

Alderman Ross Arnett Update on Eastport Shopping Center

Alderman Arnett wants to make sure that all interested residents know the current status of the debated density of the proposed Eastport Shopping Center proposal. There are three density appeals being considered, one appeal by Alderman Arnett. The appeals challenge the determination made by Planning and Zoning Director Peter Gutwald. The challenges currently rest with the Board of Appeals, which is expected to hold a hearing on November 8 at 7:30 p.m. No public testimony or comment will be taken on November 8. If the appeals are not dismissed when the Board of Appeals meets in private on November 9, the appeals will proceed to a hearing on the merits at a date set by the Board of Appeals that is likely to be in 2018. The detailed process to be followed was laid out by Mr. Fred Sussman, Appeals Board attorney advisor. See below.

Following my consultation with the Board of Appeals last night the Board asked me to communicate the following to you on behalf of the Board:

- 1. The three appeals will not be consolidated, but the Board will conduct a joint hearing on the three appeals. Each case will retain its separate case number and will retain its own identity.*
- 2. Motions to Dismiss and any other preliminary motions must be filed with the Board, c/o the Department of Planning and Zoning, by close of business on October 25, 2017. Because of the compressed time frame in which we're working counsel also must provide electronic copies of all Motions to me and to all other counsel.*
- 3. Responses to preliminary motions must be filed with the Board, c/o the Department of Planning and Zoning, by close of business on November 3, 2017. Counsel also must provide electronic copies of all responses to me and to all other counsel.*
- 4. The Board will conduct a hearing on all motions at 7:30 p.m., on November 8, 2017.*
- 5. Argument on the motions will be heard in the order that the motions were filed. Mr. Hyatt filed the first motion so he will be heard first. The proponents of any additional motions will be heard in the order that additional motions are filed.*
- 6. After all motions have been presented each counsel will have the opportunity to respond to all other Motions in the order in which the motions were presented.*
- 7. After all responses have been presented each counsel will have the opportunity to make a brief rebuttal or closing argument.*
- 8. The Board will have reviewed all motions and responses prior to the hearing. Therefore, each counsel will have a total of 30 minutes for presentation of his Motion(s), response to other Motions, and rebuttal or closing argument. Counsel may apportion his 30 minutes as counsel deems appropriate. Prior to commencement of the hearing counsel will provide his time apportionment to the Chair of the Board.*
- 9. The Board expects the Planning and Zoning Director to provide his views on any motions and, particularly, to the issue raised by Mr. Hyatt as to whether the Director's July 14, 2017, Findings is a decision subject to appeal. The Board reserves the right to question the Planning and Zoning Director as necessary to assist in its understanding of the Findings as relates to the motions.*
- 10. No public testimony or comment will be taken on the motions.*

11. The Board will convene at 6:30 p.m. on November 9 in closed session to consult with me to obtain legal advice on the motions. At or about 7:30 p.m. the Board expects to convene in open session to deliberate on the motions. Deliberations may be continued if the Board deems that necessary. Following deliberations the Board will prepare a written decision.

12. If the appeals are not dismissed in their entirety and one or more appeals will proceed to a hearing on the merits, the Board will set a date or dates for a hearing on the merits of any remaining appeals after the Board issues its written decision. It is unlikely that any hearing on the merits will take place until 2018, and any hearing date will be at least 30 days from the date of a written decision.

13. If one or more appeals proceeds to a hearing on the merits the Board will formulate a protocol as necessary for a joint merits hearing.

Please let me know if you have any questions about or objections to the process that I've set forth above. Any objections will be resolved by the Board on November 8 prior to the commencement of the hearing. If you do not express any objection you will be deemed to have concurred with this process.

Fred Sussman

Alderman Arnett has also summarized the background on the density calculation issue. He has worked with the Ward 8 community in town hall meetings and ECA general meetings to try to understand the size of the Solstice Partners proposal, the traffic impacts, and the relationship of the proposal to city codes. Alderman Arnett concluded, over this last year, that the density calculation being used by the developers permitted more apartments and a larger development than the City Code permits. He describes the methods and the reason for his appeal and that of the Concerned Citizens. He says, "I believe that as a quasi-legislative branch of the City government, it is the duty of the City Council Members to monitor and act as checks and balances on the operation of the executive operations (Planning Department) of City government. See Alderman Arnett's full statement below.

Background On Density Calculation

In September of 2016, Solstice Partners filed an official redevelopment application for the Eastport Shopping Center. The filing followed a number of years of discussion with Planning Department and meetings with the Ward 8 community. I hosted one of those meetings at the Eastport Fire Station meeting hall. The project has evolved over the years due to discussion with staff and the community. The size of the proposal and the number of apartment units evolved, gradually reducing the project in scale.

Still, at a preliminary work session last March before the Planning Commission, I raised concerns about the mass and height of the proposal. Subsequently I and a group of "concerned Citizens" raised concerns about the density of the project and questioned how the developers were justifying the number of apartment units being proposed under the

applicable zoning code provisions. The shared view of the citizen group and me is that the number of units permitted has a direct effect on the bulk of the project and its compatibility with community character.

During an approximately two year period prior to submission, the attorney for the developers had discussions with Planning Staff about the number of units that would be allowed under their Special Mixed Planned Development application. Over that same period, many civic leaders and I also engaged in discussion with City staff and the developers.

*By way of even deeper background, the property to be redeveloped, the Eastport Shopping Center, is approximately 6.75 acres and is zoned B2 commercial. B2 zoning allows a number of uses, including residential uses **above** commercial space. However, the developers chose to apply under the Special Mixed Planned Development (SMPD) provisions in the Zoning Code, which is their right to do.*

In my view, Title 21 of the City Code is quite clear as to how density is determined under SMPD. The Code (21.24.020.C2) allows up to 30% of the parcel (i.e., 6.75 acres) to be developed under special mixed planned development, or approximately 2 acres. Further the Code (21.24.050.B2) specifies that the number of units allowed in this type of residential redevelopment is the 2 acres allowed for SMPD divided by the average apartment size allowed in R4 zones, 1,700 square feet. By my calculations this yields 52 apartment units. The Concerned Citizens Group, which includes of a number of residents living near the Shopping center, derive a similar number of apartment units.

During a Town Hall meeting I hosted in Eastport at the Eastport Fire Hall, the Director of Planning and Zoning presented a PowerPoint slide that showed a density calculation used by the developers to derive the number of units. That calculation used a method different than what I find in the City Code. P&Z' employed a derived calculation that I have dubbed a "subtraction method." This method requires the total lot size (6.75 acres) to be reduced by the amount of already existing B2 commercial on the lot, that is, the existing commercial buildings and required ancillary uses such as parking spaces, drive lanes, sidewalks, etc.; then divided that acreage by 1,700 sq. ft., a value used in the R4 apartment section of the zoning Code. The developers posit that this calculation results in 127 apartment units and is much larger than the 52 units I believe is allowed under the Code.

After much concern raised by residents and me, and analysis from the City Office of Law, the Director of Planning and Zoning held an administrative hearing on 8 June to hear views as to how density should be determined for the project. While the Director did not specify a specific number of units to be approved, he did issue a finding that the subtraction method, with further unspecified refinements the Planning Director did not specify, would be the density calculation method to be used by the Department. This is the decision being appealed by me, the Concerned Citizens and the Developer.

I do not believe that the "subtraction method" is prescribed by the Code, while there is a clearly defined density method in the Code. In addition, for a number of

reasons, I find the subtraction method to be so fatally flawed as to be unusable. I took an oath of office to uphold the Charter and City Code of Annapolis. I have chosen to file an appeal of the Director's finding to the City's Board of Appeals in order to honor that obligation to defend the Code. I believe that as a quasi-legislative branch of City government, it is the duty of the City Council Members to monitor and act as checks and balances on the operation of the executive operations of City government.

Finally, as your elected representative I hold to the view that property owners have rights; that those rights are tempered by zoning and permitting rules to protect community interests and life safety matters; and that all rules should be clear, readily available, and strictly followed in all cases. I am working for you to achieve those objectives for all parties.

I have attached a more detailed review of my analysis of the Density Calculation for those who want more information.

As always, you can contact me at this email address or call my cell at (443) 745-2901.

*Ross Arnett
Alderman, Ward 8*