
CITY OF BALTIMORE

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June 14, 2022

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 22-0219 – Planned Unit Development – Amendment –
Harbor Point

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 22-0219 (“Bill”) for form and legal sufficiency. The Bill would approve certain amendments to the Development Plan of the Harbor Point Planned Unit Development (“Harbor Point PUD”). Specifically, the Bill would replace all existing Harbor Point PUD exhibits with new ones and update sections of the Harbor Point PUD to reflect the City’s new 2017 zoning code. This includes replacing Section 4 of the Harbor Point PUD with an updated Land Use section reflecting Harbor Point’s new C-5 underlying zoning and detailing permitted and conditional uses. Additionally, the Bill would change the duration of permitted temporary parking lots from 24 to 36 months, and update the time period in which the developer should complete the Open Space and Public Promenade.

Amendments to previously approved PUDs are categorized as either engineering corrections, minor changes, or major changes in accordance with Subtitle 4 of Title 13 of Article 32 of the City Code and must follow the corresponding approval procedure. City Code, Art. 32 § 13-102(b). This amendment seeks changes that would be characterized as major and therefore an ordinance is needed to approve them. Art. 32, § 13-403(b). Section 5-201 of Article 32 authorizes a member of the City Council to introduce a proposed ordinance to expressly approve, authorize, or amend a PUD. Art. 32, § 5-201(a)(8).

When reviewing a PUD amendment, certain approval standards apply. Art. 32 § 13-203 (explaining that the conditional use standards of §§ 5-405 (a) and 5-406 apply when reviewing a PUD, setting forth a number of additional factors that must be considered, and detailing required findings). Generally, the City Council may approve the amendment to the PUD if the change is compatible with the Master Plan, conforms to the regulatory criteria, and potential detrimental effects are examined with regard to adjacent property and uses. *Maryland Overpak Corp. v. Mayor and City Council of Baltimore*, 395 Md. 16, 30-31 (2006) (holding that the City Council must conduct a quasi-judicial proceeding and find facts to support the statutory criteria).

While the staff report states that the PUD amendment conforms to the Master Plan, facts should be supplemented at the hearing to better satisfy the approval standards cited above, including that the changes are in the public interest and are compatible with existing uses.

Of particular note, the Bill lists four categories of conditional uses that require approval of the Board of Municipal and Zoning Appeals: 1) Alternative Energy System, Commercial; 2) Industrial, Light; 3) Telecommunications Facility; and 4) Wireless Communications Services. However, the first two of these are neither permitted nor conditional uses within the PUD's underlying C-5 zoning. *See* Art. 32, Table 10-301 13-201(b). An amendment to a PUD may specifically provide for an exception to the requirements of the underlying zoning district. *See* Art. 32, § 13-201(b) ("Unless otherwise specifically provided by the ordinance establishing or amending the planned unit development, all requirements of the underlying zoning district apply."). However, any such exceptions should be aimed at achieving the objectives of the PUD and must be fully consistent with and authorized by Title 13 of Article 32. *See* Art. 32, § 13-202(c) ("Exceptions to the regulations contained in this Code, including use . . . may be granted through the planned unit development process, as may be desirable to achieve the objectives of the proposed planned unit development, as long as the exceptions are fully consistent with and authorized by this title.").

Finally, any bill that authorizes a change in a PUD is a "legislative authorization," which requires that certain procedures be followed in the bill's passage, including a public hearing. Art. 32, §§ 5-501(2)(vii), 5-507, 5-601(a). Additionally, certain notice requirements apply to the Bill. Art. 32, § 5-601(b). Moreover, the Bill must be referred to certain City agencies, which are obligated to review the Bill in a specified manner. Art. 32, §§ 5-504, 5-506. Also, certain limitations on the City Council's ability to amend the Bill apply. Art. 32, § 5-507(c).

Assuming all the procedural requirements discussed above are met, the Law Department can approve the Bill for form and legal sufficiency.

Very truly yours,



Jeffrey Hochstetler
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
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Ashlea Brown, Chief Solicitor