

COMMENTS FROM ALDERMAN ROSS ARNETT FOR WARD 8 ON THE
APPEAL OF THE LOFTSAT EASTPORT LANDING

18 November 2020

Comment Context

One of the primary goals of the City Adequate Public Facility code is to assure that "...development protects the public health and safety, promotes the general welfare of the community, and conserves the environment." Where Adequate Public Facilities (APF) standards cannot be met, the Code allows for mitigation. "Mitigation consists of the construction or funding of improvements to onsite or offsite public facilities by an applicant that increase capacity or safety on each facility that is below the minimum standard so that the capacity or safety of the facility after mitigation will be equal to or greater than if the proposed project had not been developed." (emphasis added 22.28.020.A)

From the Maryland Office of Planning:

The phrase "adequate public facilities" has an appealing ring to residents, public officials, and developers in many fast-growing suburban areas where schools are chronically overcrowded, long delays occur at congested intersections, not enough ballfields are available for recreational leagues, and water rationing becomes necessary.

Adequate Public Facilities laws are an effort to rein in 'runaway' development until facilities can be made adequate. APF, an adequate public facilities law, bases development approvals under zoning and subdivision laws on specifically defined public facility standards. They are designed to curtail development in areas where public facilities are inadequate, and to delay development in planned growth areas until adequate service levels are in place or reasonably assured.

*In plain English, APF laws say that if the roads are too congested, if schools classrooms are too crowded, if water systems cannot provide enough water, if sewer pipes or treatment plants are full, or if there are not enough fields for recreational use, **then**, development cannot be approved until the problem is corrected.*

This state guidance was issued in 1992, but seems relevant to today. I submit that the same philosophy that applies to APF laws also applies to mitigation when it has been determined that APF rules cannot be met. In other words, the mitigation should provide alternatives to the APF rules, not lessen their requirements. At issue in this appeal is, “are the mitigations offered by the Planning and Zoning Director and Staff sufficient to provide relief that is equal as an alternative to the APF requirements?” I submit that they mitigations are not sufficient to protect the interests of my constituents, nor to meet the requirements of the City’s APF Code.

I am presenting tonight because I was elected to represent the constituents of Ward 8, as well as all citizens of Annapolis. To cite the City Charter from a few places:

Article I Section 3: The making of policy is a matter for elected officials, the mayor and alderman/alderwomen, who are directly accountable to the voters.

Article IV – City Council in Section 2, Subsections

(b) The powers and **duties** of the city council include the power to conduct oversight of the expenditures of public money and **the delivery of municipal services. (Emphasis added)**

(c) The city council shall sit as the planning and zoning authority of the city, except for those functions delegated to the board of appeals, the planning commission or the planning and zoning director.

I submit that it is the electeds that are accountable to and represent the general interest of the voters in the City. Further that we are, in effect, the source of a system of checks and balances for the citizens. While we can represent the views of our constituents, as we perceive them to be, but it is clearly the authority of the Board of Appeals to take under consideration and evaluate what we present as part of your overall considerations.

I am not new to the Adequate Public Facilities rules in Annapolis as I have been a sponsor on every piece of APF legislation passed by the City Council, along with three other cosponsors. So, my interest in this issue is larger than my responsibility to represent the collective interests of the citizens. I want to see

that the APF rules are carried out in the appropriate way and to the fullest extent of the City Code.

I note that the APF Code provides minimal standards. For a mitigation to go below the minimum does not serve the interests of the City. Further, I note that the current development at the Eastport Shopping Center does not meet minimum APF standards, but that has been allowed because it is a preexisting condition having been built well before the passage of the APF codes. However, in applying for a new project, the applicant must now meet the current APF standards. Again, the standard for a mitigation plan should be that it maintains the adequacy equal to or greater than if the project has not been developed.

Comments on the Sufficiency of the Mitigation Plan

The mitigation plan is not adequate for:

Policing

- Chief on record at several Council meetings that he cannot provide adequate policing or meet the 3.2 ratio
- Mitigation proposed is for security cameras and “up to” \$50,000 of off-duty police officers
 - Cameras need to be synchronized with the Police requirements
 - There need to be agreements on the storage of video
 - There are redaction costs for using video not covered
- Off duty police security
 - “Up to” not satisfactory -- Is a dollar enough?
 - Is \$50,000 enough, I think not
 - HACA used off duty police officers and did not work
- A more realistic mitigation would be the annual cost of a police officer, \$125,000, or police service of equivalent value

Recreational Facilities

- Recreational space is parks or playgrounds or paths
- With this project, the 5% requirement of 6.75 acres is a third of an acre, which, if available, would cost multiple thousands of dollars to purchase (\$600 to \$1 million)
- What can \$21,000 one-time only fee provide – not much
- A more realistic mitigation would be an annual amount more like \$100,000 annual fee or a one-time contribution of \$1 million
- Another option would be the purchase of the tennis courts across the street from the development

Traffic Impact

- Closure of through access to the parking lot from Americana Drive will put much pressure on the intersection of Americana and Chesapeake
- That, in turn, will put much more pressure on the intersection of Chesapeake and Bay Ridge
- This is already an area of failing traffic conditions
- A more realistic mitigation would be to require a stoplight at Americana and Chesapeake and
- Creation of a circle at the intersection of Chesapeake and Bay Ridge should be considered and the costs shared

Non-auto Transportation

- The mitigations offered are woefully inadequate and not fair to the residents. The City has goals and plans regarding sidewalks, bicycling and trails. The City is also struggling to provide alternatives to supplement the bus system
- Transit facilities should include pull-off places for taxi and on-demand car services
- Sidewalk capacity should be expanded to do more than meet minimal standards

Stormwater Management

- In spite of on-site management systems in the development plan, there will be a large amount of stormwater flow off of the development. This is causing issues at both Smith Cove on Back Creek and at Wells Cove on Spa Creek
- The mitigation for these effects must be much greater to be realistic and fair to the residents who will bear the costs of meeting federal TMDL standards
- A more realistic mitigation would be to require repair of the 24" pipe flowing into Smith Cove and dredging of the silting at the public access to Wells Cove
- Another more realistic consideration would be to require sharing the cost with adjoining owners of restoring the small creek and cove that have been scoured out by stormwater drainage from the shopping center, post office and Watergate Village tennis courts

Conclusion

I agree with appellants that the new mitigations offered are inadequate and not fair to the residents who will bear the impact of the development long after the investors have departed. City Staff need to be more sympathetic to the needs of, and impacts, upon residents. It is residents that must live with and bear the

burdens brought on by this proposed new development. All real costs; policing, traffic and stormwater management, and recreational needs that are not borne by the developers, will be passed on to the residents of the City. The City should make every effort to protect the interest of the residents, not minimize the cost to the developers.

Ross Arnett, Alderman, Ward 8