning Code were found to be in violation of the Fair Housing Act and the Americans with Disabilities Act because it discriminated against persons with disabilities by treating them differently than comparable uses. By prohibiting RSATC’s under this bill, the bill discriminates against persons in a RSATC by not allowing them to reside in the area when other comparable uses are either permitted or allowed by conditional use by ordinance. The prohibition of RSATC ‘s under the bill therefor constitutes a violation of the Fair Housing Act and the Americans with Disabilities Act.

Pursuant to the City Zoning Code (“ZC”), a bill concerning a PUD is classified as a “legislative authorization.” ZC § 16-101. Legislative authorizations require that certain procedures be followed in the bill’s passage. Specifically, certain notice requirements

City Council Bill 15-0506
May 20, 2015
Page 4

apply to the bill's introduction. *See* ZC § 16-203. The bill must be referred to certain City agencies, which are obligated to review the bill in a specified manner. *See* ZC §§ 16-301, 16-302 & 16-303. Additional public notice and hearing requirements also apply to the bill. *See* ZC § 16-402. Certain limitations on the City Council's ability to amend the bill apply. *See* ZC § 16-403. Finally, the bill requires a Third Reading holdover before final passage by the Council. *See* ZC § 16-404.

Provided that the bill is amended to cure the legal issues discussed above and assuming all the procedural requirements are met, the Law Department will approve the bill for form and legal sufficiency.

Sincerely,



Elena R. DiPietro
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Victor Tervalá, Chief Solicitor
Hilary Ruley, Chief Solicitor
Jennifer Landis, Assistant Solicitor