

EASTPORT CITIZEN WORK GROUP SUBMISSION TO THE
PLANNING COMMISSION REGARDING PROPOSED DEVELOPMENT
OF THE EASTPORT SHOPPING CENTER

Date: May 10, 2017

INTRODUCTION

A working group of concerned citizens in Eastport has conducted a review of the proposed development of the Eastport Shopping Center (ESC). The working Group is not opposed to the development of the ESC and the sole purpose of this effort is to insure that responsible development in Eastport is consistent with the current zoning codes¹ and the Annapolis Comprehensive Plan. The Working Group consulted with Alderman Ross Arnett from Ward 8 and examined publicly disclosed documents and information submitted by the Developers. The Group received feedback from the City Office of Law and the Office of Planning and Zoning (Planning Office) about the interpretation of specific zoning codes. We also reviewed a prior written opinion from the Office of Law regarding the legal enforceability of the Comprehensive Plan. The Working Group obtained additional information from the ESC project file at the Annapolis Office of Planning and Zoning. This included correspondence between the attorney for the Developers and the Office of Planning and Zoning as early as March 2015. The application for the development of the ESC, was only first filed with the City in September 2016.

The Working Group has submitted an analysis of its findings and conclusions to the Annapolis City administration, the Office of Planning and Zoning, the Office of Law and the Developers of the Eastport Shopping Center for their consideration. We are awaiting further responses.

EXECUTIVE SUMMARY

The Working Group examined the Developers' proposed plans for the development of the ESC. It is noted that the entire area of ESC is approximately 6.75 acres of which only approximately 2 acres are proposed for new development. All of the land is currently zoned as B2 (business or commercial use) which permits (of right) the building of dwelling units above the ground floor of non-residential uses without changing the zoning designation of B2. For example, the Developers could elect to place apartments above existing stores without changing the current zoning designation.

¹ Unless otherwise specified, all statutory citations are to the Municipal Code for the City of Annapolis

Instead, the Developers of ESC have chosen to submit their plans under the zoning designation of special mixed planned development. As the name implies, this designation allows a “mixture” of different uses which can include dwelling units (apartments). However the Municipal Code specifies standards for calculating the density of dwellings under the designation of special mixed planned development.

After careful consideration, the Working Group finds that the Developers have not followed the correct statutory standards for calculating dwelling density for this mixed planned development. To justify a higher density of dwellings in a smaller area, they erroneously use a calculation standard reserved for a residential development rather than the standard for a mixed planned development.

As more specifically described below, the Developers’ approach to density calculation is flawed and they should be required to follow the clear Municipal Code requirements for mixed planned development as they move forward. Allowing misapplication of the zoning codes and miscalculation of dwelling density for ESC and future special mixed planned developments is improper and will have major negative implications for this and other development in the City of Annapolis.

The Working Group also determined that the November 2016 traffic impact analysis (TIA) for this development was not done in conformance with the Annapolis Comprehensive Plan.

Embodied within the Municipal Zoning Code and the Annapolis Comprehensive Plan, there is general and specific language that requires new development in Eastport to comport with the unique historical and neighborhood character of this community. In March 2017, the City’s Office of Planning and Zoning provided comments to the developer. The comments on architecture address height, scale, mass and setback. The Working Group believes these factors to be extremely important for consideration of any future development of the Eastport Shopping Center

Specifically, the Working Group states the following:

1. The proposed development plan for the Eastport Shopping Center miscalculates, and therefore erroneously exceeds, the density of residential dwellings permitted under the designation as a “mixed use planned development”.
2. The traffic study or TIA conducted for the proposed development of the ESC, does not conform to the requirements of the Annapolis Comprehensive Plan.
3. The current ESC development plan fails to reasonably consider legal requirements that the project be compatible with the character of the surrounding Eastport neighborhood.

ANALYSIS

1. The proposed development plan for the Eastport Shopping Center miscalculates and therefore exceeds the density of residential dwellings permitted on the development site.

What is the nature and scope of the proposed development of the Eastport Shopping Center as described by the Developers?

The project for the development of the Eastport Shopping Center is referred to as the “The Lofts at Eastport Landing” (the project). In the written application filed with the Office of Planning and Zoning in September 2016, the project is described as “a “Special Mixed Planned Development” (SMPD), proposed to be constructed **on a site approximately 2.0 acres in size which is a part of a larger parcel of 6.75 acres** which is developed as the Eastport Shopping Center.” (Exhibit A). Furthermore, the Developers identify the scope of the project as “**part of a B2 “Community Shopping” zoning district**”. In the plans filed with the application, the land area for the project is clearly described as approximately 2.0 acres in size. (Exhibit B). In a recent marketing survey mailed to a majority of citizens in Eastport, the scope of the project continues to be depicted by the Developers as a limited area on one end of the current shopping center. (Exhibit C). To further highlight the separation of the overall shopping center from the development site, they each have different street addresses. The address of the Eastport Shopping Center is listed as 1023 Bay Ridge Ave, Annapolis Md. 21403, and the address for Eastport Landing is 915 Chesapeake Avenue, Annapolis Md. 21403.

The Developers assert that they plan to build 127 rental apartment units as a use “**permitted subject to standards**” which could be allowed within the shopping center’s existing B2 zoning district. The project description submitted with the application states that the apartment units will comprise approximately 103,771 sq. of residential use, containing studio, and one and two-bedroom units. All of these apartments will be constructed in a single building located within the 2.0 acre parameters of the project description. Nowhere in the filed “Description of The Lofts at Eastport Landing Project” is there any mention of the residential density standards that would govern a special mixed development use for the project.

On their website, the Developers have clearly stated that, “The project is proposed for approximately 2 acres on a 6.75 acre site”. It should also be noted that the Developers describe the “**Redevelopment area**” as **2.63 acres (114,475 square feet)** in the narrative of the required Environment Site Design (ESD) they have submitted to the Planning Office.²

² Environment site design narrative, page 4

What are the limitations of the current and proposed zoning designations for ESC?

Currently the property at the ESC is zoned B2 (for business or commercial use). Under this designation, a property owner may add dwelling units located above ground floor non-residential uses.³ Since the development plan for the ESC is submitted for consideration as a special mixed use planned development,⁴ the option for residential units over commercial is not a matter of right for the property owner. The determination of residential density for this project is subject to specific statutory standards and limitations.

Planned development means a tract of land which contains or will contain one or more principal buildings, the development of which is allowed greater flexibility and, consequently, achieves more creative and beneficial design than may be possible under conventional zoning district regulations. There are three types of planned development: a) Residential planned development is a planned development that is substantially residential in character, b) Business planned development is a planned development that is substantially commercial or industrial in character. c) Special mixed planned development is a planned development that is substantially mixed in character and that may contain a wide range of planned development uses.⁵

When, as here, the Developers submit a plan under the designation of a mixed planned development, it is subject to some limitations, including those effecting Common Open Space⁶ and processes under Planned Development Review Criteria and Findings⁷. However, the proposed mixed planned development stands alone de-novo for planning consideration without the “of right” benefits of the prior B2 designation. The Developers must choose whether or not to 1) Develop under the current B2 zoning, 2) Proceed under different rules as a Special Mixed Use development or 3) Seek subdivision of the entire site into different zoning designations. (i.e. one area B2 another R4 (residential)).

What are the use regulations that apply to the current zoning designation of B2 for the Eastport Shopping Center?

The zoning code provides that, “for business planned developments located in a B2 district, a business plan development may include all uses allowed in any residential district as permitted use, **use subject to standards**, or as a special exception.⁸ For Special mixed planned development, except for use as specifically prohibited by the zoning codes, a special mixed planned development may consist of all uses allowed as permitted use, **use subject to standards**, or as a special exemption in any zoning district.⁹

³ Code 21.48.020

⁴ Code 21.24.020 C

⁵ Code 21.72.010

⁶ Code 21.24.060

⁷ Code 21.24.090

⁸ Code 21.24.020 B(1)(b)

⁹ Code 21.24.020 C (1)

It is important to understand that different types of “use” may be permitted within a designated zoning district. For example, within the B2 district that includes the Eastport Shopping Center, the code permits the “use” of a special mixed planned development, **but only subject to standards.**¹⁰ These statutory standards specifically govern the determination of residential density within the special mixed planned development¹¹

How the Developers miscalculate the proper apartment density for the ESC project.

The Developers, through their lawyer Mr. Charles F. Delevan, first address the question of permitted apartment density in a letter written to the Director of Planning and Zoning on March 30, 2015. (Exhibit D) Citing an earlier meeting with planning staff, Mr. Delevan proposes that the density calculation should be based on the full dimension of the shopping center site (6.75 acres). Following specified assumptions in the letter, he concludes that “the project could anticipate a total density of approximately 140 dwelling units”. He ends his letter by asking the Director of Planning and Zoning for confirmation of this conclusion. There is no evidence in the application file that such confirmation was ever given. In his letter, Mr. Delevan does not clarify that the apartments would be built on only 2 acres of the shopping center site.

In September 2016, as part of the project application, the Developers filed a document entitled “Statement of Support for special mixed planned development” (Exhibit E). On page 11 of this document, they address the question of residential density for the project. First, the Developers correctly quote two different sections of the controlling statute to determine density; one that recites the density standards reserved for residential planned developments¹² (which this is not) and a separate paragraph which applies to special mixed planned development¹³ such as this project.

After correctly quoting the different provisions for two very different kinds of development, the Developers then wrongfully conclude that: “*These sections of the planned development regulations make it clear that the “density”, i.e. allowable number of units, of a planned development project is based on the size of the site as a whole.*”¹⁴ This conclusion is wrong and in no way follows from a comparison of the different standards for residential versus mixed planned development. It is this error which is the basis of the Developers’ wrongful assertion that they are entitled to build a maximum of 127 apartment units on a small 2acre portion of a 6.75 acre site.

In their calculations of permitted residential density (the apartments) the Developers mistakenly equate (or ignore) the difference between the terms “**gross development area**” which

¹⁰ Code 21.48.020

¹¹ Code 21.24.050 B (2)

¹² Code 21.24.050 B(1)

¹³ Code 21.24.050 B(2)

¹⁴ Exhibit E, page 11, last paragraph

applies only to a “residential development”¹⁵ and the term “gross residential development area” which applies to the residential component of a mixed planned development (like this project)¹⁶. The terms appear in different paragraphs of the Code and are applied to different types of developments. They are not synonymous and describe different things. For this project, the gross development area is 6.75 acres, while the gross residential development area is approximately 2 acres. Apparently not acknowledging this critical difference, the Developers now continue to claim that they are entitled to use the full “gross” area of the shopping center site (6.75 acres) as the basis for determining the maximum number of apartments to be built on approximately 2 acres.

How should the density for residential units be calculated for the ESC as a mixed planned development?

The critical first step is to calculate the applicable baseline area to be utilized for the density calculation for the residential component of the mixed plan development.

The Zoning Code requires that planned developments shall provide for common open space.¹⁷ Common open space may include “parks, playgrounds, parkways, medians, landscaped green space, schools, community centers or other similar areas in public ownership or covered by an open space easement or controlled by a homeowners association.”¹⁸

For business and special mixed planned developments, five percent (5%) of the total ground area shall be for common open space.¹⁹ For mixed planned developments, there is no explicit language permitting this area to be included in determining the number of dwelling units, so it should be excluded from the calculation. Therefore, for a business or special mixed planned development (such as ESC), the numerator is the “gross residential development area.”²⁰ The central question is *what is the “gross residential development area” for this project?*

Under the Municipal Code, “Development” means the construction or enlargement of residential, commercial, industrial, institutional or transportation uses or principal structures.²¹

There is no “development” outside of the new buildings and facilities being constructed on the 2 acres at ESC. This is where the Developers are planning to build all of the apartment dwellings or the “residential” component of the mixed planned development. This 2 acre section

¹⁵ Code 21.24.050 B(1)

¹⁶ Code 21.24.050 B(2)

¹⁷ Code 21.24.060

¹⁸ Code 21.24.060 A

¹⁹ Code 21.24.060 B

²⁰ Code 21.24.050 B(2)

²¹ Code 22.04.010

is the “gross residential development area” needed for calculation of the density of apartments (residential) portion of this mixed planned development pursuant to the Code.²²

This means that to calculate the baseline for the determination of residential density, **only the portion of the site that is being developed for residential use** is the numerator. In their application, the Developers state; “The apartment units comprise approximately 103,771 square feet of residential use...”²³ This is **not the area of the entire site (6.75 acres) after removing the commercial uses as argued by the Developers.**

Once the correct area being **developed for residential use** or “gross residential development area” is calculated, then the maximum allowable density of dwelling units can be determined. The Code prescribes a standard area of 1700 square feet per apartment unit.²⁴ The correct square footage for the gross residential development area becomes the numerator (103,771 square feet) and 1700 becomes the denominator. The resulting number is the maximum residential density. (the number of allowed apartments). The law would allow an additional 10% of this number of permitted dwellings if the Developers also included moderate income housing units.²⁵ Depending on the exact dimensions of the gross residential development area, (approximately 2 acres)²⁶, **the maximum number of allowable apartments for this project is 61 units.**

What is the 30% Rule and how should it be applied to the proposed ESC development?

Under the zoning code requirements for a special mixed planned development, no more than thirty percent (30%) of the ground area or the gross floor area of the development may be devoted to “planned development uses”.²⁷ “Planned development use” means a use, including a special exception use, that is not normally permissible as a permitted use or use subject to standards in a zoning district, but that may be permitted as part of a planned development provided that the planned development as a whole meets the criteria for approval set forth in the Zoning Code. The Developers have described the gross floor area for the project to be 177,436 square feet.²⁸ Applying the 30% rule, only 53,231 square feet may be devoted to a planned development use.

²² Code 21.24.050 B(2)

²³ Exhibit A page 2, paragraph 1

²⁴ Code 21.50.100

²⁵ Code 20.30.160 B

²⁶ The descriptions for this area has varied under different renderings of the project, but generally described as “approximately 2 acres”.

²⁷ Code 21.24.020 C(2)

²⁸ Exhibit A page 2, paragraph 2

How does the current development plan violate the zoning code in its calculation of the area permitted for the density for the residential component of a mixed planned development?

The Developers have misapplied the requirements for calculating the density of the residential component of the ESC mixed plan development as outlined above. Their apartment density calculations ignore the actual area limitations of the project as described on their website, in their marketing material and their development application to the City. Because of these miscalculations and misapplications of the controlling zoning codes, the Developers calculated the density of residential units by subtracting the total amount of commercial retail space after redevelopment (approximately 76,000 square feet) from the area of the entire shopping center site (294,030 square feet). They propose to use this entire remaining area (218,000 square feet), rather than the gross residential development area as the basis for building 127 apartment units. This would be an impermissible error.

2. The traffic study conducted for the proposed development of the ESC, does not conform to the requirements of the Annapolis Comprehensive Plan

Upon application by the Developers, the City of Annapolis, commissioned a “Traffic Impact Analysis” (TIA) for the Eastport Commons Development (aka ESC). Dated November 9, 2016, this analysis could fairly be categorized as a “conventional” traffic study which is limited in scope and focuses primarily on the immediate traffic impact surrounding a particular development project. It should be noted that the City of Annapolis also secured a separate Eastport Transportation Study just two months earlier in September 2016. This separate study provided short-term and long-term recommendations regarding transportation issues in Eastport. Finally, any consideration of traffic impact by development must take into consideration the parameters of the Annapolis Comprehensive Plan which was adopted by the city in 2009.

The Traffic Impact Analysis commissioned by the city in November 2016 is a conventional traffic study and is not consistent with the requirements of the Annapolis Comprehensive Plan (ACP).

In pertinent part, the ACP provides that: *“Conventional methods for evaluation of the development projects traffic impacts will be replaced with a more coherent and planned urban planning-based evaluation of accessibility and mobility. Nor can they ever be considered a tool for creating mixed-use communities where higher density development and options for various forms of travel are to be encouraged.”*²⁹

²⁹ ACP Chapter 4, page 60, Policy 9

In July 2014, the Annapolis City Office of Law, in a written opinion, confirmed that the Comprehensive Plan had the full force and effect of law. (Exhibit F) The Plan also provides that the City is required to pass “planned development ordinances and regulations” and other “land use ordinances and regulations” that will further the “Policies,” the “timing of the implementation of the plan,” the “timing of development” and the “development patterns” as described in the ACP.³⁰ Contrary to these legal requirements, the City has failed to fulfill its obligation to promulgate any of these regulations.

As required by the ACP, the City “will adopt an area wide approach to the study and monitoring of traffic conditions and projection of travel demand by mode. This will be a plan-based approach and will provide the basis for understanding how future development projects should contribute to in areas transportation performance.”³¹ Contrary to this directive, the November 2016 Traffic Impact Analysis, when required to factor in the potential traffic impact of other development near the Eastport Shopping Center, specifically limits consideration to projects that had filed development applications with the Office of Planning and Zoning. (Exhibit G). The most alarming result of this artificial limitation is that the Traffic Impact Analysis completely fails to take into consideration any potential (and some would say predicted) future development of the large Watergate Pointe complex which is immediately adjacent to the shopping center.

On the Developers’ website for the project they have stated that the “traffic” study did consider impacts of all development projects with definitive plans. They noted that the study specifically excluded consideration of any future development of the adjoining Watergate complex on the basis that no definitive plan from Watergate has yet been submitted to the City. They completely dismiss any further consideration on the basis that the potential Watergate development is only a rumor. There is anecdotal evidence that the owners of the Watergate complex have been in contact with staff at the Office of Planning and Zoning to discuss concepts for future development.

It is hard to conceive how a proper traffic analysis for this project can be in compliance with the requirements of the Comprehensive Plan without some consideration of the likely major development that would take place immediately adjacent to the Eastport Shopping Center.

It is interesting to compare some of the conclusions in the November 2016 Traffic Impact Analysis (TIA) commissioned for the ESC project with the Eastport Transportation Study completed two months earlier. For the ESC project, the Traffic Impact Analysis states that: “[traffic] impacts due to the proposed development are anticipated to be negligible”³². This shortsighted and insular conclusion contrasts with a more long-term prediction of the future traffic problems in Eastport. For example, the Eastport Transportation Study of September 2016 observes that: “300 additional trips per hour (after year 2020) can go through the network during the PM peak before the ability of the roadway network to process vehicle traffic **breaks down**.”

³⁰ Land Use Code sections 3-303, 3-104

³¹ ACP Chapter 4, page 60, Policy 9.1

³² Traffic Impact Analysis, page 38, November 2016

These additional trips can take the form of *additional through traffic*, or trips that are *locally generated* from new developments, or some combination of both.”³³

Notwithstanding the City’s failure to meet its obligations under the ACP, the Plan is legally enforceable and the Developers of the ESC must participate in a comprehensive traffic study that conforms to the provisions of the ACP.

3. The current ESC development plan fails to reasonably consider legal requirements that the project be compatible with the character of the surrounding Eastport neighborhood.

The proposed special mixed development for Eastport Landing (ESC) must meet the legal criteria for compliance with community character as dictated by the Annapolis Comprehensive Plan and the Municipal Code for zoning and planning.

The Comprehensive Plan is based on three main principles, the first of which is to, “preserve and enhance Community Character.”³⁴ The clear intent of the Plan requires, “a focus on community character offer[ing] a holistic approach,” to preserve the features, values, and places that make Annapolis a unique community.³⁵ The Plan specifies that, “future development [will be] based on the role that each designated area is intended to play in the community, including its appearance and function. This approach envisions an “enhanced ability to anticipate needs associated with new development or redevelopment, including traffic demand, infrastructure, community facilities, services, and other critical features”.³⁶

The Developers have described the proposed project as an “infill” development. The Comprehensive Plan specifies that infill development should occur in a way that is consistent with existing community character. New development should be designed to fit into the existing community and help to serve the needs of its residents.

The concerns about new development compliance with community character is further reflected in specific provisions of the Municipal Code on zoning. In the review of this new special mixed development, the decision of the Planning and Zoning Director shall include findings with respect to design and compatibility of the project.³⁷ In describing the general design standards, the Code is quite clear. For example, building bulk and scale shall relate to adjacent and surrounding buildings,³⁸ and a new or altered building shall respect the characteristic proportion of existing façades of the adjoining and nearby buildings and be consistent with the development or redevelopment goal of the area.³⁹ The mass of a building

³³ Eastport Traffic Study pages 10-11. September 2016

³⁴ 2009 Annapolis Comprehensive Plan, Executive Summary, page vii; and page 2

³⁵ *Ibid.* page 3

³⁶ *Ibid.* page 4

³⁷ Code 21.22.080 B. and C

³⁸ Code 21.62.020 A(2)

³⁹ Code 21.62.020 B(3)

shall complement the size and proportions of the predominant features on the block on which it is located.⁴⁰

Examples of how the proposed project is not compatible with the character of the surrounding Eastport neighborhood include:

- The proposed development eliminates available commercial/retail space while adding no new net commercial/retail space. Replacement with residential apartments permanently prevents future commercial/retail services of any size at the shopping center.
- The square footage of the proposed building, with a ground floor of ~52,000 SF, is larger than any other building in Eastport, and over 4 times the square footage of the next largest building on adjacent land (Conte Garden Condominium, with a ground floor of ~12,000 SF). (See Exhibit H showing ground floor of Conte Gardens superimposed on ground floor of Eastport Landing)
- The height of the proposed building, with 4.5 stories on the front and shopping center sides and 5.5 stories on the Post Office and Watergate Pointe sides, is far higher than the 1 story shopping center it abuts, and higher than the surrounding buildings on adjacent land (across Chesapeake Avenue, Conte Garden Condominium is 3 stories, commercial and residential buildings are 1-2 stories; across Americana Drive, the Post Office is 1 story and residential buildings are 2-3 stories; across Norman Drive, Watergate Point garden apartments are 3 stories).
- The proposed building would add 127 new residential units with ~250 additional vehicles to the traffic in Eastport that is already rated “D,” and Planning & Zoning has indicated that the addition of 300 trips per hour will put Eastport into the “E” rating. Traffic flow around the Eastport Shopping Center currently experiences frequent heavy traffic and poor traffic flow design (turning lanes, line-of-sight, crosswalks, traffic calming, etc.) such that the adjacent Fire House trucks and ambulances, passing police cars, resident and commercial drivers, cyclists and pedestrians are at risk. The County and City are only just now participating in a Forest Drive Corridor Study and have added the Eastport corridor to that study, and a comprehensive traffic review will be conducted.
- The proposed building would add 127 new residential units with ~250 additional vehicles to the vehicles parking on an around the property. A large portion of the existing parking lot at the Eastport Shopping Center would be replaced with the proposed building. While some of the parking for residents and commercial/retail customers would be in the basement and part of the first floor of the proposed building, some spaces are proposed as “swing” parking, and the City has stated that insufficient parking is provided in the proposed plan, which will result in overflow parking into surrounding residential streets.
- The proposed building adds to the current piecemeal approach by the City to approvals of high-density planned developments. Without a comprehensive approach that takes

⁴⁰ Code 21.62.020 B(4)

into consideration all developments being considered (possible 300- 600 residential units being considered for Watergate Pointe, the 83 residential units being added to Tyler Road and Hilltop Lane, and redevelopment of the HACA properties in Eastport), and without a proper understanding of what traffic, parking, police, and other public facilities on a peninsula with limited exit roads can sustain, the City fails to comply with the Comprehensive Plan and City Code.

When the Planning Commission reviews the Developers' application for this project, it must make written findings that the development complies with the planned development use standards and bulk and density standards.⁴¹ As recited above in great detail, the current design for this project does not comply with mandatory bulk and density standards. On this factor alone, the project fails to meet the test of neighborhood character compliance.

RESERVATION

At the time of the submission of this memorandum, the Working Group is aware that there may be future meetings with the Developers, citizens of Eastport and also with the Office of Planning and Zoning and Office of Law. The Working Group reserves the right to modify the information and/or the conclusions of this memorandum based on new or significantly different and verified information. The opinions recited in this memorandum are solely those of the citizens of the Working Group and are not to be construed as legal advice for any person or corporation.

⁴¹ Code 21.24.090 D

Description of The Lofts at Eastport Landing Project

The project known as The Lofts at Eastport Landing is a "Special Mixed Planned Development" ("SMPD") proposed to be constructed on a site approximately 2.0 acres in size which is a part of a larger parcel of 6.75 acres which is developed as the Eastport Shopping Center (Parcel 538, Grid 20, Tax Map 52). The portion of the site which is the subject of this "SMPD" is located on the northeast corner of the shopping center property at the intersection of Chesapeake Avenue and Americana Drive. The portion of the property which will comprise the project was previously developed as a gasoline service station and the northeast portion of the Shopping Center containing a two screen movie theater and restaurant.

The project will consist of 127 rental apartment units with retail and/or commercial uses on portions of the ground floor. Parking areas to serve the project are located on the interior of the basement and first floors of the proposed structure.

The property is part of a B2 "Community Shopping" zoning district. The uses which will constitute the project include those commercial/retail and residential uses allowed as "permitted", "permitted subject to standards", "permitted subject to special exception" approval and accessory uses by the Table of Uses set forth in Section 21.48.020 of the City Code. The rental apartment units are permitted by the above referenced section as "Dwellings above the ground floor of nonresidential uses", and as "Dwellings, multi-family" by Section 21.24.020.C which allows such uses as part of a Special Mixed Planned Development.

The apartment units comprise approximately 103,771 square feet of residential use containing studio, one and two bedroom units. The commercial/retail component of the proposed project comprises approximately 11,898 square feet (including offices and a restaurant). The project will contain a number of amenities to serve the residents and their guests including a swimming pool, open air courtyard, indoor and outdoor seating areas, and indoor recreation areas and facilities.

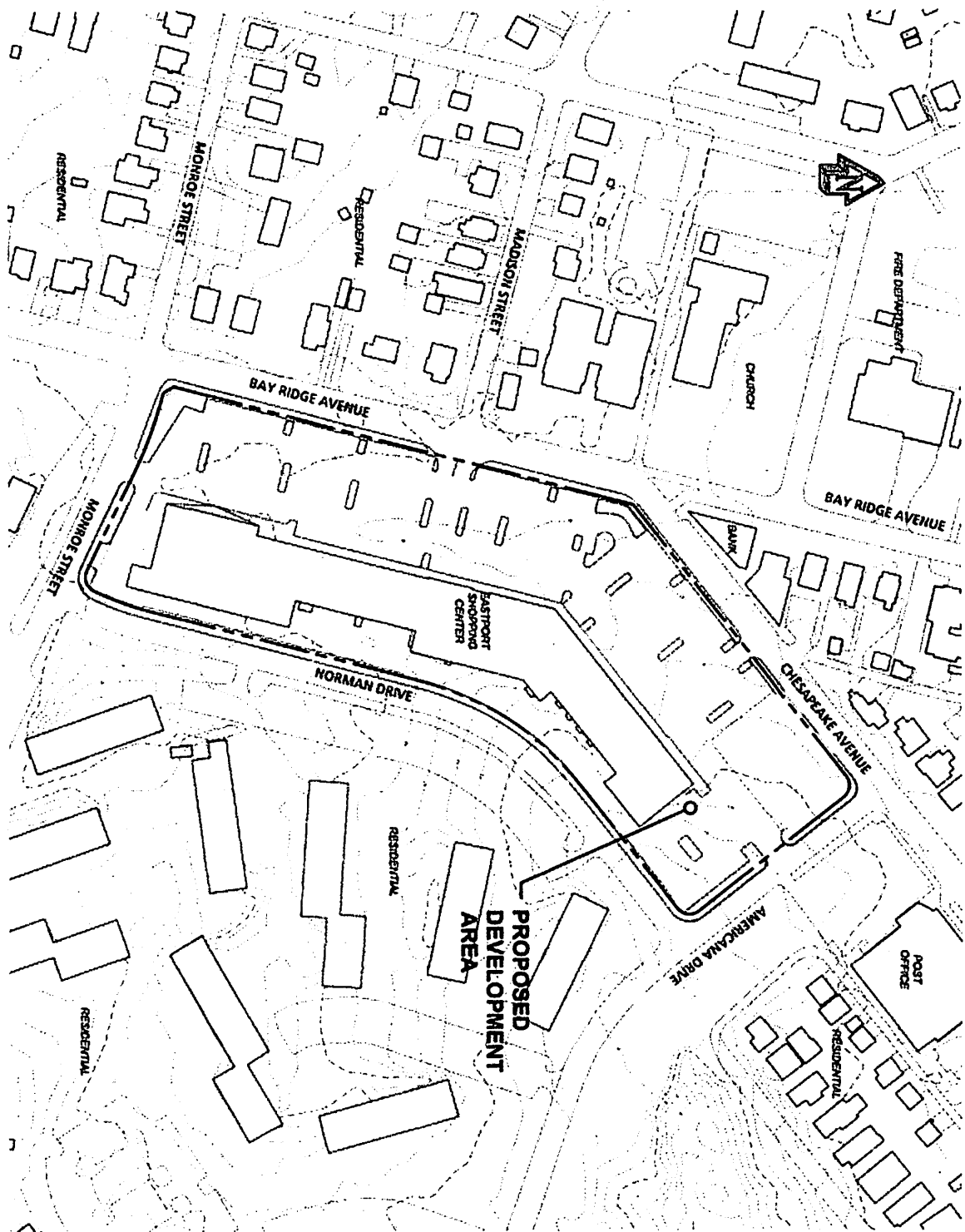
The structure containing the project will observe those setbacks and other bulk regulations set forth in Section 21.50.150 of the City Code with such variations as allowed pursuant to Section 20.30.160.C of the code (the "MPDU" regulations). The height of the proposed structures is 63.6 feet (measured from grade elevation 22.72'), a height which may be permitted by planned development approval by virtue of Section 21.38.030.E of the City Code. The floor area ratio of the project will be 0.60 (based on total gross floor area of 177,436 square feet).

The project will comply with those MPDU regulations set forth in Chapter 20.30 of the City Code, and will provide 7 MPDU units.

The architecture of the project has been designed to emulate the character of the surrounding Eastport neighborhoods with exterior elements designed to break up the mass and bulk of the structure into smaller components. The portions of the structure fronting on Chesapeake Avenue containing the commercial/retail are set back from Chesapeake Avenue by a distance of 20 feet to provide street front amenities including landscaping, planter boxes and outdoor seating areas.

The applicant proposes to accomplish the redevelopment proposed herein as a Special Mixed Planned Development, and is concurrently seeking approval of Site Design Plan Review and the approval of the Certificate of Adequate Public Facilities.

EXHIBIT B





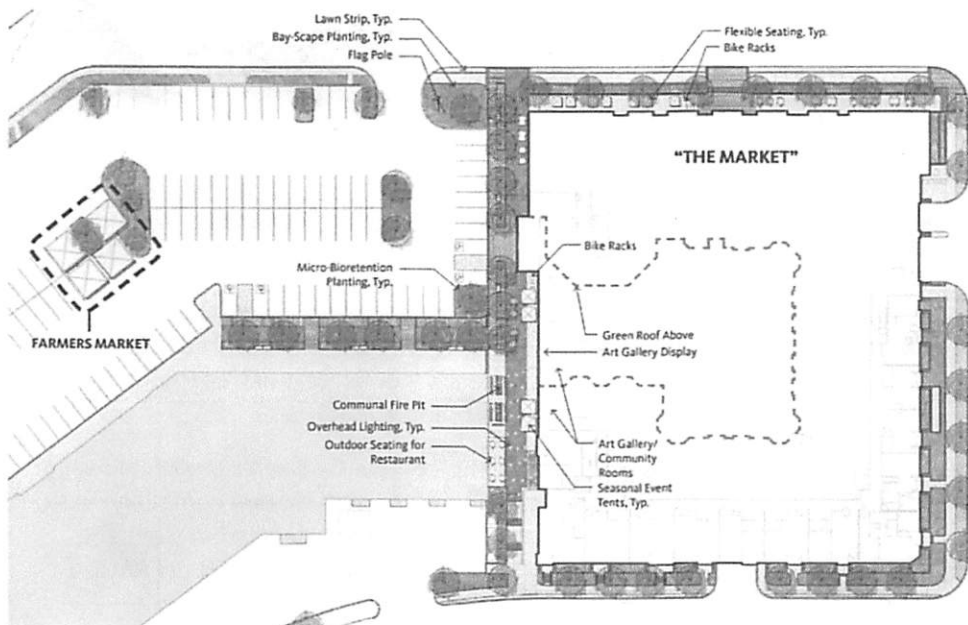
EASTPORT
LANDING

A NEW TRANSFORMED AND REVITALIZED EASTPORT LANDING

Eastport is a neighborhood defined by people, passion and a connection to the surrounding waters of the Chesapeake. At the heart of it all lies Eastport Landing, a village center designed to bring Annapolitans together to shop, dine and socialize. Today, the center's founding family has partnered with Solstice Partners, a regional development company, to transform and revitalize Eastport Landing.



The current plans for Eastport Landing propose to transform the existing shopping plaza into a vibrant, sustainable mixed-use community with high end apartments, a locally driven market, retail and expanded outdoor space for all Eastport residents and visitors to enjoy.



Landscaping, additional parking and environmental features will be delivered across the entire plaza. The new structure is planned for the two most northeast acres of the 6.7 acre site - specifically the former theater building, Adam's Rib and the neighboring vacant parcel (a portion formally occupied by the gas station) along American Drive and Chesapeake Avenue.



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March 30, 2015

Mr. Pete Gutwald, Director
Annapolis Department of Planning and Zoning
145 Gorman Street
Annapolis, Maryland 2140

Dear Mr. Gutwald:

The purpose of this letter is to confirm the conclusions reached at the meeting in your office on March 3 concerning the Eastport Shopping Center and the density of residential units which would be allowed in a planned development on this site.

The site is classified as a B2 "Community Shopping District" and comprises approximately 6.75 acres or 294,030 square feet. The uses allowed as permitted uses in the B2 zoning district include numerous commercial and retail uses and "dwellings above the ground floor of nonresidential uses". While "business establishments" have no minimum lot size, the density of residential dwelling units are governed by Section 21.24.050 B.2. which provides that the maximum number of dwelling units in a business or special mixed planned development "...may not exceed the number of units determined by dividing the gross residential development area by the minimum lot area per dwelling unit required by the R4 district."

You have indicated that prior to calculating the density of dwelling units which would be allowed in the project, that the square footage of the commercial uses remaining after redevelopment should be subtracted from the area of the site available for residential development. The amount of commercial and retail uses on the site following redevelopment is projected to be approximately 76,000 square feet. The "gross residential development area" remaining after subtracting the square footage of commercial uses following redevelopment would be approximately 218,000 square feet.

Section 21.50.100 specifies that the "Density (maximum, expressed as minimum sq. ft. of lot area per dwelling unit)" for "Dwellings, multi-family" (the type of dwelling unit planned for this project) is 1700 square feet. This would indicate that the allowable density for the project, based on the current survey information, would be 218,000 square feet divided by 1700 square feet, or 128 dwelling units. Compliance with the MPDU regulations, Section 20.30.160 B. would allow a density bonus for rental housing of an additional ten percent, or 12 dwelling units.

These calculations would indicate that the project could anticipate a total density of approximately 140 dwelling units, to be adjusted based on current survey and other data at the time of development.

I would appreciate confirmation of the conclusions stated above.

BLUMENTHAL, DELAVAN, POWERS & PALMER, P.A.

Pete Gutwald
March 30, 2015
Page 2

Thank you for your help in this regard.

Sincerely yours,



Charles F. Delavan

cc: Ms. Sally Nash, Ph.D.
Mr. Tom Smith
Mr Alex Kopicki
Mr. Jeff Jacobson

Statement of Support for The Lofts at Eastport Landing Special Mixed Planned Development
Planned Development Review Criteria

Code, Section 21.24.090

A. The planned development is compatible with the character of the surrounding Neighborhood and the Comprehensive Plan and the purposes of planned developments.

A.1 Compatible with the character of the surrounding neighborhood. The proposed project is located in the northeast corner of the Eastport Shopping Center, and will replace the previous structure, a gasoline service station, and part of the existing shopping center structure. It is located across Chesapeake Avenue from an area zoned "B2" comprising a bank, a restaurant and other retail uses. The northwest frontage of the shopping center is also across Bay Ridge Avenue from the Eastport Fire Station, an apartment complex and a residence at the corner of Bay Ridge Avenue and Madison Street zoned B1 and used as professional offices. Across Americana Drive from the shopping center is a Professional Office zoning district containing the Eastport Post Office and (further east) open space and recreational facilities (tennis courts). The project site is bordered to the East by Norman Drive. Directly across the street is the Watergate Village Apartment complex, which includes several six-story buildings and provides just over 600 rental units.

The Project was designed with careful consideration of its context within Eastport, and the proposed building compatibly reflects the scale and character of the surrounding neighborhood. The mixed-use structure incorporates a series of traditional, small-scale retail/commercial storefronts with dwelling units above.

Along Chesapeake Avenue and the southwest elevation the building's first floor retail has been designed to tie in to the existing architecture the shopping center. The design includes a roof element that provides a visual continuation of the roof along the front of the existing shops. The apartments above have been carefully configured to provide variation in the building plane, both vertically and horizontally. The scale of the building, window patterns, covered porches, awnings, and architectural details are intended to maintain the character of the neighborhood and to enhance the pedestrian-friendly nature of both streets.

The landscape plan includes extensive new plantings, new brick sidewalks, raised planters along Chesapeake Avenue that will also function as storm water management, street furniture and new street lighting. Together these elements will provide a significant enhancement to the prominent corner site and to the larger neighborhood. The development of the partially vacant site will be a significant improvement at this location. The continuation of residential uses along Americana Drive and Norman Drive, and the storefronts with apartments above on Chesapeake Avenue are consistent with the established development patterns on both streets.

A.2 Compatible with goals and objectives of Comprehensive Plan. The 2009 Comprehensive Plan contains a number of provisions which bear on the compatibility of The Lofts at Eastport Landing project with the Plan. Among the issues raised by the comprehensive plan that are relevant to the project are the following:

- a. The population of the City of Annapolis has been growing at a faster rate than predicted by the prior 2000 Comprehensive Plan, and the 45-65 age group is growing fastest of any demographic group. P. 9, 10
- b. There is a higher concentration of people living alone in the city as compared to Anne Arundel County or the State of Maryland. P. 9, 10
- c. Very little vacant land remains within the City which would be available for development of any type, including land for residential uses. Use of “infill development” areas helps to compensate for lack of vacant land for development. P. viii, 17, 20, 66
- d. Improvement of vacant or underutilized parcels will strengthen neighborhood and community character. Infill development will promote economic diversity and real estate vitality, but should be consistent with the character of the surrounding community. P. 20, 33
- e. Land use planning strategies should protect and support expansion of neighborhood commercial retail centers that serve local residents. P. 34
- f. Bay Ridge Avenue and Chesapeake Avenue (among other City streets and roads) will experience considerable congestion by 2030, which will increase the importance of public transit through the Eastport community, and development projects should be evaluated based on availability of public transit. P. 41-44, 60
- g. Population growth expected in the City indicates that approximately 3220 new households are expected to be added to the City by the year 2030, only approximately 1400 of which will be accommodated by residential housing

projects presently in the pipeline. This leaves a deficiency in housing units to accommodate the remaining 1800 new households. P. 66-68

h. New development should be designed to preserve the City's natural resources, protect the Chesapeake Bay, enhance landscaping and forest cover and improve storm water management.

i. The lack of available land to facilitate construction of new housing units, rising population/number of households and affluence of City residents have contributed to a dramatic rise in housing costs. These factors have created a need for affordable housing opportunities, particularly in the rental housing market. P. 105-109

The proposed The Lofts at Eastport Landing project will help to meet the expanding housing needs of the City by creating a mixed use infill project of rental housing units in an area surrounded by existing commercial, apartment and single family housing units. This project will preserve and enhance the vitality of the Eastport Shopping Center, a neighborhood commercial and retail center. Public transit is available with a bus stop located on Chesapeake Avenue and Monroe Street. The project will provide effective stormwater management where none exists now, including improvement of the stormwater outfall into Back Creek.

The Plan's emphasis on effective use of infill development combined with the Plan's directive that the City should "protect and support the expansion of neighborhood commercial retail centers that serve local residents" (Plan, page 34), are reflected in the mixed-use design for the site which properly balances a

residential character along Americana and Norman Drive with a more commercial character along Bay Ridge Avenue. By redeveloping a long-vacant site on a prominent Eastport corner with new businesses and residences, the Project will help the City to “maintain a vibrant local economy” (Plan, page 4) while it furthers the design objectives of the Plan.

By compatibly siting the building facades, by including street trees and decorative lighting, and by featuring sidewalk furniture and bicycle parking, the Project achieves the design objectives and spirit of what the Comprehensive Plan and other planning documents call for in this area of the neighborhood. For additional information see the corresponding Statement in Support of Site Design Plan Review which accompanies this submittal.

A.3 Compatible with the purposes of planned developments. The Lofts at Eastport Landing design takes advantage of the Special Mixed Planned Development concept by providing a mix of uses, including retail and commercial uses and residential apartments units integrated into a single mixed use structure with shared parking and amenities. It will provide a transition from the mix of R2-NC residential, B2 “Community Shopping”, B1 “Convenience Shopping”, and P “Professional Office” zoning districts and uses north of the subject property along Chesapeake and Bay Ridge Avenues and the rest of the Eastport Shopping Center commercial uses to the South. The design has been carefully formulated to achieve an integrated and coordinated physical structure with parking occupying the interior of the structure hidden from the exterior façade which emphasizes the residential nature of the

structure. The mixed use structure contains an interior courtyard on the second floor containing a pool and open space amenities, but creates a connection to the shopping center via an open space and activity corridor from Norman Drive. Modern stormwater management structures and facilities protecting the water of Back Creek will be incorporated into the site design along with extensive landscaping, planters and other landscape design features.

B. The proposed locations of buildings, structures, open spaces, landscape elements, and pedestrian and vehicular circulation systems are adequate, safe, and efficient and designed to minimize any adverse impact upon the surrounding area.

The setbacks of the proposed structure along Chesapeake Avenue are approximately 20 feet, creating a landscaped walkway and outdoor seating area between the retail uses on the ground floor and the street frontage. The setbacks of approximately 16 feet along Americana Drive also provide a broad landscaped walkway. Both street frontages will include the planting of significant trees and other landscaping. Entrances into the interior parking area within the structure are on the lower end of the Americana Drive frontage and through the rear of the structure from Norman Drive. The Norman Drive frontage will also contain walkways and tree planting. Pedestrian access into the courtyard area between the remaining Shopping Center structure and the interior side entrance into The Lofts at Eastport Landing will be maintained by reserving a courtyard walkway from Norman Drive. The walkway along the South face of the building has been designed to extend the existing pedestrian path along the front of the existing shopping center all the

way out to Chesapeake Avenue. (The current walkway stops at the end of the center and connects to the existing parking lot.) This extension will allow for a continuous pedestrian path to the shopping center and new retail space that will not require crossing the vehicular entrances. The open area along the South face of the building incorporates planted areas and open sidewalk space that has been designed to act as an outdoor gathering space for community activities such as art fairs. The site plan also shows an area where the popular seasonal farmers market could be accommodated.

C. The planned development will promote high quality design and will not result in greater adverse impacts to the surrounding area compared to the development that may otherwise be permitted pursuant to the Zoning Code if a planned development were not approved.

While the SMPD process allows for significant variations in the bulk requirements in connection with the redevelopment, the uses and the site design are intended to be compatible with the scale and character of adjacent properties and the neighborhood in general. The heights of the buildings are designed to reflect and complement the surrounding average structural heights on Bay Ridge and Chesapeake Avenues and the detailing materials and fenestration are all consistent with those found in the more traditional buildings throughout Eastport. The design team has conducted several meetings with the community, including a town hall meeting hosted by Alderman Arnett. The proposed design has been significantly reduced in scale from prior proposals in response to community input. The number of units proposed has also been reduced from

in excess of 200 to approximately 127. The previously proposed flat roofs and more urban design features, such as large expanses of glass and the use of metal panels, have been removed from the design. These elements have been replaced by more traditional gable roof forms and shingle siding to better relate to the more prevalent architectural elements and materials found throughout Eastport.

To further promote high quality design and to reflect the charm of this section of Eastport, the Project includes the installation of street trees along Americana Drive Norman Drive and Chesapeake Avenue. It also includes adequate space for bike racks, benches along Chesapeake Avenue and the replacement of existing sidewalks bordering the Property with brick walks and planting areas, which are consistent with the Eastport Streetscape Plan.

D. The planned development complies with the planned development use standards and bulk and density standards.

Use Standards

A special mixed planned development is Permitted Subject to Standards in the B2 zoning district per Code Section 21.48.010. Except for uses specifically prohibited by the Code in the districts that are the subject of an SMPD application,¹ SMPDs may consist of all uses allowed as a permitted use, use subject to standards, or as a special exception in any zoning district, which uses are allowed as permitted uses if included within and approved as part of an SMPD, Code 21.24.020 C. 1. The Code also provides, at 21.24.020 C.2., that

¹ No uses are specifically prohibited in the B2 district.

no more than thirty percent of the ground area or of the gross floor area of the development may be devoted to planned development uses.²

The provisions at Code, 21.24.020 C.2 are referred to herein as the "30% Provision."

The uses proposed within the Project's mixed use structure include: first-floor commercial space on Chesapeake Ave., dwelling units on Chesapeake Ave. above the commercial space, and dwelling units fronting on Americana Drive and Norman Drive which are served by a parking garage located on the interior of the structure. The first-floor commercial space on Chesapeake Ave. could contain a wide variety of commercial and retail uses, as well as dwellings above the ground floor of nonresidential uses permitted within the B2 district per Code 21.48.020. The interior garage is considered as an accessory structure, which is allowable in the B2 district. Consequently, the first-floor commercial space on Chesapeake Ave., the dwelling units above it, and the garage are allowable B2 uses within the SMPD and are not counted toward the 30% Provision.

The dwelling units fronting on Chesapeake Avenue are located within the B2 district. The dwellings are above the ground floor and are permissible in B2 per Code, 21.48.020, but dwellings on the ground floor are not. Consequently, the ground floor portions of the multi-family residences were are counted toward the 30% Provision.

In counting the ground floor portions of the multi-family residences toward the 30%

Provision, both ground area and gross floor area were analyzed. Regarding ground area,

² A "planned development use" is defined in part at Code, 21.782.010 D. as "a use, including a special exception use, that is not normally permissible as a permitted use or use subject to standards in a zoning district, but that may be permitted as part of a planned development provided that the planned development as a whole meets the criteria for approval set forth in this Zoning Code."

the ground area of the building footprint that will include residential uses is 6,173 square-feet. The property is comprised of a total of 293,891 square-feet of ground area.

Accordingly, the percentage of ground area attributable to those uses is 2.10%. Regarding gross floor area, the gross floor area of the ground floor portions of residences is 8,590 square-feet. The total gross floor area proposed in the SMPD is 269,661 square-feet.

Accordingly, the percentage of gross floor area attributable to these uses is 5.47%.

Consequently, the SMPD complies with the 30% Provision at Code, 21.24.010 C.2. See calculations attached as Exhibits B and C.

Bulk and Density Standards

Bulk regulations for planned developments in the B2 district are determined through the planned development process, pursuant to Chapter 21.24 and Code Section 21.50.150.

The Planning Commission may adjust the bulk standards for a planned development, other than height, that are otherwise applicable in the zoning district. Code Section 21.24.050 A. In addition, the project will provide 7 Moderately Priced Dwelling Units (MPDU's). By providing the units, all of the bulk requirements for the project are subject to a 20 percent increase. (Code Section 20.30.160.C) Thus, bulk regulations are flexible within a planned development and the SMPD's proposed yards, building scale and lot coverage and open space areas are appropriate for the Property and have been designed to complement the neighborhood.

The percentage of common open space required in an SMPD is 5% of the total ground area, or 14,701 square-feet. Code, 21.24.060 B. The Applicant has designed in excess of

15,000 square-feet of common open space at the SMPD, exceeding the Code's requirements.

Density of Project:

Because of the need for flexibility on height, setbacks and other issues, the project will be a planned development. The planned development regulations, Section 21.24.050 specify the density applicable to planned developments, providing in subsection B.1. the standards for a residential planned development as follows: "...the maximum number of dwelling units may not exceed the number of units determined by dividing the gross development area by the minimum lot area per dwelling unit...required by the district...in which the development is located. Gross development area shall be the area of the zoning lot as a whole." A "Zoning lot" is defined as "...a single tract of land located within a single block which, at the time of filing for a building permit, is designated by its owner or developer as a tract to be used, developed or built upon as a unit, under single ownership or control." Section B.2 specifies that "In a business or special mixed planned development, the maximum number of dwelling units may not exceed the number of units determined by dividing the gross residential development area by the minimum lot area per dwelling unit required by the R4 district."

These sections of the planned development regulations make it clear that the "density", i.e., allowable number of units, of a planned development project is based on the size of the site as a whole.

The B2 zoning district regulations specify that many commercial and retail uses and “dwellings above the ground floor of nonresidential uses” are “permitted uses”. The B2 Bulk Regulations (Section 21.50.150) specify that a “business establishment” has no minimum lot size. There appears to be no provision of the Zoning Ordinance which would require any reduction in the gross (or gross residential) development area of the whole parcel to accommodate the “business establishments” on the site. As a result, the residential density calculations should be based on the “whole parcel”.

Dwellings above the ground floor of non-residential uses have a minimum “lot area” square footage of 1800 square feet. This minimum square footage of lot area per dwelling unit is modified by Section 21.24.050 B.2 quoted above, providing that the minimum lot area for such residential units in a planned development is governed by the R4 regulations, which requires a minimum lot area for residential units of 1700 square feet.

As a result of the Code provisions cited above, it is clear that (1) the computation of allowable density of residential units must be based on the “whole parcel”, in this case a parcel of 6.75 acres (293,891 square feet); (2) that the business establishments on the property have no minimum lot size, and, therefore, should not be deducted from the size of the “zoning lot” in computing residential density; and (3) that the density, or number of units allowed in the project, is the size of the whole parcel, 293,891 square feet, divided by the minimum lot size per residential unit of 1700 square feet. This would yield a

potential number of dwelling units of 172 units. The proposed project contains approximately 127 residential units.

Building heights. Code 21.24.050 A. provides that the Planning Commission may adjust the bulk standards for a planned development, other than height, that are otherwise applicable in the zoning district. In the B2 district, the bulk regulations at Code, 21.50.150 specify that height and other performance standards are flexible and determined through the planned development process.

- E. The planned development complies with the Site Design Plan Review criteria provided in Section 21.22.080.

The Project complies with all applicable Site Design Plan Review criteria as illustrated in the corresponding statement and the associated materials.

- F. The planned development plan includes adequate provision of public facilities and the proposed infrastructure, utilities and all other proposed facilities are adequate to serve the planned development and adequately interconnect with existing public facilities.

The Project is served by and will interconnect with adequate public utilities. Storm drainage will connect to an existing 27-inch RCP and inlet at the corner of Norman and Americana Drives. It has been confirmed that the inverts are adequate to drain the furthest point of the Property. Public water and sewer are available in Chesapeake Avenue and natural gas service is available in Chesapeake Avenue. Electric service is currently run overhead along both streets. Trash and recycling collection are anticipated

to be provided by the City as part of the existing pick-up service. Accordingly, given the surrounding utilities and existing uses, adequate public facilities are available to support the proposed redevelopment. The Applicant is simultaneously applying for a Certificate of Adequate Public Facilities during which the adequacy of public facilities will be tested by multiple City departments.

~~EXHIBIT A~~

----- Forwarded message -----

From: **Jacqueline Lee** <jglee@annapolis.gov>
Date: Fri, Jul 25, 2014 at 12:54 PM
Subject: Comprehensive Plan - Full Force and Effect of Law
To: "Ald. Jared Littmann" <aldlittmann@annapolis.gov>
Cc: Gary Elson <gmelson@annapolis.gov>

Dear Alderman Littmann:

Gary Elson has asked that I forward this email to you on his behalf.

You have asked whether the City of Annapolis Comprehensive Plan has the full force and effect of law?

The answer to that question is, yes. In a 2002 decision of the Court of Appeals of Maryland the Court stated that "[w]e repeatedly have noted that [comprehensive] plans, which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. Where the latter exist, however, they serve to elevate the status of comprehensive plans to the level of true regulatory device In those instances where such a statute or ordinance exists, its effect is usually that of requiring that zoning or other land use decisions be consistent with a plan's recommendations regarding land use and density or intensity." Mayor & Council of Rockville v. Rylyns Enterprises, Inc., 372 Md. 514, 530-31, 814 A.2d 469, 478-79 (2002). [Internal Citations omitted].

Section 21.02.030 of the City Code states that "[t]he Zoning Code is adopted for the purpose of promoting the public health, safety and general welfare of the citizens of the City of Annapolis . . . and [B.] to ensure the integrity of, and help implement, the Comprehensive Plan." Thus, because the City of Annapolis has linked its Comprehensive Plan, by Ordinance, with the Zoning Code, the Plan is implemented with the full force and effect of law.

Kindest regards,

Jacqueline

Section 5 Background Conditions

5.1 Annual Growth

The growth in regional traffic is considered for the purposes of developing the base traffic volumes in the projected build year for the opening of the site. The Average Daily Traffic (ADT) Volumes from 2005 to 2015 are shown in the table in Appendix E for West Street (MD 450) west of Church Circle and were obtained from the MD State Highway Administration. The traffic patterns indicate that growth has been relatively flat in the downtown area.

5.2 Base Traffic Volumes

Even though the growth has been relatively flat in the area, in order to be consistent with the Scoping Agreement and provide conservative results, a growth of 1% was assumed for the study area. The resulting 2018 Base Peak Hour Volumes are shown on Exhibit 5.

5.3 Approved Background Developments

The City of Annapolis requested that six background projects be included in this traffic study. Those projects are:

1. East Annapolis Yacht Club
2. West Annapolis Yacht Club
3. Eastport Sail Loft
4. Griscom Square
5. Primrose Hill
6. St. Mary's School

The combined morning and evening peak hour traffic volumes from the developments are shown in Exhibit 6. A summary of trip generation and assignment for each background development can be found in Appendix E.

5.4 Background Peak Hour Traffic Volumes

The combined Background Condition peak hour traffic volumes consider the base volumes added to the trip assignments for the approved background developments. These volumes are shown in Exhibit 7.

5.5 Background Conditions Analysis Results

Exhibit 8 summarizes the results of the LOS and queuing analysis using the

EXHIBIT H

