

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, CITY SOLICITOR
100 N. Holliday Street
Suite 101, City Hall
Baltimore, Maryland 21202

February 7, 2018

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

Re: City Council Bill 17-0107 Zoning – Conditional Use Retail Goods Establishment
(with Alcoholic Beverage Sales) 3601–3605 Park Heights Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0107 for form and legal sufficiency. If enacted, the bill would grant permission for the establishment, maintenance and operation of a retail goods establishment (with alcoholic beverage sales) at 3601-3605 Park Heights Avenue, which is in the R-6 Zoning District. Such a use is not permitted in R-6, either by right or by this type of conditional use ordinance. Baltimore City Code, Art. 32, Tbl. 9-301. Even if the property could be legally rezoned to a district in which that use is not amortized, the use would remain non-conforming in that district and a conditional use would not be required. Baltimore City Code, Art. 32, §18-202(a); *accord Purich v. Draper Properties, Inc.*, 395 Md. 694, 708 (2006).

As the Mayor and City Council just zoned this property R-6 effective June 5, 2016 and there has been no showing of a substantial change in the neighborhood or of a mistake of fact in the selection of R-6, this property cannot legally be rezoned. Md. Code, Land Use, §10-304(b)(2); Baltimore City Code, Art. 32, §5-508(b)(1); *see also* Law Department's report on City Council Bill 17-0106, issued February 7, 2018. Even if the property could be rezoned and this ordinance enacted, Section 5-407 of Article 32 of the Baltimore City Code would void the conditional use a year after it is granted because no permit would be obtained for the use.

If the bill were enacted, any conditions it seeks to impose on the use of the property as a Retail Goods Establishment (with Alcoholic Beverage Sales) would be unenforceable. In other words, any conditions that are not land use conditions or that conflict with state law, including matters lying properly within the purview of the Liquor Board, would not be enforceable as part of a conditional use ordinance and therefore should never be in a conditional use ordinance. *See, e.g., Worton Creek Marina, LLC v. Claggett*, 381 Md. 499, 512-513 (2004); *Northwest Merchants Terminal v. O'Rourke*, 191 Md. 171 (1948).

For the reasons set forth, the Law Department is unable to approve this bill for legal sufficiency.

Very truly yours,



Andre M. Davis
City Solicitor

cc: Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Hilary Ruley, Chief Solicitor