

**FINDINGS AND RECOMMENDATION  
OFFICE OF PLANNING AND ZONING  
ANNE ARUNDEL COUNTY, MARYLAND**

**APPLICANT:** Lidl US Operations, LLC  
(Contract Purchaser)

**ASSESSMENT DISTRICT:** 2<sup>nd</sup>

**CASE NUMBER:** 2016-0093-V, 0094-V, 0095-V **COUNCILMANIC DISTRICT:** 6<sup>th</sup>

**HEARING DATE:** January 19, 2017

**PREPARED BY:** Sara Anzelmo  
Planner II

**REQUEST**

The applicant is requesting a use variance to allow a grocery store with greater floor area than allowed and with less rear service area than required in a C1 – Local Commercial District on property located on Bay Ridge Road in Annapolis.

**LOCATION AND DESCRIPTION OF SITE**

The subject site consists of nine tax account numbers totaling 5.27 acres+/- of land and is located with 420+/- feet of road frontage on the south side of Bay Ridge Road, 0 feet southwest of Georgetown Road. It is identified on Tax Map 57A as Lot 6 of Parcel 861, Parcel 862, Lot 7 of Parcel 863, Lot 7 of Parcel 864, Lot 8 of Parcel 867, and Parcel 868 in Block 8; Lot 6 of Parcel 762 and Parcel 765 in Block 7; and Lot 1 of Parcel 1405 in Block 14.

The subject property is split zoned. It is predominantly zoned C1 – Local Commercial District with a narrow sliver of R1 – Residential District zoning along the east side property line and a narrow sliver of R2 – Residential District zoning along the rear property line. The current zoning was adopted by the comprehensive rezoning of Councilmanic District 6 zoning maps, effective October 7, 2011.

The site is not waterfront and is not located within the Chesapeake Bay Critical Area overlay. It is currently improved with various dilapidated commercial and residential structures, various storage sheds, and various driveways and paved areas. (See existing conditions plan.)

**APPLICANT'S PROPOSAL**

The applicant proposes to demolish the existing improvements and to redevelop the site with a 36,185 square foot grocery store building with a sales floor area of 22,837 square feet.

**REQUESTED VARIANCES**

§ 18-5-102 of the Anne Arundel County Zoning Code lists the permitted, conditional and special exception uses allowed in C1 – Local Commercial Districts. While grocery stores are among the

permitted uses, the use includes a maximum size limit of 25,000 square feet. The proposed grocery store would be 36,185 square feet, necessitating a variance of 11,185 square feet.

§ 18-5-201 of the Code provides that the maximum size of a retail or other single use establishment in a C1 – Local Commercial District shall be limited to 25,000 square feet of floor area. The proposed grocery store would be 36,185 square feet, necessitating a variance of 11,185 square feet to this bulk provision.

§ 18-5-201 also requires that the building shall be accessible by a 15-foot wide unobstructed right-of-way. The applicant has requested a variance to remove the rear drive aisle requirement in order to allow more square footage for afforestation and stormwater control.

## **FINDINGS**

A review of the County 2016 aerial photograph shows that the subject property is slightly irregular in shape and abuts commercially zoned and developed properties to the west, east, and north including a large retail shopping center containing a Giant grocery store. The property abuts residentially developed properties to the south.

The applicant's letter explains that the intent is to combine the parcels and to create a small and unique food shopping experience to satisfy the public need. The property fronts along Bay Ridge Road, which is a heavily traveled five-lane arterial road. The applicant notes that the road frontage and visibility are crucial for the business and its success and that a sales floor area of 22,837 square feet is required in order to have a viable enterprise, which in turn requires the building size to be 36,185 square feet. The applicant concludes that the variance is the minimum necessary to allow the applicant to meet its project purpose and the existing community needs. While the 22,837 square foot retail floor area will comply with the 25,000 square foot size limitation of § 18-5-102 and § 18-5-201 of the Code, the associated product storage results in an overage, necessitating a variance.

The **Development Division** commented that a revised plan was provided on January 6, 2016 that begins to address concerns the Division raised in a December 13, 2016 meeting, by revising the parking layout to preserve healthy specimen trees. However additional changes may be needed at the time of Preliminary Plan approval and grading permit review. The applicant will have to get a revised MDE permit for impacting the nontidal wetlands since this plan does not match what MDE previously reviewed and approved under the City's annexation plan. Demonstrating avoidance and minimization of the wetland impacts will be the responsibility of the applicant. Modifications for specimen tree removal and wetland impact will be processed with the Preliminary Plan and will be dependent on the outcome of the MDE review and further discussions with the applicant regarding the parking layout. A reduction in parking could be considered to preserve additional environmental features if the applicant provides connectivity and joint parking arrangement within the adjacent "Bay Village" site.

The **Department of Inspections and Permits (Engineering Division)** commented that the site is being evaluated as a Preliminary Plan under SDP No. C-2016-0045-00-PP. There are no engineering or utility objections to granting the zoning variances provided all engineering and utility comments, as part of the Preliminary Plan process, are addressed.

**The Health Department** commented that the property is served by public water and sewer facilities. The Department has no objection to the variance request.

For the granting of a variance, a determination must be made as to whether because of certain unique physical conditions peculiar to and inherent in the property, strict implementation of the Code would result in an unwarranted hardship. The Code is silent with regard to use variances, as they are typically considered to be tantamount to a rezoning. However, in this case, the Code specifically permits a grocery store in the C1 District, but limits the size to 25,000 square feet. This is unique in the Zoning Code because the building area was included in the use chart rather than being made a condition of the use, which is typically how the Code is constructed and applied. As a result, the applicant is seeking a use variance in addition to a size variance.

C1 Districts are typically smaller isolated commercial sites strategically located within the interior of residential areas at a collector roadway intersection, which are intended to serve the day to day commercial needs of the immediate neighborhood population. In order to ensure that these commercial establishments only draw patrons from the immediate surrounding neighborhood, the size of establishments are restricted. However, the subject C1 District is not an isolated site located within a residential area; rather, it is located along a heavily commercialized arterial roadway located at the periphery of a residential neighborhood where a larger establishment may be appropriate and warranted. The properties to the north and east of the subject property are located in the City of Annapolis and are zoned "B2 Community Shopping District", which provides for a wider range of uses than their less intense "B1 Convenience Shopping District". It is noted that a larger grocery store<sup>1</sup> is located almost directly across Bay Ridge Road from the subject site. The proposed variance provides for a land use that is both consistent and appropriate with the zoning in Annapolis City. Denial of a variance to allow for a larger grocery store than what is currently permitted in the C1 District, given the unique location and particular land use context inherent to the property, would cause an unwarranted hardship in the use of the property.

As for the variance to the required 15-foot rear service area, the applicant is providing adequate loading facilities in lieu of the required rear service area to the satisfaction of this Office.

Approval of the variances would not alter the essential character of the neighborhood, as the C1 – Local Commercial District site is located amongst other commercially zoned and developed properties (including a large grocery store across the street) and on a heavily traveled arterial road rather than the interior of a residential neighborhood. The proposed grocery store, while larger than specified in the Code, is still relatively small with a 22,837 square foot floor area; and, it is the opinion of this Office that it would not undermine the planning objective of the provision, which is to prevent larger community and regional scale establishments from locating within the interior of a neighborhood. It should be noted that the proposed grocery store is still smaller than the typical sized grocery store of industry majors located in a similar setting, which is approximately 45,000 to 50,000 square feet. The variances would not substantially impair the appropriate use or development of adjacent property because the proposal would comply with the setback requirements from all property lines, would be located well away from structures on

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<sup>1</sup> The Giant Grocery Store located at 948 Bay Ridge Road has 53,700 square feet of floor area.

abutting lots, and would be required to comply with the County Landscape Manual. The variances would not be detrimental to the public welfare and are deemed to be the minimum necessary in this case.

**RECOMMENDATION**

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends ***conditional approval*** of a use variance to § 18-5-102 and zoning variances to the bulk provisions of § 18-5-201 to allow a 36,185 square foot grocery store that does not provide a 15-foot unobstructed rear service area in a C1 District. Approval of the variances should be conditioned on addressing the unresolved site planning issues to the satisfaction of the Development Division and on obtaining a revised MDE permit for impacting the nontidal wetlands.

This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.

  
LGR / SLA



County Executive Steven R. Schuh

**Office of Planning and Zoning**

***INTER-OFFICE CORRESPONDENCE***

**DATE:** January 12, 2017  
**TO:** Lori Rhodes, Planning Administrator, Zoning Division  
**FROM:** Don Zeigler – Development Division—Regional Team  
**VIA:** Courtney Wilson, Planning Administrator, Regional Team  
**SUBJECT:** 2016-0093-V, 2016-0094-V, 2016-0095-V Lidl Annapolis

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This memo is in response to your request for comments regarding a “Use” Variance for the above site to allow a grocery store with greater floor area than allowed in a C1 (Local Commercial) District. The applicant also needs zoning relief to allow a rear service area that does not meet area requirements. The site is a collection of nine parcels that contain vacant and dilapidated residential and retail buildings. The site has a combined acreage of 5.28 acres and is zoned C1. The site is located on the south side of the Bay Ridge Road and Georgetown Road intersection. The property fronts along Bay Ridge Road which is a major arterial road for the County and the City of Annapolis. To the north of the proposed grocery store are retail stores located in the City of Annapolis, to the west is a small shopping center and to the south and east are single family residential dwellings

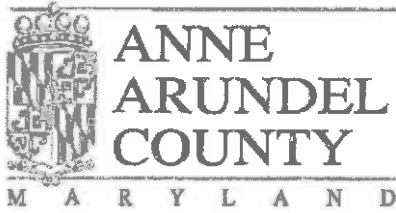
Per Section 18-16-304(a)(5) and (9), this Office offers the following comments:

The Development Division defers to Zoning and the Hearing Officer on whether the variance meets the required criteria in Article 18 and whether the previous annexation application to the City of Annapolis and the City's Comp Plan have any bearing on the proposed layout.

A revised plan was provided on January 6, 2016 that begins to address concerns we raised in a December 13, 2016 meeting by revising the parking layout to preserve healthy specimen trees. However additional changes may be needed at time of Preliminary Plan approval and grading permit review.

The applicant will have to get a revised MDE permit for impacting the nontidal wetlands since this plan does not match what MDE previously reviewed and approved under the City's annexation plan. Demonstrating avoidance and minimization of the wetland impacts will be the responsibility of the applicant. Modifications for specimen tree removal and wetland impact will be processed with the Preliminary Plan and will be dependent on the outcome of the MDE review and further discussions with the applicant regarding the parking layout. A reduction in parking could be considered to preserve additional environmental features if the applicant provides connectivity and joint parking arrangement within the adjacent “Bay Village” site.

Cc: Courtney Wilson, Don Zeigler, Janet Scott



*Department of Inspections and Permits  
2664 Riva Road, Annapolis, MD 21401*

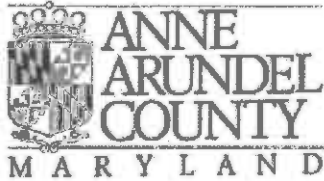
***Interoffice Memo***

**To:** Krystyna Lane, OPZ Zoning Division  
**From:** Brad Bodman, Dept. of Inspections and Permits, Engineering Division *BB*  
**Date:** December 27, 2016  
**Subject:** Lidl Annapolis - Zoning Variances  
941 Bay Ridge Road, Annapolis, MD 21403  
2016-0093-V  
2016-0094-V  
2016-0095-V  
Variance Review

**Engineering and Utility Review**

The above-referenced project has been reviewed for Public Works and Utility issues and the following comments apply:

This site is being evaluated as a Preliminary Plan under SDP No. C-2016-0045-00-PP. There are no engineering or utility objections to granting the abovementioned zoning variance applications provided all engineering and utility comments, as part of the Preliminary Plan process are addressed.



Anne Arundel County Department of Health  
J. Howard Beard Health Services Building  
3 Harry S. Truman Parkway  
Annapolis, MD 21401  
Phone 410-222-7193 Fax 410-222-7479  
Maryland Relay (TTY users): 1-800-735-1158  
www.aahealth.org

**Jinlene Chan, M.D., M.P.H.**  
**Health Officer**

**MEMORANDUM**

**TO:** Krystyna Lane, Zoning Applications  
Planning and Code Enforcement, MS-6301

**FROM:** Albert Herb, Program Manager  
Bureau of Environmental Health

**DATE:** November 18, 2016

**RE:** Samarus Gran Children Property  
Lot 6 Bay Ridge Road, Annapolis, 21403

**CASE**  
**NUMBER:** 2016- 0093-V

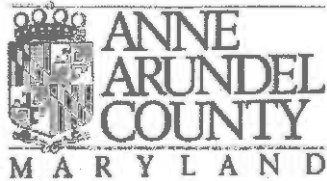
**SUBJECT:** Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance request allow a grocery store with greater floor area than allowed in a C1-local commercial district, and with less rear service area than required. The Health Department offers the following comments:

The Health Department has reviewed the above referenced request. The property is served by public water and public sewer facilities. The Health Department has no objection to the above referenced request.

If you have further questions or comments, please contact J. T. Gruver at 410-222-7194.

**cc:** Lori Rhodes  
File



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**Jinlene Chan, M.D., M.P.H.**  
**Health Officer**

### MEMORANDUM

**TO:** Krystyna Lane, Zoning Applications  
Planning and Code Enforcement, MS-6301

**FROM:** Albert Herb, Program Manager  
Bureau of Environmental Health

**DATE:** November 18, 2016

**RE:** Annapolis Neck, LLC  
914 Bay Ridge Road, Annapolis, 21403

**CASE**  
**NUMBER:** 2016- 0094-V

**SUBJECT:** Variance/Special Exception/Rezoning

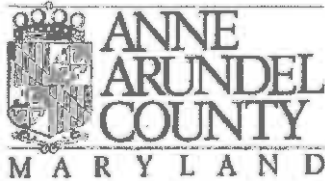
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### MEMORANDUM

**TO:** Krystyna Lane, Zoning Applications  
Planning and Code Enforcement, MS-6301

**FROM:** Albert Herb, Program Manager  
Bureau of Environmental Health

**DATE:** November 18, 2016

**RE:** Samaras Grandchildren Property  
929 A Bay Ridge Road, Annapolis, 21403

**CASE**  
**NUMBER:** 2016- 0095-V

**SUBJECT:** Variance/Special Exception/Rezoning

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