

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

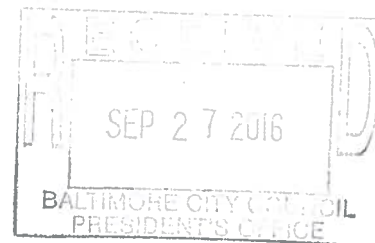


DEPARTMENT OF LAW

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

September 27, 2016

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 16-0695 – Planned Unit Development – Amendment 1 –
New Shiloh Baptist Church

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 16-0695 for form and legal sufficiency. The bill approves certain amendments to the Development Plan of the Planned Unit Development (“PUD”) for the New Shiloh Baptist Church.

With the exception of certain minor modifications, every deviation from a PUD must be processed and approved, under Title 9 of the Zoning Code of Baltimore City (ZC), as a new application. ZC §9-118(a). To be lawful, proposed changes to a PUD cannot make it incompatible with the surrounding neighborhood or negate the purposes for which the PUD was originally created. *See Maryland Overpak Corp. v. Mayor and City Council of Baltimore*, 395 Md. 16, 30-31 (2006) (“[A] PUD partakes more of the characteristics of a conditional use than any other zoning construct or mechanism recognized in Baltimore City The hallmarks examined for their approval generally are compatibility with a Master Plan, conformance to regulatory criteria, and an examination of potential deleterious effects vis-a-vis adjacent property and uses.”). Title 9 of the Zoning Code, in particular, Section 9-112, sets forth governing standards which reflect the above cited case law. *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.”).

In *Maryland Overpak Corp.*, 395 Md. at 43-44, the Court of Appeals made clear that the process in Baltimore City for the approval of PUDs, and amendments thereto, is quasi-judicial in nature, requiring findings of fact by the City Council after consideration of reports and testimony from governmental agencies. The Court stated: “A quasi-judicial proceeding in the zoning context is found where, at a minimum, there is a fact-finding process that entails the holding of a hearing, the receipt of factual and opinion testimony and/or forms of documentary evidence, and a particularized conclusion, based upon delineated statutory standards, for the unique development proposal for the specific parcel or assemblage of land in question.” *Id.* at 53.

The Staff Report from the Planning Department (“Report”) states that this bill is necessary because “the proposed use of multi-family housing was absent from the language in the original ordinance.” Report at 2. **The Report does not, however, supply findings regarding the considerations listed in Section 9-112; therefore they will have to be established at the hearing and accepted by the City Council.**

Certain procedural requirements apply to this bill because an amendment to 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 amending the New Shiloh Baptist Church Planned Unit Development has been met. Thus, if the required findings are made at the hearing, and assuming all procedural requirements are met, the Law Department approves the bill for form and legal sufficiency.

Sincerely,



Jennifer Landis
Assistant Solicitor

cc: David Ralph, Acting City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervalva, Chief Solicitor