

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

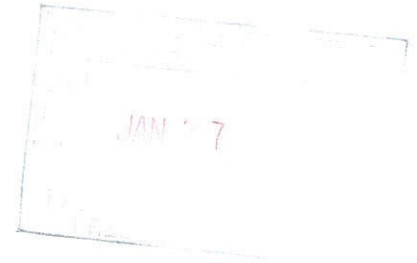


DEPARTMENT OF LAW

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

January 26, 2011

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



Re: City Council Bill 10-0624 – Planned Unit Development – Amendment 1 –
Greenmount West – Arts and Entertainment District

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 10-0624 for form and legal sufficiency. The bill would approve amendments to the Development Plan of the Greenmount West – Arts and Entertainment District Planned Unit Development (“PUD”). The original PUD was approved and established by Ordinance 03-533. The bill would amend the Development Plan by modifying the uses permitted, permitting the Board of Municipal and Zoning Appeals (“BMZA”) to grant variances to off-street parking requirements within the PUD, expressly grant certain off-street parking variances, and add a property located at 1500 Barclay Street to the existing office-residential PUD.

The bill adds to the list of permissible uses “schools: elementary and secondary.”

The bill provides that the BMZA “has the authority to grant variances to off-street parking requirements within the PUD in accordance with Title 15 of the zoning code.” This section presents several legal issues.

First, this provision is in direct conflict with §9-124 of the City Zoning Article which requires that “off-street parking in a Planned Unit Development must be provided in accordance with the requirements of Title 10 of this article, as they apply to the underlying district.” Section 10-303 provides that “[a]ll parking facilities in a Planned Unit Development count towards meeting the parking space requirements for all uses and structures in that Planned Unit Development.” In other words, the City Code requires that off-street parking requirements be addressed with regard to the entire PUD; not property by property. Therefore, to provide for a separate procedure in this particular PUD with regard to off-street parking would conflict with the required procedures in the Zoning Article, as well as principles of uniformity across PUDs in the City. Maryland law requires that zoning regulations be “uniform for each class or kind of development throughout each district.” Md. Ann. Code art. 66B § 2.02.



Secondly, while it is true that the BMZA has the authority to grant variances for off-street parking in a general sense, this is done through a separate procedure under Title 15, which requires certain considerations. It is not clear that these considerations have been made or that the procedures required by Title 15 have been followed.

Next, Title 15 provides that a variance may be granted "by the Board or as part of an ordinance authorizing a conditional use, by the Mayor and City Council." City Zoning Article, §15-101. Although a PUD is similar to a conditional use, they are two, distinct legislative actions. Therefore, granting a variance within this bill, which is an amendment to a PUD, and not a conditional use, is not authorized.

Finally, Article 66B 2.08 (c)(1)(iii) grants the BMZA the authority to grant variances. It provides "(c) (1) The Board of Municipal and Zoning Appeals may...

(iii) Authorize, on appeal in specific cases, a variance from the terms of an ordinance ...

(2) **If otherwise authorized by the general zoning ordinance of Baltimore City**, this section does not prevent the Mayor and City Council of Baltimore from granting variances, special exceptions, or conditional uses by ordinance." [emphasis added].


Thus, granting a variance within this PUD amendment would not be consistent with state authorization for variances, because it is not "otherwise authorized by the general zoning ordinance of Baltimore City."

For the reasons stated above, the Law Department recommends deleting the new sections 4 and 5 from the bill (page 3, lines 12-23).

Since the bill is zoning legislation, a rehearing is required under §16-403 should the bill be amended after the public hearing.

The bill is otherwise consistent with Title 9, Subtitles 1 and 3 of the Baltimore City Zoning Code, which provide general and specific requirements for office-residential Planned Unit Developments. Accordingly, the Law Department approves Council Bill 10-0624 for form and legal sufficiency subject to the required deletions.

Very truly yours,



Ashlea H. Brown
Assistant Solicitor