

**BOARD OF APPEALS  
OF THE CITY OF ANNAPOLIS**

<b>Appeal of the Certification of</b>	*	
<b>Adequate Public Facilities for the</b>	*	<b>Appeal No: APL2020-002</b>
<b>Lofts at Eastport Landing and</b>	*	
<b>Mitigation Plan</b>	*	

**AMENDED NOTICE OF APPEAL  
AND STATEMENT OF GROUNDS FOR APPEAL**

COMES NOW Appellants, Stephen H. Rogers, *pro se*, and Charles T. Henney, Jr., with counsel, Heidi L. Halleck, Esq., of Walsh, Becker, and pursuant to City Code Chapter 22.32.010 and Chapter 21.30 et. seq. hereby appeals the decisions by the Director of Department of Planning and Zoning, Dr. Sally Nash dated May 26, 2020 regarding the Certification of Adequacy of Public Facilities Pursuant to Title 22 of the Charter and Code of the City of Annapolis, as well as the approval of the Mitigation Plan for Certificate of Adequate Public Facilities dated May 28, 2020.

Appellants cite the following grounds, and improper determinations made by the City in its Adequate Public Facilities (hereinafter “APF”) Certification and Mitigation Plan which were arbitrary and capricious, based on erroneous findings of fact and error of law, and were an abuse of discretion based on the factual circumstances of this case and the application of the APF law:

**Failure of the Meager Conditions In the Certificate of Adequate Public Facilities and the Approved Mitigation Plan to Cure the Board’s Determinations of Inadequacy.**

Director Nash’s summary decision on the Certification of Adequacy and the approval of the Mitigation Plan are arbitrary and capricious, an abuse of discretion, and are improper and deficient as a matter of fact and the application of law where the Board specifically found the five areas of public facilities adequacy to be inadequate, and where the approved conditions or

mitigation requirements do not and cannot cure or mitigate the defects found and articulated by the Board. No new plans or meaningful changes were proposed by the Applicant, and few, if any, new substantive requirements were required to correct the deficiencies. Nearly all of the conditions approved by the City for the APF areas and for the Mitigation Plan as approved were already required in the Site Plan Approval conditions or were requirements in the initial APF approval, and were rejected by the Board of Appeals as inadequate. Without any additional substantive or adequate modifications or required conditions to meet the legal adequacy or mitigation requirements and standards, the City's decision is arbitrary and capricious, erroneous as matter of fact and legal requirements of the APFO and as such is an abuse of discretion.

The approved Mitigation Plan Fails to Address the Adequacy Failures Determined by the Board. Code 22.28.020 requires that a Mitigation Plan "increase the capacity or safety on each public 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." In each of the areas of adequacy, the application of the conditions of the Mitigation Plan fail as a matter of fact and law to increase the capacity or safety of the facility to be equal or greater if the proposed project had not been developed, and as such, the City's actions are arbitrary and capricious and an abuse of discretion.

A brief summary of some, but not all, of the inadequacies as a matter of erroneous factual determination and failure to meet required legal standards in each area include:

**1. Police Protection Adequacy.** The Director of the Police Department correctly determined that the Police facilities for this project are inadequate, however, the calculation as to the adequacy of the facility was also improper as a matter of law and unsupported by the facts where it was only based on the addition of residential units and failed to calculate and include the

additional police protection necessary for the additional, substantial commercial space and uses required for this Mixed Use (Residential and Commercial) project. In addition to the residential units, 14,535 additional square feet are proposed for commercial use, including a restaurant which will draw customers both day and night to the facility. The Police Adequacy report and the Mitigation Plan are therefore erroneous as a matter of fact and law for failing to account for and address this additional commercial use impact on the police facility.

With regard to the residential calculation portion for the project, the Code requires 3.2 Officers “authorized in the current City Budget” per 1,000 residents. The calculation of the number of residents is still both improper and inaccurate as a matter of fact and law, and as such, the required number of additional officers is greater than 126. Only 110 officers are authorized in the City budget where the current and prior budgets do not authorize or include funds for 10 to 13 certified officers (the Police Chief is not a certified officer per the Police APFO). A current hiring freeze for unfilled positions is in effect and the policy of the City adopted by the City Council is to reduce personnel costs by attrition rather than across the board cuts. The recent increase in major crime (homicides and handgun related felonies and murders) places pressure on the current reduced staffing.

Importantly, the Mitigation Plan conditions are deficient as a matter of fact and law and are clearly arbitrary and capricious where the essential element is the condition to provide an off-duty police or security officer and where the requirement is to pay “up to” \$50,000 per year. Since there is no minimum amount specified, this condition can then be satisfied by paying only \$10.00, thus vitiating any alleged increase in security to the project by this condition. Also, there is no requirement on the time of day or hours or days of the week when the added security force is to be on site, allowing for the critical evening hours or weekends unaddressed.

Additionally, the requirement to hire off-duty officers is unrealistic where the City is currently so understaffed that it must use significant over-time of its current officers to maintain required shifts and there are few off-duty officers available. Security officers on site have limited police authority and abilities and do not meet the adequacy requirements required by the Code. The hiring of a part-time security officer is as deficient as hiring a part-time tutor for a child who cannot attend an over crowded school.

The Mitigation Plan does not address or increase in any way the necessary off-site police protection adequacy. Providing cameras and a security guard does not replace the off-site police protection that the additional residents will require, such as traffic enforcement and accident response for the additional residents, crime investigation, arrests, court appearances, communications and 911 services, fingerprinting and investigations on car thefts and break-in's, insurance loss police reports, personal property (e.g. boats in nearby marinas) theft and damage protection and reports, and public safety at neighboring restaurants, bars, stores and recreational area that residents will frequent. Nor will the on-site cameras provide police, safety or private property and traffic protection for the additional commercial customers while walking to, or driving to and parking near and walking to the site. This condition is all the more paltry and meaningless where it is already standard practice that commercial and residential properties provide security cameras. Virtually all other similar properties already have them.

. The capacity of the City's police protection facilities under the proposed mitigation plan **will not be equal to or greater than if this project had been developed** and the Mitigation Plan be vacated and denied as an arbitrary and capricious act, as an error of finding of fact and law, and an abuse of discretion by the Planning and Zoning Director.

**2. Recreation Facilities.** After the Board determined that the facility is inadequate

for this project, a new calculation was done and the recreational area was recalculated downward to 7,193 square feet out of the required 49,000 square feet. Not one foot of additional recreational space was added on site or off, and only the Fee in Lieu was increased to only \$21,000 despite the Board's articulated concerns in its finding at the decision hearing that the amount of recreational space was inadequate and that simply adding a curative provision of a small dollar amount for the fee in lieu could not cure it to meet the intended purpose and adequacy policy of Chapter 22.02.010.

The Director has the discretion and the power to determine the proportionate requirement of necessary space versus fee in lieu to assure that the project meets the stated goals of the APF Code "to ensure that the proposed project contributes to and is served by adequate recreational facilities". The recreational space is not sufficient as a matter of fact and law, and the fee in lieu requirement of \$21,000 cannot in any way as a matter of fact provide the necessary recreational space as required by the stated goal of the APF. The City is not limited to just holding its nose and accepting an insignificant fee in lieu amount with what is clearly an inadequate amount of recreational space for the project. There is nothing in the code or the standards that limit the Director from making the determination that the provided space is inadequate. The Director failed to consider or require that additional space be provided on-site or off-site be required to meet the stated goals and requirements of Chapter 22.

Further, as a matter of law, the City failed to consider or require other alternative, substantive increases to recreation space as permitted by the Code. Both the Code and the additional Standards promulgated state that standards and choices of providing adequate recreational space "**shall include but not be limited to**": a. the provision of space, b. fee in lieu, or c. a combination of the two. The Code clearly states that the City **shall not be limited to**

a, b, and c. and the City failed to consider as a matter of law, not only the proper proportionate requirement of space to fee in lieu, but also other meaningful options to provide additional recreational space, such as provide the legal assistance to clear the title on the Post Office Park to ensure that it is a public space, the requirement to lease or provide space for a dog park or play ground or arrange or lease a kayak launch site nearby.

This project as proposed would add 98 residential units with approximately 225 additional residents (2.3 persons per household per the Comp Plan) to a commercially zoned property which lacks sufficient park facilities in the area. The City's approval of the Mitigation Plan with 7,193 feet of space and a fee in lieu of only \$21,000 fails as a matter of fact and law, is arbitrary and capricious, and is an abuse of discretion because it does not make the adequacy of the facility "equal or greater than if the project had not been developed" and therefore must be vacated and denied.

**3. Traffic Impact.** The Board found that the City erred in its findings that "the determination that the traffic impact related to this project will have negligible impact when it is clear that current service is inadequate". The Board articulated the deficiencies at the decision hearing regarding the safety and not just efficiency of traffic flow at the intersections and streets abutting the project. The Board recognized deficiencies in the Traffic Study (Traffic Impact Analysis or TIA) as a matter of law and fact on which the City relied in the determination of adequacy, including the failure to **a.** collect data on three days (only one was used), **b.** collect data at peak hours (the school release hours were not included), and **c.** the use of the out-dated and stale data, **d.** the failure to cite or provide important data from outside the study that was used in the study, **e.** the study was done on a nice day in September and failed to include the impact of traffic accidents, community events and poor conditions. The Board specifically noted

that consideration was not given to the impact of anticipated traffic problems on the two main exit roads to the peninsula, flooding on Compromise Street and accidents on Forest Drive, as well as the placement and expected impact of the exit of the parking garage of the project so close to the difficult and unsafe intersection at Americana and Chesapeake Ave. Another deficiency identified by the Board which needed to be addressed was that the trip generation calculation relied on was not done using the updated ITE manual for a mixed use project and needed to be recalculated and considered in the remand.

The Director of the Department of Transportation's report found and acknowledged that the total traffic conditions do not satisfy the promulgated standards, and incomprehensibly recommended three conditions that could bring the project to the level of service that is adequate. One, that the light signal at Tyler and Bay Ridge be optimized (a condition in the prior plan). Two, that the creation of the left turn lane at the northbound intersection of Americana and Chesapeake be removed due to the insufficient turning radius for buses (although this was a necessary condition required in the traffic study in the determination that the light would then function at a D rather than E). Three, that "based on the accepted TIA, no impacts to bicycle, pedestrian or vehicular safety are anticipated as a result of the development, and the overall impacts due to the proposed development are anticipated to be negligible".

The City's approval of the Mitigation Plan that really only requires the signal optimization for the light signal at the Hilltop and Chesapeake and a "donation" of \$10,000 toward the cost is arbitrary and capricious, based on erroneous findings of fact and is an error of law, and is an abuse of discretion. The Mitigation Plan includes no additional requirements or conditions than the prior plan which was determined by the Board in the March 17, 2020 Final Decision to be inadequate. In fact, a prior necessary and important condition requiring the

creation of a turn lane to improve the functioning of the intersection at Americana and Chesapeake to a D rather than an E was removed, and no alternative mitigation provision was included to improve the traffic flow deficiency it was included to fix.

The Mitigation Plan is based on the improper determination as a matter of law and fact that the Traffic Impact Analysis (traffic study) completed in 2016 and March of 2017 is accepted and proper. No new or revised TIA was completed or considered as clearly anticipated by the Board's March 17, 2020 Order. The data collection relied on for the study was completed more than three years prior to the approval of the Mitigation Plan and is does not comply with the City's traffic study standards. The study data collection was not done in accordance with the standards as to the number of days collected and the hours of collection. The outside data was not cited or identified. The trip generation number was not recalculated using the proper, updated mixed use ITE model. The City's failure to require a new TIA or to independently address the Board's articulated concerns regarding the failure to give proper consideration of the impacts of weather, community events and impact of foreseeable traffic blockages at the two primary exit routes (Compromise and Forest), the negative impact of the project's parking exit so close to the intersection, and the impact of Postal Service delivery vehicles and traffic on the determination of adequacy of the Mitigation Plan, is an abuse of discretion, are based on an erroneous finding of fact and application of law and is arbitrary and capricious. A new traffic study must be required and basic failures addressed in the Mitigation Plan which would have a real impact on improvement of the facility, including but not limited to the reduction of the number of residential units, the requirement of the placement of a signal or four-way stop signs at the Americana and Monroe intersections, redirecting traffic to one way down Americana and Monroe, the relocation of the parking garage exit away from the intersection, etc. The Mitigation

Plan regarding traffic does not as a matter of law and fact address the inadequacy of the traffic impact facility, and does not make the adequacy of the facility “equal or greater than if the project had not been built”. It is an abuse of discretion for Director Nash to determine that the impact of the increased generation of trips for both 98 residential units AND the additional traffic for the additional 14,535 square feet of commercial space use (which was not determined by the updated ITE manual as required) will be negligible and will have no impact on adequate traffic and bicycle safety and flow at this project.

**4. Non-AutoTransportation.** The Board in the March 17, 2020 determined that the Non-Auto Transportation Facilities as provided and required in the project application were inadequate and unsupported by the evidence for this project, and that:

The evidence shows that the Director’s certification of adequacy ignores multiple opportunities to advance [the stated goals of the non-auto APFO] and, perhaps more importantly, fails to address the purpose of the APFO to assure that the proposed development protects the public health and safety and promotes the general welfare of the community. Those overlooked opportunities include the widening of sidewalks and reconfiguring of the road to allow insertion of a safe bike lane, and the development of a multi-modal transportation center.

Upon the remand, the City in the Adequate Public Facilities Report found the Non-Auto Transportation facilities are not adequate and proposed and approved a Mitigation Plan with eight conditions. These conditions are insufficient as a matter of fact and application of law to satisfy the APFO requirements for adequacy.

Five of the eight conditions required and approved in the mitigation plan were already required as Site Plan approval conditions issued in November of 2018 and therefore add nothing new to mitigate the inadequacy of the facility, including:

1. Painting bike sharrow markings along Chesapeake Ave.

2. Placement of 2 bike racks and a bike service station (A multi-modal transportation hub was required with bicycle parking and bike-share parking, without the specification of a bike service station)

4. Repainting and updating the sidewalk crossings at the front of the property at Americana, Bay Ridge and Monroe

5. Require that the sidewalks are ADA accessibility compliant (ADA only recommends that they be 5' (60") wide) and widen the sidewalk if there are obstructions (there are currently no obstructions like phone or sign poles in the plans as submitted).

8. Signal timing optimization as Bay Ridge and Tyler.

The three modest additions are:

3. Instillation of a 4' sidewalk along the other side of Norman drive at the back of the building.

6. The coordination with DPW to conduct a stop sign warrant analysis at the intersection of Chesapeake and Bay Ridge, and if warranted, a stop sign and non-electronic signage will be provided.

7. Require the applicant to give the new tenants (only one time for the first new tenants) a 30 day bus pass (Cost: \$80 for non-student and senior, \$40 for senior)

These mitigation conditions do not correct or mitigate the inadequacies as found by the Board in its decision. The sidewalks are not required to be widened in the front and side of the proposed building despite the finding that the width of 60 inches was insufficient for the expected resident and neighborhood use (the condition that they be adjusted by an obstruction is ineffectual and meaningless where there are no current obstructions in the sidewalk plans). The Director failed to apply the ITE Curbside Management Manual that recommends wider sidewalks for projects such as this one. The Manual refers to Washington D.C.'s standards that require 6' wide sidewalk in residential areas, 8' wide sidewalks in mixed commercial and residential areas and 10' wide sidewalks in higher use commercial areas. The addition of a 4' sidewalk on the other side of Norman does not mitigate the inadequacy of the narrow sidewalk in the front and side of the building where pedestrian, wheel chair, stroller, pet walking and bike traffic will be most

concentrated, and where the Board found the 6' wide requirement to be inadequate and unsafe due to the location and expected use.

Further, some requirements from the Site Plan Approval conditions (which are not subject to modification without recertification of the Site Plan) were improperly deleted and not included as conditions of adequacy. For example, Condition #8 requires the placement of a multi-modal transit location with a bike share parking, vehicle parking, Uber/Lyft parking. This was not done or required and was to be considered for placement on the widening parcel area. The determination that the 14 foot widening parcel is only 7 feet wide or less was not articulated and was improper as a matter of law.<sup>1</sup> The placement of the required multi-modal transportation hub can therefore only be placed close to the complicated intersection of Bay Ridge and Chesapeake and was found by the Board to be dangerous and inadequate.

The unsafe pedestrian conditions articulated by the Board at the intersection of Chesapeake and Bay Ridge near the bus stop and shelter, bicycle storage rack and presumed multi-modal hub location remain unsolved. The condition that the City conduct a Stop Sign Warrant Analysis does not require or ensure that one will actually be placed there. This should have been done BEFORE the plan was approved. Also, crosswalks and flashing electronic pedestrian crossing signs (such as those at Hilltop near the intersection at Spa Rd.) were not required which would provide for the safety and welfare of the new residents and all the school children and shopping pedestrians that cross dangerously along those two streets.

---

<sup>1</sup> The State Highway (Bay Ridge) was 40' wide when it was deeded to the city in 19xx by deed stating it is 40' wide, and the 1952 deed transferring the 14" strip states that it abuts and commences from the 40' street edge. The street to this day is still 40' wide and was never widened into the 14' strip. The Applicant's drawings are inaccurate and unfounded and the city has provided not Memorandum of Interpretation or explanation of its illogical determination.

No dedicated bike lane was required to comply with the standards of safety for riders on the dangerous streets and intersections on Chesapeake and Bay Ridge. No was connectivity of a dedicated bike lane achieved with the dedicated bike lane that exists further up on Tyler and Hilltop Lane and Bay Ridge Avenue.

A requirement that bus passes be supplied for only one month to residents does little to fix the constrained pedestrian paths, lack of safe bike lanes, lack of e-cruiser or bike share hub or the placement of a taxi/Uber/Lyft parking area necessary to encourage residents to forego car ownership. This plan is not in concert with the stated programmatic goals and recommendations of the Eastport Sector Study or Comprehensive Plan and does not promote the health and safety or the general welfare of the community as required.

The Mitigation Plan conditions and requirements as proposed are insufficient and inadequate as a matter of factual basis and application of legal requirements, and does not increase the capacity or safety of the non-auto facility requirements 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. Approval of this inadequate mitigation plan by the City, especially in the face of the Board's findings and directive to the City to take the overlooked opportunity to include the widening of sidewalks and reconfiguring the road to include a safe bike lane and the development of a multi-modal transport center, is based on erroneous findings of fact and application of the law and standards, and is arbitrary and capricious and an abuse of discretion by the City.

**5. Stormwater Management Facilities.** The Board specifically found in its March 17, 2020 Final Decision and Order the Stormwater facilities to be inadequate based on the determination that the out-flow of the storm water caused significant out-flow damage to the

creek and the published APF standards required that this be corrected. The Acting Director's APF report affirmatively states that the outfall site is experiencing erosion in the downstream channel, but without any rational or legal reason does not require that the creek bed stabilization be completed as part of the adequacy approval. It simply states that "this project does not show outfall repairs being completed as part of this project [sic] the developer is required to provide preliminary engineering design and to assist in the planning approval of a stormwater project associated with the restoration and improvements to the headwaters of Back Creek." In addition to dropping the creek restoration requirement as determined by the Board to be required by the City's adequacy standards, this new adequacy approval, without any articulated rational, reduced the financial contribution requirements of applicant from the initial approved APF condition of providing for the full cost of the engineering design, to only a cap of \$17,000 for the cost of the engineering design.

The Applicant must be required to either pay for the storm drain channeling remediation or approval must be withheld until such time as a grant is actually secured to do the required work. The hope that a grant may be secured sometime in the future is simply too speculative to support an adequacy determination where the damage to the creek is so immediate and significant. The City's failure to require actual remediation is not supported by the facts and is an error of law, an abuse of discretion and is arbitrary and capricious.

The APF Standards require the Applicant to inspect and report on the condition of the outfall pipe for any cracking, spalling, stability issues, and any other deficiencies in the Adequate Public Facilities Report. These defects were not reported and are deficient as a matter of fact and are deficient as a matter of law. The exhibits presented at the hearing by Mr. Rogers show significant damage and poor condition of the outflow pipe including debris, damage, leakage and

pooling. The City engineer acknowledged a significant defect where a 28” pipe drained into a 24” pipe. The inspection of the outflow pipe by the Applicant was not included in the Adequacy Report, nor were any of the existing, documented poor conditions included in the report as required. The cost of construction, repair and remediation of this outfall pipe was not included in the Adequacy Report and was not considered or addressed in the Mitigation Plan and is unsupported by the facts, is an error of law, is arbitrary and capricious and an abuse of discretion by the City.

The Stormwater APF report does not include, nor did the City provide a proper outflow capacity analysis of the stormwater capacity of this outfall pipe to include in the certification the abutting areas that also flow into that pipe. In calculating the *pro rata* share of cost for the Mitigation Plan payment of costs for creek remediation, the City calculated the storm water from the project to be a small proportion of the outflow of the pipe, yet the Adequacy Report and considerations were done only using a model for the outfall pipe to support only the project water and not the inflow from surrounding properties. This Adequacy Report and the Mitigation Plan therefore are erroneous as a matter of finding of fact, application of the law, are arbitrary and capricious and an abuse of discretion by the City.

The stormwater treatment calculations were not supported by the facts and are improperly calculated as a matter of law. The limit of stormwater disturbance is two acres, but the application uses the 6.75 acres for bioretention throughout the parking lot, not just the two acres used in the limit of disturbance. One quarter of the two acre site is a grassy area which is a permeable area, as acknowledged by the Applicant’s expert at the APF hearing, and is improperly classified as impervious surface as a matter of fact and law, and is arbitrary and capricious. The development plan as proposed increases the impervious surface area from the

existing area, as presented by environmental expert written testimony. The greater square footage will increase storm water outflow, causing increased erosion and scouring of the creek bed. This project was improperly classified as redevelopment versus new development in accordance with the definitions and Maryland Stormwater Management Guidelines (MDE) the appropriate limits to impervious surface were not applied.

The disruption of the contaminated soils on the property during the construction of all of the proposed storm water treatment and the NPDES request for approval has not been reviewed and certified by MDE, and the property is currently restricted to commercial use only. The necessary approval for the use of the property for residential use by MDE has not been granted and is an essential, preliminary determination necessary to protect the health and safety of the public. The Applicant represented at the prior appeal that this would have been done shortly, but it has not yet been granted. The failure to require MDE certification for the disruption of the soil and the requirement that MDE change its restriction for the use of the property from erroneous finding of fact, error in law, is arbitrary and capricious and is an abuse of discretion by the City.

The Applicants have acknowledged that they do not own the parcel of property referred to as the “Widening Strip” along the front of the property along Chesapeake Ave. from Monroe to the intersection of Chesapeake and Madison. The Board’s Order directed the City to ascertain whether the Applicant has sufficient rights to use that property. The evidence presented by the Appellants including a Title Search and Property Survey Report and drawings from a licensed surveyor show that the 14’ parcel extends from the sidewalk curb, over the planting berm and several feet into the existing parking spaces. The Applicant’s defense that the road was widened after the deed of transfer of the 14’ parcel is not support by any evidence or fact. The drawings

submitted by the Applicant are unsigned by an non-licensed person and the plat and plan drawings showing 7' of the 14' parcel on the other side of Bay Ridge Ave. are an attempt to obfuscate the real problem and are inaccurate as a matter of fact and law. The stormwater calculations improperly include the footage from the full impervious berm area (even when the Applicants assert that the widening parcel extends only half way through it), and are incorrect and not supported by the evidence and are an error of law and are arbitrary and capricious and the approval of the storm water APF report as adequate and the Mitigation Plan that does not address this is an abuse of discretion by the City. The proper determination of ownership of this parcel likewise effects the Traffic and Non-Auto APF considerations as to the options for widening sidewalks and the placement of the multi-modal transportation center as required by the Cite Plan Approval conditions. The City's failure to determine that the Applicants do not have right to use this parcel is an error of finding of fact and application of law and is an abuse of discretion.

The City's approval of the Mitigation Plan regarding Stormwater Adequacy which does not effectively address the inadequacy of the stormwater facility and does not make the adequacy of the facility "equal or greater than if the project had not been developed" and must be denied and vacates as erroneous finding of fact and application of law, arbitrary and capricious and an abuse of discretion by the City.

Appellants reserve the right to amend the statement of grounds for appeal as the facts and circumstances warrant, particularly in light of the fact that the record in this case as persevered and made available to the public and the appellants by the City website Etrakit is not functioning and has not been functioning since early September.

**Summary.** The publication of somewhat more detailed APF standards and the

somewhat more detailed responses by the Department Directors without any necessary and meaningful modifications and improvements to the project or a substantive mitigation plan again fails to meet the Adequate Public Facility requirements that were of concern to the Board of Appeals. The same September of 2018 project plans without any modifications were prematurely sent back by the Departments despite the Board's determination of inadequacy, clear rebuke and admonishment. The City once again approved the plans with minimal to no mitigation conditions which do not address and ameliorate the areas that were clearly deemed deficient by the Board. The City feels constrained to require any adequacy improvements over the lowest minimum required standards (see Attachment A, Letter from Dir. Nash) which were deemed inadequate, and the City failed to exercise the required discretion to require the necessary improvements to the public facilities that a project of this size and location requires as a matter of fact and law. The actions by the City are an abuse of discretion and are arbitrary and capricious. The Board properly exercised its discretion as required by the language and intent of Chapter 22.02.010 and found that the minimum standards as presented in the project design were simply not adequate based on the testimony and evidence received.

At the very least, the inadequacies noted required a new robust plan by the Applicant to be developed with the input of the community through meetings and at a comment period prior to approval by the City. Instead, the City has entered into a clearly inadequate Mitigation Plan based on erroneous findings of fact and application of law without ANY input or review from the appellants, neighborhood associations or representatives, as was assured by the City and these failures are emblematic of the City's recurring failure to safeguard the "public health and safety, promote the general welfare of the community, and conserve the environment" as required by the Adequate Public Facilities Ordinance and the Board's decision.

WHEREFORE, for the reasons set forth herein, the Appellants ask that the Board of Appeals:

1. Direct that the full record in this case, including the exhibits, resident submissions and evidence of the initial hearing and in this remand review appeal be transmitted to the Board;
2. Set this matter in for a hearing before the Board on the merits of the appeal;
3. Vacate and deny the Applicant's Application for Adequate Facilities Certification and Mitigation Plan as inadequate as a matter of law and based on erroneous findings of fact, as arbitrary and capricious, and as an abuse of discretion by the City J with specific findings as to the areas of inadequacy;
4. Such other and further relief as the Board deems necessary and proper.

---

Stephen H. Rogers, *pro se*  
515 4<sup>th</sup> St.  
Annapolis, MD 21403  
(443) 871-5610  
Appellant  
Owner of 815 Chesapeake Ave.  
Annapolis, MD 21403

---

Charles H. Henney, Jr.  
826 Chesapeake Ave  
Annapolis, MD 21403  
(443) 454-0521  
Appellant

Respectfully submitted,

---

Heidi L. Halleck, Esq.  
Walsh, Becker  
#9006280102  
14300 Gallant Fox Lane, #218  
Bowie, MD 20175  
(301) 262-6000 x1488  
[HalleckEsq@Yahoo.com](mailto:HalleckEsq@Yahoo.com)  
Counsel for Charles H. Henney, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was emailed and mailed on this \_\_\_ day of October, 2020 to Joel Braithwaite, Esq., Asst. City Atty, 160 Duke of Gloucester St., Annapolis, MD 21401, and to Alan J. Hyatt, Esq., Hyatt & Weber, P.A., 200 Westgate Cir. #500, Annapolis, MD 21401, counsel and agent for Applicants.

\_\_\_\_\_  
Heidi L. Halleck, Esq.