

Benjamin S. Wechsler ♦ 443-949-3041 ♦ bwechsler@yvslaw.com

June 13, 2025

**VIA ELECTRONIC MAIL**

Ms. Sterling Seay  
Anne Arundel County  
Office of Planning and Zoning  
2664 Riva Road, 3rd Floor  
Annapolis, MD 21401

Re: Shipley Homestead  
Special Exception and Variance Application to Revise a  
Planned Unit Development  
Tax Map 14, Parcel 11 (the "Property")  
Letter of Explanation

Dear Ms. Seay:

This Firm represents Shipley Homestead Partners, LLC (the "Applicant") regarding the enclosed special exception and variance applications proposing to modify a Planned Unit Development ("PUD") on a property within the BWI/Fort Meade Growth Area immediately across Route 175 from north gate to Fort George G. Meade (the "Application").

The Applicant seeks to modify the previously-approved Special Exception No. 2018-0268-S for the Shipley's Homestead PUD, and also seeks a related Variance. Specifically, the Special Exception modification seeks approval to develop townhomes in the previously designated commercial area located in the C3 district. The applicant also seeks a variance to reduce the minimum area of land dedicated to commercial uses from 25% (as set forth in Anne Arundel County Code Section 18-12-203(e)) to as little as 12%

The Special Exception and Variance, if granted, will allow the Applicant to develop up to 147 townhome units, which will help address the profound housing shortage and affordability crisis in Anne Arundel County in general, and in the Fort George G. Meade area in particular. This new housing project can be provided only if the required minimum commercial component of the PUD is reduced from 25% to 12%.

The Applicant continues to look for retail partners to provide some additional retail. Thus, the request for the PUD amendment is to allow *up to* 100% of the remaining C3 land to be dedicated to residential townhome use, while giving the Applicant the flexibility to develop up to three commercial pad sites if a suitable end user is identified. Any such development would result in the net reduction in the allowance for up to 147 townhomes that is being requested.

## **Background and Executive Summary**

The PUD was approved in Case No. 2018-0268-S. The PUD covers a total of 95.66 gross acres, split between 56.06 acres of R5-Residential District and 39.60 acres<sup>1</sup> of a C3-General Commercial District. The overall PUD (including both the R5 and the C3 acreage) allowed for a total of 641 dwelling units and up to 120,000 square feet of commercial uses within this acreage.

Within the C3 component, the PUD approval contemplated a total of up to 400 dwelling units (at a net density of 11 units per acre),<sup>2</sup> as well as 120,000sf of retail to be located within a retail lot. This was in addition to 241 residential units allowed on the R5 portion of the property (at a net density of 4.5 units per acre).

The original 2018 PUD was approved pursuant to Anne Arundel Code Section 18-12-203(e), which allows PUDs in the C3 zoning district if the property is within the BWI/Ft. Meade Growth Area, provided that “when residential and commercial uses are contained in separate structures, at least 25% of the land area shall consist of commercial uses, including structures, parking, access and open areas used for stormwater management and landscaping.”

As originally approved in the PUD, the commercial component exceeded the 25% requirement, and allowed for the development of several commercial pad sites along Route 175, a gasoline station, as well as a grocery store, with a total allowance of up to 120,000sf of retail.

The R5 residential component was completely built out at the permitted 241 residential units, and no changes are sought to this portion of the project in this Application.

The C3 portion of the PUD is the subject of this Application. Of the 400 originally-permitted residential units, a total of 71 single-family attached (e.g. townhomes) have been completed, with an additional 44 townhomes being fully permitted, as well as 128 condominium units. Overall, this leaves an allowance of 157 unbuilt and undeveloped residential units.

A relatively small portion of the 120,000sf of retail/commercial has been developed. The Royal Farms (located on a 2.41 acre parcel) has been developed (consisting of approximately 4,650 square feet of interior finished area). The balance of the commercial area was intended for an anchor grocery store and several retail pad sites. Despite many years of efforts (as set forth in greater detail below), no grocer has expressed interest in this site, despite extensive efforts and outreach.

In the same period (from 2018 to today), Anne Arundel County’s housing crisis has deepened, and COVID has permanently changed consumer habits, leading to much more widespread and diverse food delivery infrastructure.

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<sup>1</sup> While the gross acreage of this parcel is 39.60 acres, the net acreage (after factoring out floodplain areas) is 36.84 acres.

<sup>2</sup> The 400 units approved for the C3 acreage is significantly less than the 552 units that could have been permitted within the C3 (15 units/acre \* 36.84 net acres).

Given the passage of time and corresponding changes to housing and consumer demand, the Applicant now seeks approval to modify the original Special Exception approving the PUD. The Application, as set forth in greater detail below, consists of two main components.

- First, the applicant seeks a modification of the PUD to change the previously designated commercial area to an additional residential area. The applicant seeks to develop up to 147 townhomes in the area where the 94,000 square-foot commercial building was intended to be located. Due to the allowance of 157 units as originally permitted by the 2018 PUD, the applicant is not seeking to increase the total number of units beyond what was originally permitted.
- Second, the Applicant seeks to reduce the remaining commercial component by eliminating the anticipated grocery store. This change requires a modification to the existing Special Exception, as well as a variance to Anne Arundel County Code Section 18-12-203(e) to reduce the minimum commercial component from 25% to 12%.

These changes are consistent with various housing and commercial trends in Anne Arundel County, and will allow the overall PUD to comply with each of the Bulk Regulations for PUDs contained in Code section 18-12-203 (with the exception of the 25% commercial component, which is the subject of the variance).

Over the seven (7) years since the original PUD Special Exception Approval, the need for housing—particularly housing choices for all different stages of life and income levels—has increased significantly. As a result, the County Code has been amended on multiple occasions in order to liberalize and increase permissible density in commercial zones. In addition, changing consumer habits have made it increasingly difficult to develop the anticipated grocery store or other retail and commercial uses.

#### **Description of the Property:**

The Applicant is the owner and developer of 95.66 gross acres of land (90.55 net acres) which is part of the Shipley Homestead subdivision and development. The property is located north of Maryland Route 175 (Annapolis Road) and east of the Baltimore-Washington Parkway, shown on the Administrative Site Plan, attached as **Exhibit A**. Currently, 11.8 acres of the Property in the eastern most portion of the PUD remains undeveloped.

The Property is split zoned R5-Residential District (56.06 acres) and C3-General Commercial District (39.60 acres) with the subject parcel located in the C3 zoning district. The site is within the BWI-Fort Meade Growth Area, a Managed Growth Development Policy Area, and a Priority Funding Area. The Property is not located within the critical area. The Warfield Family Cemetery is located across the street and is protected by easement; it will not be disturbed or impacted by the changes to the PUD that are proposed.

### **Detailed History of the PUD:**

In 2019, the Administrative Hearing Officer granted the Applicant's original special exception request pursuant to § 18-12-201 to allow a PUD of 641 dwelling units and up to 120,000 square feet of commercial uses in a R5 district and C3 district, decision attached as **Exhibit B**.<sup>3</sup> The PUD intended to develop 241 dwelling units (townhouses and detached single family units) in the R5 district and 400 dwelling units (townhouses, semi-detached, multi-family, condominiums or apartments) in the C3 district, as well as an automobile gasoline station in the southern portion of the property and a commercial space in the eastern portion. The Applicant intended for the commercial portion of the PUD to be used as a grocery store and some secondary pad sites.

Since the original PUD special exception was approved, the Applicant has completed building 241 single family detached homes and townhouses in the R5 district and 71 single family attached townhomes in the C3 district. The Applicant is currently in the process of securing permits for an additional 44 townhomes and 128 condominium units in the C3 portion of the PUD. The site was also improved with an automobile gasoline station that was granted in the adjoining original special exception decision.

The Applicant, however, was not able to develop the commercial parcel located on Parcel 3C3 despite extensive efforts. In the past 7 years the Applicant has approached but found no interest by Safeway, Harris Teeter, Giant Food, Aldi, Lidl, Sprouts and Wal-Mart Neighborhood Market. The Applicant speculates this is likely because of the Food Lion located in the Ridgeview Plaza Shopping Center located directly across the street from the site and the proximity to multiple grocers in the nearby Arundel Mills area.

Despite interest from other retail users, the inability to secure a grocery store ultimately prevented the Applicant from marketing the rest of the retail property. Each grocer has unique and unpredictable restrictions on the type of business permitted to coexist in their centers. Consequently, the Applicant was unable to pursue other retail users due to unpredictable and unknown competition restrictions and visibility constraints that a grocer may have objected to.

It is the Applicant's desire to continue to pursue alternate commercial retail opportunities without the restrictions and roadblocks imposed by a grocery store. In the event this proves to be an impossible task, the PUD Variance will offer the flexibility to complete the community as residential townhomes

### **Development Proposal:**

The Applicant is proposing a revision of the PUD so the property can be developed with up to an additional 147 townhomes.

The current undeveloped 11.8 acre parcel was originally anticipated to be developed with 94,000 square-feet of commercial and retail. A multi-year effort to attract a grocery store to this site has been unsuccessful, and thus the acreage dedicated to the commercial development is being

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<sup>3</sup> This decision also granted the special exception request in application 2018-0269-S to allow for an automobile gasoline station with convenience store and carwash in a C3 district pursuant to § 18-11-206.

proposed to be reduced from 25% to 12%, which accounts for the existing Royal Farms development along the north side of Maryland Rte. 175/Annapolis Road immediately west of Maryland Rte. 713/Ridge Road.

In order to accomplish this goal, the Applicant is seeking a special exception to amend the original PUD (to allow the development of up to 147 townhomes in the previously intended commercial site in the C3 district) as well as a variance to reduce the 25% commercial use requirement as set forth in § 18-12-203(e) to a more reasonable 12%.

The Applicant continues to look for retail partners to provide some additional retail. Thus, the request for the PUD amendment is to allow *up to* 100% of the remaining C3 land to be dedicated to residential townhome use, while giving the Applicant the flexibility to develop up to three commercial pad sites if a suitable end user is identified. Any such development would result in the net reduction in the allowance for up to 147 townhomes that is being requested.

#### **Special Exception:**

The applicant seeks a special exception for the modification of the Planned Unit Development in order to develop the previously proposed commercial parcel into additional residential units. The requirements for PUDs are set forth in § 18-12-201 et seq. with the bulk regulations contained in § 18-12-203 and outlined below.

(a) Generally. Bulk regulations relating to lot size, setbacks for principal and accessory structures, spacing between structures, and height limitations shall be proposed by the developer in a submittal of specific development and design standards and, if approved by special exception, shall govern the development of the PUD.

(b) Setbacks if PUD abuts residential. When a structure in a PUD is located within 50 feet of the boundary line of a residential district, the setback for the structure shall be the more restrictive of the setback requirements for the abutting residential zoning district or for the zoning district in which the structure is located.

(c) Density. The density of development in a PUD may not exceed the density allowed by the zoning district in which the development is located. A PUD in a C2 or C3 zoning district may not exceed 15 dwelling units per net acre.

(d) Retail use. A single retail use may not exceed 65,000 square feet.

(e) Additional requirements for PUDs in C2 and C3 zoning districts. A PUD in a C2 or C3 zoning district may be permitted as a special exception only in the BWI/Ft. Meade Growth Area as shown on the official map adopted by the County Council in Bill No. 55-16 and entitled "BWI/Fort Meade Growth Area". A variance to allow a PUD in a C2 or C3 zoning district not shown on the official map is not permitted. When residential and commercial uses are contained in

separate structures, at least 25% of the land area shall consist of commercial uses, including structures, parking, access, and open areas used for stormwater management and landscaping. When residential and commercial uses are contained in the same structure, at least 25% of the floor area of the structure shall consist of commercial uses.

The Applicant does not wish to disturb the majority of what was granted in the special exception decision and will continue to adhere to all regulations in this modification. Specifically, the setback requirements for the R5 district portion of the PUD that abuts an R1 district to the east and R2 to the west will remain unchanged (§ 18-12-203(b)), as well as the maximum square footage requirements in a single retail use (§ 18-12-203(e)). The maximum density calculations will also remain unchanged and the proposed additional dwellings will not exceed the 641 dwelling units allowed under the current PUD and it will certainly not exceed the 820 maximum allowed dwelling units under the Code.<sup>4</sup> Additionally, the design guidelines from the original PUD application will be applied to the new townhome development, ensuring aesthetic and architectural continuity with the remainder of Shipley's Homestead.

Section 18-16-304 of the Code sets forth the general requirements for special exceptions. To begin, the proposed modification is not detrimental to the public health, safety, and welfare, Code § 18-16-304(1). This property is especially sensitive to public safety concerns due to sensitivity around the horrific incident regarding the shooting of a real estate agent that occurred in a model home in the existing surrounding neighborhood. The Applicant believes the change from commercial to residential will ease some of those concerns as there will be less traffic from people outside of the neighborhood.

The location, nature, and height of each building, wall, and fence, the nature and extent of landscaping on the site, and the location, size, nature, and intensity of each phase of the use and its access roads will be compatible with the appropriate and orderly development of the district in which it is located. § 18-16-304(2).

Operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in other uses allowed under article 18. § 18-16-304(3). Nearby properties include both the already existing residential properties in Shipley's Homestead as well as commercial properties including the gas station and convenience store located within the PUD and the shopping center across the street. This application includes both residential and a small commercial aspect, in conformance with the nearby properties.

The use at the location proposed will not have any adverse effects above and beyond those inherently associated with the use irrespective of its location within the zoning district § 18-16-304(4). As stated above, similar uses surround the properties.

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<sup>4</sup> This number was calculated in the original application and it is based on the maximum density of 5 dwelling units per net acre allowed in the R5 district (where the area in the R5 district totals 53.6 net acres) and the maximum density of 15 dwelling units per net acre allowed in the C3 district (where the area in the C3 district totals 36.84 net acres). Given that there are 484 units already built or in the process of being built (241 units in the R5 district and 243 in the C3 portion of the PUD), there is a balance of 157 units. The applicant is not requesting more units than what was previously granted.

The proposed residential units and commercial sites will not conflict with an existing or programmed public facility, public service, school, or road. Code § 18-16-304(5).

The Applicant anticipates that this application will receive a favorable written recommendation from both the Health Department and the Office of Planning and Zoning. Code § 18-16-304(6).

The proposed use is consistent with Plan 2040, the new County General Development Plan, adopted by the County Council as Bill No. 11-21. § 18-16-304(7).

As will be shown by evidence at the hearing, there is a public need for the residential housing. Code § 18-16-304(8).

The use will meet and be able to maintain adherence to the criteria for the specific use. Code § 18-16-304(9) as discussed more fully below and shown on the Plan.

The requirement that the application conform to the critical area criteria is inapplicable because the Property is not located in the Critical Area or a Bog Protection Area. Code § 18-16-304(10).

The administrative site plan demonstrates the Applicant's ability to comply with the requirements of the Landscape Manual. Code § 18-16-304(11).

#### **Variance:**

The Applicant seeks a variance from the commercial use requirements for a PUD in a C3 district to reduce the 25% minimum commercial use component to as little as 12%.<sup>5</sup> In accordance with § 18-12-203(e) “[w]hen residential and commercial uses are contained in separate structures, at least 25% of the land area shall consist of commercial uses, including structures, parking, access, and open areas used for stormwater management and landscaping. When residential and commercial uses are contained in the same structure, at least 25% of the floor area of the structure shall consist of commercial uses.”

The original PUD proposed 24 acres of commercial uses, meeting the minimum 25% requirement of 23.9 acres. Due to exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties and unnecessary hardship that has come with the development of this property § 18-16-305(a). After the extensive efforts explained above, the Applicant has not been able to fill the undeveloped space in the past 7 years and there are no realistic prospects of that changing. Due to the need for additional housing in the County, the applicant believes the best use for the Property is additional residential dwellings. In order to complete this goal, the applicant requests a variance for a decrease of the 25% (23.9 acres) requirement to 12% (11.5 acres).

Section 18-16-305 of the Code sets forth the requirements for granting a zoning variance. Variances may be granted when the Administrative Hearing Officer finds “that practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article,

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<sup>5</sup> It is possible that the fully developed lot will include additional commercial area exceeding 12% or 11.5 acres.

provided the spirit of law is observed, public safety secured, and substantial justice done.” A variance may only be granted if the Administrative Hearing Officer affirmatively finds the following:

- (1) Because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or
- (2) Because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.

Code § 18-16-305(a)(1) & (2). The Applicant originally planned to develop the eastern C3 parcel into a commercial development containing a grocery store. The Applicant was unable to obtain any interest from popular grocers and the lot has remained unused and undeveloped for the past 7 years following the grant of the original special exception. In order to avoid the practical difficulties that have come with developing this portion of the property, the Applicant is seeking a variance to allow a decrease in the acreage dedicated to commercial use from 25% to 12%.

Additionally, the Administrative Hearing Officer must also find that:

- (1) the variance is the minimum variance necessary to afford relief; and
- (2) the granting of the variance will not:
  - (i) alter the essential character of the neighborhood or district in which the lot is located;
  - (ii) substantially impair the appropriate use or development of adjacent property;
  - (iii) reduce forest cover in the limited development and resource conservation areas of the critical area;
  - (iv) be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area;
  - (v) not be detrimental to the public welfare.

Code, § 18-16-305(c). The variance is the minimum variance necessary to afford relief. The Applicant wants to make use of the property so it does not remain undeveloped but is unable to do so with the current percentage required by the code. Further, the Applicant is not completely eliminating commercial aspects of the PUD and will make better use of the property with a smaller commercial component. The granting of this variance will not alter the essential character of the neighborhood as similar development already exists, it will not substantially impair the appropriate use or development of adjacent property, it is not located in the critical area or in a bog protection area, and it is not detrimental to the public welfare.



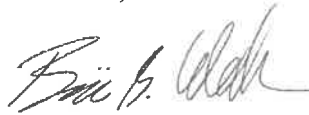
**Conclusion:**

For the foregoing reasons, and for good cause shown, the Applicant respectfully requests special exception approval to allow for the modification of the PUD as set forth in special exception 2018-0268-S. The Applicant also requests the approval of the variance from the requirement of 25% of the land area consisting of commercial uses in § 18-12-203(e) to 12%.

Should you have any questions regarding the enclosed special exception application, please telephone me in our Annapolis office. Thank you for your assistance with this matter.

Very truly yours,

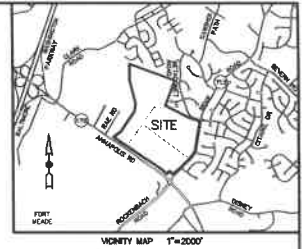
YVS LAW, LLC

A handwritten signature in black ink, appearing to read "Ben S. Wechsler", written over a light blue horizontal line.

Benjamin S. Wechsler

Attachments

# ADMINISTRATIVE SITE PLAN SHIPLEY HOMESTEAD PLANNED UNIT DEVELOPMENT FOR COMMERCIAL AREA REDUCTION



## GENERAL NOTES

1. COORDINATES ARE BASED ON THE MARYLAND STATE COORDINATE SYSTEM, NAD 83 DATUM PROJECTED BY THE DEPARTMENT OF PUBLIC WORKS OF ANNE ARUNDEL COUNTY, MARYLAND. ELEVATIONS ARE NAVD 83.

COUNTY CONTROL STATIONS = TRAVERSE/BENCHMARK  
STATION 2028 = NORTH 53.6241 352 EAST 1,395,975.489 ELEVATION 237.08  
STATION 2029 = NORTH 53.081 053 EAST 1,390,763.224 ELEVATION 249.08

COMMERCIAL AREA  
12.0 ACRES

## OVERALL SHIPLEY HOMESTEAD PUD ANALYSIS

TOTAL AREA OF PUD = 95.88 ACRES  
GROSS TRACT AREA (G3) = 39.80 ACRES  
GROSS TRACT AREA (R5) = 56.08 ACRES

TOTAL MAXIMUM PERMITTED UNITS = 620  
TOTAL MAXIMUM UNITS PROPOSED = 631

MINIMUM COMMERCIAL LAND PERCENTAGE (25% PER CODE)

12% OF TOTAL AREA TO BE COMMERCIAL = 95.88 ACRES x 12% = 11.5 ACRES (MINIMUM REQUIRED FOR VARIANCE)  
COMMERCIAL LAND PROVIDED = 12.0 ACRES

## DENSITY CALCULATIONS C3

DENSITY PERMITTED = 15 UNITS/NET ACRE

GROSS TRACT AREA (C3) 39.80 ACRES  
WETLANDS 0.00 ACRES  
STEEP SLOPES 0.00 ACRES  
FLOODPLAIN (EASMENT) 2.76 ACRES  
NET TRACT AREA 36.84 ACRES  
PERMITTED DENSITY = 15 UNITS/ACRE x 36.84 ACRES = 552 UNITS

## DENSITY CALCULATIONS R5

DENSITY PERMITTED = 5 UNITS/NET ACRE

GROSS TRACT AREA (R5) 56.08 ACRES  
WETLANDS 0.00 ACRES  
STEEP SLOPES 2.46 ACRES  
FLOODPLAIN 0.00 ACRES  
NET TRACT AREA 53.60 ACRES  
PERMITTED DENSITY = 5 UNITS/ACRE x 53.60 ACRES = 268 UNITS

## MINIMUM SINGLE FAMILY PERCENTAGE

20% REQUIRED R5 = 268 x 20% = 53 REQUIRED  
10% REQUIRED C3 = 552 x 10% = 55 REQUIRED  
TOTAL 108 SINGLE FAMILY REQUIRED  
120 SINGLE FAMILY PROPOSED

## MAXIMUM COVERAGE

30% MAXIMUM COVERAGE PERMITTED WITH RESIDENTIAL STRUCTURES = 21.5 ACRES  
85% MAXIMUM COVERAGE PERMITTED WITH COMMERCIAL STRUCTURES = 20.4 ACRES

## RESIDENTIAL COVERAGE = 9.3 ACRES

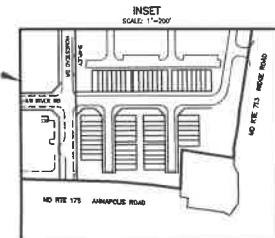
## COMMERCIAL COVERAGE = 2.5 ACRES

## MINIMUM OPEN SPACE

45% MINIMUM OPEN SPACE REQUIRED IN RESIDENTIAL AREA (81.31 ACRES) OR 38.58 ACRES

NO. BY DATE REVISIONS

## LOCATION PLAN SCALE: 1"=200'



J.A. CHISHOLM, P.E., LLC.  
LAND DEVELOPMENT CONSULTANTS  
ENGINEERING • PLANNING • SURVEYING  
53 OLD SOLOMON'S ISLAND ROAD, SUITE D  
ANNAPOLIS, MARYLAND 21401  
HURSHOLOMOL.COM

PHONE (410) 956-7020 FAX (410) 956-7025

## ADMINISTRATIVE SITE PLAN FOR VARIANCE SHIPLEY HOMESTEAD PLANNED UNIT DEVELOPMENT

152 MAP 14 GRID 13 PARCEL 112 & 152 MAP 14 GRID 7 PARCEL 6105

SITE ZIP CODE 21076 ZONED R5 & C3 NAD 83-81 DATUM SCALE: 1"=200' DATE: FEB. 2025  
FOURTH TAX DISTRICT ANNE ARUNDEL COUNTY, MARYLAND

DEVELOPER: SHIPLEY HOMESTEAD PARTNERS, LLC  
2881 RIVA ROAD, SUITE 200  
ANNAPOLIS, MARYLAND 21401  
(410) 331-2938  
ATTENTION: KEVIN LUSBY - k Lusby@shipleysteam.com

SHEET 1 OF 1

DESIGN: DLH DRAFT: CK APPROVED: DLH

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER 2018-0268-S & 2018-0269-S**

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**SHIPLEY HOMESTEAD PARTNERS, LLC**

FOURTH ASSESSMENT DISTRICT

DATE HEARD: JANUARY 31, 2019

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ORDERED BY:

**DOUGLAS CLARK HOLLMANN**  
ADMINISTRATIVE HEARING OFFICER

PLANNER: **STERLING SEAY**

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DATE FILED: **FEBRUARY 27, 2019**

## **PLEADINGS**

Shipley Homestead Partners, LLC (hereinafter the applicant), seeks a special exception (2018-0268-S) to allow a Planned Unit Development (PUD) of 641 dwelling units and up to 120,000 square feet of commercial uses in a R5-Residential District and C3- General Commercial District and a special exception (2018-0269-S) to allow an automobile gasoline station with convenience store and carwash in a C3 district on property with 1700 feet of frontage on the north side of Annapolis Road, 200 feet west of Ridge Road, Hanover.

## **PUBLIC NOTIFICATION**

The hearing notice was posted on the County's website in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 300 feet of the property was notified by mail, sent to the address furnished with the application. Kevin Lusby testified that the property was posted for more than 14 days prior to the hearing and submitted a affidavit to that effect (Applicant's Exhibit 1). There was no evidence to the contrary. Therefore, I find and conclude that the requirements of public notice have been satisfied.

## **THE HEARING**

A hearing was held on January 31, 2019, in which the witnesses were sworn and the following was presented with regard to the proposed relief requested by the applicant.

### **THE PROPERTY**

The subject property comprises of 95.66 acres, which is located along Annapolis Road, Hanover, MD 21076. It is identified as Parcel 112 in Block 13 and Parcel 165 in Block 7 on Tax Map 14 and is split-zoned R5-Residential District (56.06 acres) and C3- General Commercial District (39.60 acres). The site is within the BWI-Fort Meade Growth Area, a Managed Growth Development Policy Area, and a Priority Funding Area (PFA).

The majority of the site is unimproved; however, there are several existing structures including dwellings and the community clubhouse and recreation area.

### **THE PROPOSED WORK**

The applicant seeks to develop the subject property as a PUD with 241 dwelling units (townhouses and detached) in the R5 district, 400 dwelling units (townhouses, semi-detached, multi-family, condominiums or apartments), as well as an automobile gasoline station with convenience store and car wash in the C3 district.

### **THE ANNE ARUNDEL COUNTY CODE**

The specific criteria for a PUD are set forth in § 18-12- 201 of the County Code. The specific criteria for an automobile gasoline station are set forth in § 18-11-106 of the Zoning Ordinance. All special exceptions are also subject to the general standards of § 18-16-304.

### **THE EVIDENCE PRESENTED AT THE HEARING**

Sterling P. Seay, a zoning analyst with the OPZ, presented the following findings:

- Specific Criteria for PUD. The Code provisions pertaining to a PUD have been fashioned to encourage development according to an overall development plan. A PUD allows a variety of dwelling types, densities and site arrangements while allowing for a greater degree of flexibility in design than would otherwise be allowed under the standard provisions of the Code. In addition, the number of dwelling units allowed in a given area may be applied in the aggregate rather than separately to the individual lots or sites.
- Pursuant to § 18-12-202, the applicant proposes a 641 dwelling unit development, an automobile gasoline station with convenience store and car wash, and commercial uses with direct access to both Ridge Road (Route 713) and Annapolis Road (Route 175). There will also be internal access roads within the PUD.
- In the letter of explanation, the applicant writes that the PUD with gasoline station would allow a more diverse mix of units to complement the planned commercial component of the project and would be more compatible with the existing and planned residential uses in Shipley Homestead and in the surrounding area. The letter continues that the applicant has coordinated with the State Highway Administration (SHA) regarding access and frontage

improvements that will provide safer and improved traffic conditions along this corridor of Annapolis Road.

- *§ 18-12-203(a) Bulk regulations relating to lot size, setbacks for principal and accessory structures, spacing between structures, and height limitations shall be proposed by the developer in a submittal of specific development and design standards and, if approved by special exception, shall govern the development of the PUD.* The applicant has submitted Design Guidelines that includes context and design objectives, setbacks, and other requirements within the PUD.
- *§ 18-12-203(b) provides that when a structure in a PUD is located within 50 feet of the boundary line of a residential district, the setback for the structure shall be the more restrictive of the setback requirements for the abutting residential zoning district or for the zoning district in which the structure is located.* The R5 district portion of the PUD abuts R1 district to the east and R2 to the west requiring any structure within 50 feet of the boundary line to comply with the R1 setbacks to the east and the R2 setbacks to the west.
- *§ 18-12-203(c) The density of development in a PUD may not exceed the density allowed by the zoning district in which the development is located. A PUD in a C2 or C3 zoning district may not exceed 15 dwelling units per net acre.* The PUD has land in both the R5 and C3 districts. In the R5 district, the maximum density permitted is 5 dwelling units per acre. With net acreage of 53.6 acres in the R5 district, 268 dwelling units are permitted. The net acreage

in the C3 district is 36.84 acres permitting 552 dwelling units. The proposal is to develop the PUD with 641 of the permitted 820 units. The project is less intense in density than permitted in the R5 and C3 districts by right.

- *§ 18-12-203(d) A single retail use may not exceed 65,000 square feet. Retail uses are proposed for the C3 district and no single retail use is proposed in excess of 65,000 square feet.*
- *§ 18-12-203(e) A PUD in a C2 or C3 zoning district may be permitted as a special exception only in the BWI/Ft. Meade Growth Area as shown on the official map adopted by the County Council in Bill No. 55-16 and entitled “BWI/Fort Meade Growth Area”. A variance to allow a PUD in a C2 or C3 zoning district not shown on the official map is not permitted. When residential and commercial uses are contained in separate structures, at least 25% of the land area shall consist of commercial uses, including structures, parking, access, and open areas used for stormwater management and landscaping. When residential and commercial uses are contained in the same structure, at least 25% of the floor area of the structure shall consist of commercial uses. The property is located in the “BWI/Fort Meade Growth Area”. The proposed commercial uses on the C3 district part of the PUD consists of residential and commercial uses in separate structures and the site plan shows that the PUD is meeting this requirement. Required are 23.9 acres of commercial uses. Proposed are 24 acres of commercial uses including structures, parking, access, and open areas used for stormwater management*



and landscaping. The PUD exceeds the required percentage of commercial uses.

*§ 18-12-203(f) The following bulk regulations are applicable to a PUD:*

<b><i>Zoning district</i></b>	<b><i>Minimum site area</i></b>	<b><i>Minimum dwelling unit composition of total units</i></b>	<b><i>Maximum coverage by structures in residential areas</i></b>	<b><i>Minimum open area in residential areas</i></b>
R5	20 acres	20% are single-family dwellings	30%	40%

*(g) Bulk regulations in commercial districts. The following bulk regulations are applicable to a PUD in a C2 or C3 commercial district:*

<b><i>Zoning district</i></b>	<b><i>Minimum site area</i></b>	<b><i>Minimum dwelling unit composition of total units</i></b>	<b><i>Maximum coverage by structures</i></b>	<b><i>Minimum open area in residential areas</i></b>
C2, C3	10 acres	10% are single-family dwellings	30% for residential structures; 85% for commercial structures based on area delineated as commercial on site development plan	45%

- The Shipley Homestead PUD Analysis on sheet one of the site plan shows that the bulk regulations above are complied with in both the residential district and commercial district.
- Pursuant to § 18-12-203(a), the developer has proposed specific development and design standards as part of this special exception application. These standards will govern the development of the proposed PUD.
- Specific Criteria for Automobile Gasoline Station. The applicant is proposing an automobile gasoline station with convenience store and car wash on C3 district land within the PUD. § 18-12-202(a) provides that in addition to

dwelling units, a PUD in a C2 or C3 zoning district may have the permitted, conditional, special exception, and business complex auxiliary uses for C2 and C3 commercial districts in accordance with § 18-5-102 which allows an automobile gasoline station as a special exception use.

- Planned on a C3 zoned 103,010 square foot (2.36 acre) lot, part of Bulk Parcel 2 lot, are seven pumps, a convenience store and a car wash.
- The specific criteria for an automobile gasoline station are set forth in § 18-11-106 of the Anne Arundel County Zoning Ordinance.

*(1) The facility shall be located on a lot of at least 22,500 square feet with at least 150 feet of frontage along each road.* The automobile gasoline station is to be located on part of Bulk Parcel 2 that is 103,010 square foot (2.36 acre) in area and will with approximately 496 feet of frontage along Annapolis Road , and approximately 673 feet of frontage along the three proposed internal roads (Piedmont Lane, Haw River Road, and Clovis Way).

*(2) The facility may not be located at the intersection of local roads.* The gasoline station will not be at the intersection of local roads. The gasoline station fronts on Annapolis Road, a principal arterial road.

*(3) Service bays shall be oriented to the rear or side lot lines.* No service bays are proposed.

*(4) Structures shall be located at least 40 feet from any road right-of-way, at least 25 feet from any other structure, and at least 10 feet from any lot line.*

This requirement is met with the canopy over the pump island 54 feet from

Annapolis Road and the car wash and convenience store both 40 feet from the internal roadways. All structures have at least 25 feet of separation and are more than 10 feet from any lot line.

*(5) Pumps shall be located at least 25 feet from any road right-of-way. Pump islands shall be located at least 20 feet apart. Pumps and pump islands shall be located at least 25 feet from a structure not used primarily as an automobile gasoline station. This requirement is met as shown on the site plan.*

*(6) A canopy over a pump island may not project within 15 feet from a road right-of-way. This requirement is met as shown on the site plan.*

*(7) Driveways shall be at least 20 feet from each side or rear lot line, at least 50 feet from any intersecting road right-of-way, and at least 15 feet and no more than 45 feet wide. This requirement is met as shown on the site plan.*

*(8) Obstructions that adversely affect visibility at a station driveway are prohibited. There will be no obstructions.*

*(9) The facility may include a convenience store operation. A convenience store is proposed.*

*(10) The facility may include a repair center, but a repair center shall be limited to minor work to be completed within three days after the vehicle is dropped off for service. No repairs are proposed.*

*(11) The facility may include a car wash. A car wash is proposed.*

- General Criteria. Neither the proposed PUD nor the automobile gasoline station will be detrimental to the public health, safety and welfare. In fact, the

applicant has coordinated with the SHA regarding access and frontage improvements that will provide safer and improved traffic conditions along this corridor of Annapolis Road. The location, nature and height of each building, wall, and fence shall be situated to minimize adverse impacts. The nature and extent of, landscaping and the location, size nature and intensity of each phase of the use and its access roads will be compatible with the appropriate and orderly development of the district in which the use is located. Operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in other uses allowed in the Code.

- The PUD and automobile gasoline station will not have any adverse effects above and beyond those inherently associated with the use irrespective of its location since the property is in the BWI/Ft. Meade Growth Area; will not conflict with an existing or programmed public facility, public service, school, or road; has the written recommendations and comments of the Health Department and OPZ; is consistent with the County's General Development Plan (GDP); will meet and be able to maintain adherence to the criteria for the specific use; and, the administrative site plan demonstrates the applicant's ability to comply with the requirements of the Landscape Manual. The applicants must present sufficient evidence of public need for the uses. The applicant has presented sufficient evidence that the proposed uses will be able to meet and maintain adherence to the criteria for the specific use.

- 18-16-304(b) provides if phasing of development is proposed for a use allowed by special exception and the Planning and Zoning Officer has approved a plan for phasing of development, the Administrative Hearing Officer may allow phasing pursuant to the approved plan as a condition of special exception approval. The applicant has indicated that the project will be constructed in multiple phases over multiple years and requests approval of a plan of phasing.
- Compatibility with the GDP. Figure 7-1 - 2009 Land Use Plan of the GDP designates the R5 portion of the site as “Residential Medium Density” and the C3 portion of the site as “Commercial”. Table 7-1 Description of Land Use Plan Categories of the GDP specifies the typical uses found in each land use designation. In the Residential Medium Density category, typical uses are generally single-family detached, duplex, townhouses and multifamily dwellings. In the Commercial category typical uses include community retail, commercial office, general retail, and highway commercial uses. The corresponding zoning categories for the subject designation are the R5 district and C3 district. The allowable density in the R5 district is 5 dwellings units per acres and the allowable density in the C3 district is generally 15 dwelling units per acre.
- Figure 7-2 encourages a suitable range of housing densities and types to meet local needs.
- The subject site is located within a Managed Growth Area (Figure 7-3 Development Policy Areas) that may be according to the GDP characterized by

low to high density residential uses. The subject property also lies within a designated PFA. The PFA designation is a “Smart Growth” tool intended to direct growth in the state in a manner that ensures lands are used in an efficient and effective manner. Growth is to be encouraged in those areas that are already developed and where adequate infrastructure exists or can be readily provided so as to reduce pressure on critical farmland and natural resource areas.

- The Health Department commented that the property is served by public water and sewer facilities and has no objection to the variance request.
- The Long Range Planning Division commented that the 95.66 acre site is zoned R5/C3 and is classified as Medium Density Residential and Commercial on the 2009 GDP Land Use Map. The subject property is adjacent to properties with a land use classification of Low Density Residential, Low-Medium Density Residential and Commercial. Annapolis Road borders the site to the south. The site is in the Managed Growth Development Policy Area and is within the PFA. The 2009 GDP Land Use Map changed the Planned Land Use designation from Low Density Residential to Medium Density Residential and Commercial. OPZ received comprehensive zoning applications for the subject parcels. During the 2011 Comprehensive Zoning process, the C3 and R5 zoning districts were adopted for the subject parcels. The site is within the planned sewer service category in the Patuxent Sewer

Service Area and the planned water service category in the Jessup 400 Water Pressure Zone.

- The Development Division offered no objection to approval of the special exception requests but noted, among other things, that the proposed plan does not appear to meet Forest Conservation requirements.
- The Engineering Division, Department of Inspections and Permits offered no objection to approval of the special exception requests provided engineering comments are adequately addressed at the appropriate review stages.
- The Fire Department recommended approval.
- The State Highway Administration reviewed the applications and has no comment.
- Based upon the standards set forth under § 18-16-304 under which a special exception may be granted the OPZ recommends *approval* of a special exception to allow a PUD and an automobile gasoline station.

#### **Applicant's Testimony**

The applicant was represented at the hearing by Eric M. DeVito, Esquire, of the law firm of Stone Mattheis Xenopoulos & Brew, PC, who presented evidence through Kevin Lusby for the applicant, David L. Hursh, of JA Chisholm PE, LLC, engineers, Marilee Tortorelli of Morris & Ritchie Associates, Inc., landscape architect, Ken Schmid of Traffic Concepts, Inc., and Ed Steere of Valbridge Property Advisors, that the applicant has met the requirements of § 18-12-201 for a PUD as shown on County Exhibit 2-PUD and the requirements of § 18-11-106

for an automobile gasoline station, convenience store and car wash as shown on County Exhibit 2-GAS, as well as the general requirements for a special exception found in § 18-16-304 of the Code. Public need was shown by the testimony of Ed Steere of Valbridge Property Advisors who presented his findings in a report that was admitted into evidence as Applicant's Exhibit 4. Ms. Tortorelli presented evidence of the location of other gasoline stations in Anne Arundel County (Applicant's Exhibit 2 -H1) and in the immediate neighborhood (Applicant's Exhibit 2 -H2). Both applications meet the bulk regulations of the Code and no variances are needed or are requested by the applicant.

The applicant indicated that the work would be carried out in multiple phases and asked that it be allowed to work with the Planning and Zoning Officer to develop a plan for phasing the development as per § 18-16-304(b) and an extension of the time period in § 18-16-405 to allow for a phased development.

#### **Protestants' Testimony**

A number of nearby residents testified in opposition to both applications. John Rogers testified that he did not think there would be enough parking spaces for the dwellings that will be built. Sandy Gibson presented a petition of 146 nearby neighbors in opposition to the PUD (Protestants' Exhibit 1). Jessica Liese testified that the applicant has not been transparent with nearby property owners who believed that an existing forest area on the property would not be developed. There are concerns about traffic generated by the proposed development and by



other property owners using roads in the development to cut through to get to Ridge Road and Annapolis Road. Jeffrey Voice wants to delay construction so that a compromise can be worked out between the applicant and neighbors as to how much development will occur. Hilary Liese testified that 98% of the people who signed the petition did not know about the applicant's intentions. All of the witnesses expressed concern about safety and the worry that rental properties will bring an undesirable element to what they regard as a primarily rural neighborhood. Finally, all the witnesses were opposed on the ground that the proposed development would lower the value of their homes and increase traffic.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

### **DECISION**

The law is settled that a special exception use is a use that the legislative body recognizes as compatible with permitted uses, subject to a public hearing to show compliance with the underlying standards. Schultz v. Pritts, 291 Md. 1 (1981); Peoples Council for Baltimore County, et al v. Loyola College in Maryland, in the Court of Appeals of Maryland 137, September Term 2007, (September 9, 2008).

The standards governing the grant of a special exception for a PUD are found in § 18-12-201. Based upon the evidence, I find that the applicant has complied with each of the specific criteria set forth in § 18-12-201.

The standards governing the grant of a special exception for an automobile gasoline station with convenience store and carwash are found in § 18-11-106.

Based upon the evidence, I find that the applicant has complied with each of the specific criteria set forth in § 18-11-106.

In addition, § 18-16-304 of the Code requires that the Hearing Officer make affirmative findings that:

- (1) The use will not be detrimental to the public health, safety, and welfare;
- (2) The location, nature, and height of each building, wall, and fence, the nature and extent of landscaping on the site, and the location, size, nature, and intensity of each phase of the use and its access roads will be compatible with the appropriate and orderly development of the district in which it is located;
- (3) Operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in other uses allowed under this article;
- (4) The proposed use will not conflict with an existing or programmed public facility, public service, school, or road;
- (5) The proposed use has the written recommendations and comments of the Health Department and the Office of Planning and Zoning;
- (6) The applicant has presented sufficient evidence of public need for the use;
- (7) The applicant has presented sufficient evidence that the use will meet and be able to maintain adherence to the criteria for the specific use;
- (8) The application will conform to the critical area criteria for sites located in the critical area; and

(9) The administrative site plan demonstrates the applicant's ability to comply with the requirements of the Landscape Manual.

I find that the applicant has met the requirements of § 18-16-304. The applicant submitted sufficient evidence to show that there is public need for the automobile gas station. The evidence shows that the proposed use will not be detrimental to the public health, safety, and welfare of the surrounding community.

The Protestants expressed shock and surprise to hear about the plans by the applicant to expand an existing residential development and add a gas station, convenience store, and car wash. However, everything the applicant wants to do is allowed under the Code, and is in compliance with existing zoning. Notice that no variances are being requested, i.e., the applications meet the requirements of the Code. Unlike variances, where discretion can permit a denial of a requested change to the Code, an applicant is entitled to a special exception if they meet the criteria laid down by the County Council for the particular uses.

For these reasons, I conclude that the applicant has also complied with the requirements of § 18-16-304.

### **ORDER**

PURSUANT to the application Shipley Homestead Partners, LLC, petitioning for a special exception to allow a Planned Unit Development (PUD) of 641 dwelling units and up to 120,000 square feet of commercial uses in a R5-Residential District and C3- General Commercial District and a special exception

to allow an automobile gasoline station with convenience store and carwash in a C3 district; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **27th day of February, 2019;** and

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted**:

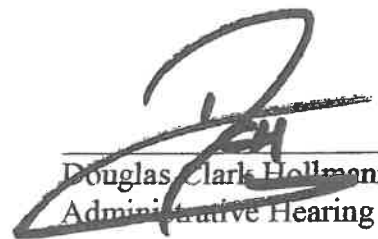
1. A special exception pursuant to § 18-12-201 to allow a PUD of 641 dwelling units and up to 120,000 square feet of commercial uses in a R5- Residential District and C3- General Commercial District on property located on the north side of Annapolis Road, 200 feet west of Ridge Road, Hanover as shown on County Exhibit 2-PUD; and
2. A special exception pursuant to § 18-11-206 allow an automobile gasoline station with convenience store and carwash in a C3- General Commercial District on property located on the north side of Annapolis Road, 200 feet west of Ridge Road, Hanover as shown on County Exhibit 2-GAS.

The foregoing special exceptions are subject to the applicant complying with any instructions and necessary approvals from the Office of Planning and Zoning, the Department of Inspections and Permits, the Department of Health, and/or the Critical Area Commission. In addition, pursuant to § 18-16-304(b), the applicant may enter into a plan with the Planning and Zoning Officer for the

phasing of the development approved by this decision and order. Such plan does not need any approval or input from this Office to take effect.

This Order does not constitute a building permit. In order for the applicant to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Furthermore, County Exhibit 2-PUD and County Exhibit 2-GAS, referenced in this decision, are incorporated herein as if fully set forth and made a part of this Order. The decision and order shall not prohibit the applicant from making minor changes to the facilities as presently shown to adjust for changes made necessary by comments or requirements that arise during plan review or construction, provided those minor changes do not exceed the variances granted herein. The reasonableness of any such change shall be determined by the Office of Planning and Zoning.



Douglas Clark Hollmann  
Administrative Hearing Officer

### **NOTICE TO APPLICANT**

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, § 18-16-405(a) provides that a variance or special exception that is not extended or tolled expires by operation of law unless the applicant within 18

months of the granting of the variance or special exception (1) obtains a building permit or (2) files an application for subdivision. Thereafter, the variance or special exception shall not expire so long as (1) construction proceeds in accordance with the permit or (2) a record plat is recorded among the land records pursuant to the application for subdivision, the applicant obtains a building permit within one year after recordation of the plat, and construction proceeds in accordance with the permit.

**Pursuant to § 18-16-405(b), because the work approved by this decision and order will be constructed in multiple phases over multiple years, the time periods forth in § 18-16-405(a) shall be extended to 36 months and two years.**

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.

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

**APPLICANTS:** Shipley Homestead Partners, LLC

**ASSESSMENT DISTRICT:** 4th

**CASE NUMBER:** 2018-0268-S & 2018-0269-S

**COUNCIL DISTRICT:** 4th

**HEARING DATE:** January 31, 2019

**PREPARED BY:** Sterling Perry Seay  
Planner

**REQUEST**

The applicant is requesting a Special Exception to allow a Planned Unit Development of 641 dwelling units and up to 120,000 square feet of commercial uses in an R5 – Residential District and C3-General Commercial District and a Special Exception to allow an automobile gasoline station with convenience store and car wash in the C3-General Commercial District for property located at Annapolis Road and Ridge Roads in Hanover.

**LOCATION AND DESCRIPTION OF SITE**

The subject property consists of 95.66 acres of land. This property has 1,700 feet of frontage on the north side of Annapolis Road; 0 feet west of Ridge Road. The property is identified as Parcel 112 in Block 13 and Parcel 165 in Block 7 on Tax Map 14. The subject property has been zoned R5-Residential District (56.06 acres) and C3- General Commercial District (39.60 acres) since the adoption of the Fourth Council District zoning maps effective July 10, 2011. The property is not located in the Critical Area.

The site is within the BWI-Fort Meade Growth Area, a Managed Growth Development Policy Area, and a Priority Funding Area. The majority of the site is unimproved; however, there are some existing structures including dwellings and the community clubhouse and recreation area.

**APPLICANTS' PROPOSAL**

The applicant seeks approval of a Special Exception to develop the land as a Planned Unit Development with 241 dwelling units (townhouses and detached) in the R5 District, 400 dwelling units (townhouses, semi-detached, multi-family, condominiums or apartments), and commercial uses including an automobile gasoline station with convenience store and car wash in the C3 District.

**SPECIAL EXCEPTION STANDARDS**

The specific criteria for a Planned Unit Development (PUD) are set forth in § 18-12- 201 of the Anne Arundel County Code. The specific criteria for an automobile gasoline station are set forth in §18-11-106 of the Anne Arundel County Zoning Ordinance. All Special Exceptions are also subject to the general standards of §18-16-304 of the Anne Arundel County Zoning Ordinance.

## FINDINGS

### Specific Criteria for PUD

The Code provisions pertaining to a Planned Unit Development (PUD) have been fashioned to encourage development according to an overall development plan. A PUD allows a variety of dwelling types, densities and site arrangements while allowing for a greater degree of flexibility in design than would otherwise be allowed under the standard provisions of the Code. In addition, the number of dwelling units allowed in a given area may be applied in the aggregate rather than separately to the individual lots or sites.

Pursuant to §18-12-202 of the Anne Arundel County Code, the applicant proposes a 641 dwelling unit development, an automobile gasoline station with convenience store and car wash, and commercial uses with direct access to both Ridge Road (MD Rte. 713) and Annapolis Road (MD Rte. 175). There will also be internal access roads within the PUD.

In the letter of explanation, the applicant writes that the PUD with gasoline station would allow a more diverse mix of units to complement the planned commercial component of the project and would be more compatible with the existing and planned residential uses in Shipley Homestead and in the surrounding area. The letter continues that the applicant has coordinated with the State Highway Administration (SHA) regarding access and frontage improvements that will provide safer and improved traffic conditions along this corridor of Annapolis Road.

*§18-12-203 (a) Bulk regulations relating to lot size, setbacks for principal and accessory structures, spacing between structures, and height limitations shall be proposed by the developer in a submittal of specific development and design standards and, if approved by Special Exception, shall govern the development of the PUD.* The applicant has submitted Design Guidelines that includes context and design objectives, setbacks, and other requirements within the PUD.

*§18-12-203 (b) provides that when a structure in a PUD is located within 50 feet of the boundary line of a residential district, the setback for the structure shall be the more restrictive of the setback requirements for the abutting residential zoning district or for the zoning district in which the structure is located.* The R5 District portion of the PUD abuts R1 District to the east and R2 to the west requiring any structure within 50 feet of the boundary line to comply with the R1 setbacks to the east and the R2 setbacks to the west.

*§18-12-203 (c) The density of development in a PUD may not exceed the density allowed by the zoning district in which the development is located. A PUD in a C2 or C3 zoning district may not exceed 15 dwelling units per net acre.* The PUD has land in both the R5 and C3 Districts. In the R5 District, the maximum density permitted is 5 dwelling units per acre. With net acreage of 53.6 acres in the R5 District, 268 dwelling units are permitted. The net acreage in the C3 district is 36.84 acres permitting 552 dwelling units. The proposal is to develop the PUD with 641 of the permitted 820 units. The project is less intense in density than permitted in the R5 and C3 Districts by right.

*§18-12-203 (d) A single retail use may not exceed 65,000 square feet.* Retail uses are proposed for the C3 district and no single retail use is proposed in excess of 65,000 square feet.



**2018-0268-S & 2018-0269-S**

*§18-12-203 (e) A PUD in a C2 or C3 zoning district may be permitted as a Special Exception only in the BWI/Ft. Meade Growth Area as shown on the official map adopted by the County Council in Bill No. 55-16 and entitled "BWI/Fort Meade Growth Area". A variance to allow a PUD in a C2 or C3 zoning district not shown on the official map is not permitted. When residential and commercial uses are contained in separate structures, at least 25% of the land area shall consist of commercial uses, including structures, parking, access, and open areas used for stormwater management and landscaping. When residential and commercial uses are contained in the same structure, at least 25% of the floor area of the structure shall consist of commercial uses. The property is located in the "BWI/Fort Meade Growth Area". The proposed commercial uses on the C3 district part of the PUD consists of residential and commercial uses in separate structures and the site plan shows that the PUD is meeting this requirement. Required are 23.9 acres of commercial uses. Proposed are 24 acres of commercial uses including structures, parking, access, and open areas used for stormwater management and landscaping. The PUD exceeds the required percentage of commercial uses.*

*§18-12-203 (f) The following bulk regulations are applicable to a PUD:*

<b>Zoning district</b>	<b>Minimum site area</b>	<b>Minimum dwelling unit composition of total units</b>	<b>Maximum coverage by structures in residential areas</b>	<b>Minimum open area in residential areas</b>
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*(g) Bulk regulations in commercial districts. The following bulk regulations are applicable to a PUD in a C2 or C3 commercial district:*

<b>Zoning district</b>	<b>Minimum site area</b>	<b>Minimum dwelling unit composition of total units</b>	<b>Maximum coverage by structures</b>	<b>Minimum open area in residential areas</b>
C2, C3	10 acres	10% are single-family dwellings	30% for residential structures; 85% for commercial structures based on area delineated as commercial on site development plan	45%

The Shipley Homestead PUD Analysis on sheet one of the site plan shows that the bulk regulations above are complied with in both the residential district and commercial district.

Pursuant to §18-12-203 (a) of the Anne Arundel County Code, the developer has proposed specific development and design standards as part of this Special Exception application. These standards will govern the development of the proposed PUD.

Specific Criteria for Automobile Gasoline Station

The applicant is proposing an automobile gasoline station with convenience store and car wash on C3 –General Commercial District land within the PUD. §18-12-202 (a) provides that in addition to dwelling units, a PUD in a C2 or C3 zoning district may have the permitted, conditional, Special Exception, and business complex auxiliary uses for C2 and C3 commercial districts in accordance with § 18-5-102 which allows an automobile gasoline station as a Special Exception use.

Planned on a C3 zoned 103,010 square foot (2.36 acre) lot, part of Bulk Parcel 2 lot, are seven pumps, a convenience store and a car wash.

The specific criteria for an automobile gasoline station are set forth in §18-11-106 of the Anne Arundel County Zoning Ordinance.

*(1) The facility shall be located on a lot of at least 22,500 square feet with at least 150 feet of frontage along each road.* The automobile gasoline station is to be located on part of Bulk Parcel 2 that is 103,010 square foot (2.36 acre) in area and will with approximately 496 feet of frontage along Annapolis Road and approximately 673 feet of frontage along the three proposed internal roads (Piedmont Lane, Haw River Road, and Clovis Way).

*(2) The facility may not be located at the intersection of local roads.* The gasoline station will not be at the intersection of local roads. The gasoline station fronts on Annapolis Road ( MD Rte 175), a principal arterial road.

*(3) Service bays shall be oriented to the rear or side lot lines.* No service bays are proposed.

*(4) Structures shall be located at least 40 feet from any road right-of-way, at least 25 feet from any other structure, and at least 10 feet from any lot line.* This requirement is met with the canopy over the pump island 54 feet from Annapolis Road and the car wash and convenience store both 40 feet from the internal roadways. All structures have at least 25 feet of separation and are more than 10 feet from any lot line.

*(5) Pumps shall be located at least 25 feet from any road right-of-way. Pump islands shall be located at least 20 feet apart. Pumps and pump islands shall be located at least 25 feet from a structure not used primarily as an automobile gasoline station.* This requirement is met as shown on the site plan.

*(6) A canopy over a pump island may not project within 15 feet from a road right-of-way.* This requirement is met as shown on the site plan.

*(7) Driveways shall be at least 20 feet from each side or rear lot line, at least 50 feet from any intersecting road right-of-way, and at least 15 feet and no more than 45 feet wide.* This requirement is met as shown on the site plan.

*(8) Obstructions that adversely affect visibility at a station driveway are prohibited.* There will be no obstructions.

*(9) The facility may include a convenience store operation.* A convenience store is proposed.

(10) *The facility may include a repair center, but a repair center shall be limited to minor work to be completed within three days after the vehicle is dropped off for service. No repairs are proposed.*

(11) *The facility may include a car wash. A car wash is proposed.*

#### General Criteria

Neither the proposed PUD nor the automobile gasoline station will be detrimental to the public health, safety and welfare. In fact, the applicant has coordinated with the State Highway Administration (SHA) regarding access and frontage improvements that will provide safer and improved traffic conditions along this corridor of Annapolis Road. The location, nature and height of each building, wall, and fence shall be situated to minimize adverse impacts. The nature and extent of, landscaping and the location, size nature and intensity of each phase of the use and its access roads will be compatible with the appropriate and orderly development of the district in which the use is located. Operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in other uses allowed in the Code.

The PUD and automobile gasoline station will not have any adverse effects above and beyond those inherently associated with the use irrespective of its location since the property is in a the BWI/Ft. Meade Growth Area; will not conflict with an existing or programmed public facility, public service, school, or road; has the written recommendations and comments of the Health Department and the Office of Planning and Zoning; is consistent with the County General Development Plan; will meet and be able to maintain adherence to the criteria for the specific use; and, the administrative site plan demonstrates the applicant's ability to comply with the requirements of the Landscape Manual. The applicants must present sufficient evidence of public need for the uses. The applicant has presented sufficient evidence that the proposed uses will be able to meet and maintain adherence to the criteria for the specific use.

18-16-304 (b) of the Zoning Ordinance provides if phasing of development is proposed for a use allowed by Special Exception and the Planning and Zoning Officer has approved a plan for phasing of development, the Administrative Hearing Officer may allow phasing pursuant to the approved plan as a condition of Special Exception approval. The applicant has indicated that the project will be constructed in multiple phases over multiple years and requests approval of a plan of phasing.

#### Compatibility with the GDP

Figure 7-1 - 2009 Land Use Plan of the General Development Plan (GDP) designates the R5 portion of the site as "Residential Medium Density" and the C3 portion of the site as "Commercial". Table 7-1 Description of Land Use Plan Categories of the GDP specifies the typical uses found in each land use designation. In the Residential Medium Density category, typical uses are generally single family detached, duplex, townhouses and multifamily dwellings. In the Commercial category typical uses include community retail, commercial office, general retail, and highway commercial uses. The corresponding zoning categories for the subject designation are the R5 Residential zoning district and C3-General Commercial District. The allowable density in the R5 district is 5 dwellings units per acres and the allowable density in the C3 District is generally 15 dwelling units per acre.

Figure 7-2 encourages a suitable range of housing densities and types to meet local needs.

The subject site is located within a Managed Growth Area (Figure 7-3 Development Policy Areas) that may be according to the GDP characterized by low to high density residential uses. The subject property also lies within a designated Priority Funding Area (PFA). The Priority Funding Area designation is a “Smart Growth” tool intended to direct growth in the State in a manner that ensures lands are used in an efficient and effective manner. Growth is to be encouraged in those areas that are already developed and where adequate infrastructure exists or can be readily provided so as to reduce pressure on critical farmland and natural resource areas.

Agency Comments:

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

The **Long Range Planning Division** commented that the 95.66-acre site is zoned R5/C3 and is classified as Medium Density Residential and Commercial on the 2009 General Development Plan (GDP) Land Use Map. The subject property is adjacent to properties with a land use classification of Low Density Residential, Low-Medium Density Residential and Commercial. MD 175 borders the site to the south. The site is in the Managed Growth Development Policy Area and is within the Priority Funding Area. The 2009 GDP Land Use Map changed the Planned Land Use designation from Low Density Residential to Medium Density Residential and Commercial. The Office of Planning and Zoning received comprehensive zoning applications for the subject parcels. During the 2011 Comprehensive Zoning process, the C3 and R5 zoning districts were adopted for the subject parcels. The site is within the Planned sewer service category in the Patuxent Sewer Service Area and the Planned water service category in the Jessup 400 Water Pressure Zone.

The **Development Division** offered no objection to approval of the Special Exception requests but noted, among other things, that the proposed plan does not appear to meet Forest Conservation requirements.

The **Engineering Division, Department of Inspections and Permits** offered no objection to approval of the Special Exception requests provided engineering comments are adequately addressed at the appropriate review stages.

The **Fire Department** recommended approval.

The **Maryland State Highway Administration** reviewed the applications and has no comment.

**RECOMMENDATION**

Based upon the standards set forth under Article 18-16-304 under which a Special Exception may be granted the Office of Planning and Zoning recommends approval of a Special Exception to allow a Planned Unit Development of 641 dwelling units and up to 120,000 square feet of commercial uses in an R5 – Residential District and C3-General Commercial District and approval of a Special Exception to allow an automobile gasoline station with convenience store and car wash in the C3-General Commercial District with all development to be constructed in phases.

**2018-0268-S & 2018-0269-S**

Disclaimer: 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/SPS

**For Office Use Only**

CASE # 2018-0268-S

FEE PAID 1375.00

DATE Nov 29, 2018



**For Office Use Only**

ZONE R5 C3

CRITICAL AREA: IDA LDA RCA

BMA: Yes No

NO. OF SIGNS 5

**SPECIAL EXCEPTION APPLICATION**

NOTE: This form can be downloaded to your computer and filled out utilizing Adobe Reader (or similar product). It can also be printed and filled out by hand.

Applicant(s): Shipley Homestead Partners, LLC

(Applicant must have a financial, contractual, or proprietary interest in the property)

Property Address: Annapolis Road Hanover, MD 21076

Property Location: 1700 feet of frontage on the ( N ) side of Annapolis Road ;  
(Enter Street Name )  
200 feet ( W ) of (Nearest intersecting street) Ridge Road  
(Enter Street Name )

12-digit Tax Account Number See attached Tax District ( 4 ) Council District A 1

Waterfront Lot: Y ☒ N ☒ Corner Lot: Y ☒ N ☒ Deed Title Reference See attached

Zoning District R5/C3 Lot # N/A Tax Map 14 Block/Grid 7 & 13 Parcel 165 & 112

Area 95.66 (Acres) Subdivision Name Shipley Homestead

Description of Special Exception Requested (Brief, detail fully in letter of explanation)

Request for a Special Exception to permit a Planned Unit Development in a R5/C3 Zoning District

for a property located within the BWI/Et/ Meade Growth Area

The applicant hereby certifies that he or she has a financial, contractual, or proprietary interest equal to or in excess of 10 percent of the property; that he or she is authorized to make this application; that the information shown on this application is correct; and that he or she will comply with all applicable regulations of Anne Arundel County, Maryland.

Applicant's Signature [Signature]

Owner's Signature [Signature]

Print Name Shipley Homestead Partners, LLC

Print Name Shipley Homestead Ptn., LLC & St. Clair, LLC

Mailing Address 2661 Riva Road Suite 220

Mailing Address 2661 Riva Road Suite 220

City, State, Zip Annapolis, MD 21401

City, State, Zip Annapolis, MD 21401

Work Phone 443-321-2926

Work Phone 443-321-2926

Home Phone N/A

Home Phone N/A

Cell Phone 410-271-6072

Cell Phone 410-271-6072

Email Address klusby@kochhomes.com

Email Address klusby@kochhomes.com

**\*\*\* Below For Office Use Only \*\*\***

Application accepted by Anne Arundel County Office of Planning and Zoning: [Signature]

11 20 18

Special Exception to allow a Planned Unit Development (PUD) of

641 Dwelling Units and up to 120,000 square feet of

Commercial Uses in a R5 Residential District and C3-General

Commercial District

For Office Use Only

CASE # 20B-0269-5

FEE PAID 1235.00

DATE 11 20 2018



For Office Use Only

ZONE C3

CRITICAL AREA: IDA    LBA    RCA   

BMA: Yes    No   

NO. OF SIGNS 1

**SPECIAL EXCEPTION APPLICATION**

NOTE: This form can be downloaded to your computer and filled out utilizing Adobe Reader (or similar product). It can also be printed and filled out by hand.

Applicant(s): Shipley Homestead Partners, LLC

(Applicant must have a financial, contractual, or proprietary interest in the property)

Property Address: Annapolis Road Hanover, MD 21076

Property Location: 1700 feet of frontage on the ( N ) side of Annapolis Road ;  
(Enter Street Name)

200 feet ( W ) of (Nearest intersecting street) Ridge Road ;  
(Enter Street Name)

12-digit Tax Account Number 04-767-90244618 Tax District ( 4 ) Council District 41 )

Waterfront Lot: Y ☐ N ☒ Corner Lot: Y ☐ N ☒ Deed Title Reference L.29495 F.369-372

Zoning District C3 Lot # N/A Tax Map 14 Block/Grid 13 Parcel 112

Area 40.52 ( Acres ) Subdivision Name Shipley Homestead

Description of Special Exception Requested (Brief, detail fully in letter of explanation)

Request for a Special Exception to permit a Gas Station in a C3 Zoning District

The applicant hereby certifies that he or she has a financial, contractual, or proprietary interest equal to or in excess of 10 percent of the property; that he or she is authorized to make this application; that the information shown on this application is correct; and that he or she will comply with all applicable regulations of Anne Arundel County, Maryland.

Applicant's Signature [Signature] Owner's Signature [Signature]

Print Name Shipley Homestead Partners, LLC Print Name Shipley Homestead Partners, LLC

Mailing Address 2661 Riva Road Suite 220 Mailing Address 2661 Riva Road Suite 220

City, State, Zip Annapolis, MD 21401 City, State, Zip Annapolis, MD 21401

Work Phone 443-321-2926 Work Phone 443-321-2926

Home Phone N/A Home Phone N/A

Cell Phone 410-271-6072 Cell Phone 410-271-6072

Email Address klusby@kochhomes.com Email Address klusby@kochhomes.com

\*\*\* Below For Office Use Only \*\*\*

Application accepted by Anne Arundel County Office of Planning and Zoning: [Signature] 11 20 2018  
Initials Date

Special Exception to allow an automobile gasoline station  
with convenience store and car wash in a C3 - General Commercial  
District







## OFFICE OF PLANNING AND ZONING

### CONFIRMATION OF PRE-FILE (2025-0047-P)

DATE OF MEETING: 6/6/2025

P&Z STAFF: Donnie Dyott, Lori Allen, Stacy Paulos, Sam Meyers

APPLICANT/REPRESENTATIVE: Shipley Homestead Partners LLC / Ben Wechsler EMAIL: bwechsler@yvslaw.com

SITE LOCATION: 7940 Shipley Homestead Dr LOT SIZE: 39.60 ac portion of 95.66 ac overall PUD ZONING: C3/R5

CA DESIGNATION: N/A BMA: N/A or BUFFER: N/A APPLICATION TYPE: Special Exception & Variance

The Applicant seeks to modify the previously-approved Special Exception No. 2018-0268-S for the Shipley's Homestead PUD, and also seeks a related Variance. Specifically, the Special Exception modification seeks approval to develop townhomes in the previously designated commercial area located in the C3 District. The applicant also seeks a variance to reduce the minimum area of land dedicated to commercial uses from 25% (as set forth in Anne Arundel County Code Section 18-12-203(e)) to 12%. The Special Exception and Variance, if granted, will allow the Applicant to develop up to 147 townhome units, which will help address the profound housing shortage and affordability crisis in Anne Arundel County in general, and in the Fort George G. Meade area in particular. This new housing project can be provided only if the required minimum commercial component of the PUD is reduced from 25% to 12%.

The C3 portion of the PUD is the subject of this Application. Of the 400 originally-permitted residential units, a total of 71 single-family attached (e.g. townhomes) have been completed, with an additional 44 townhomes being fully permitted, as well as 128 condominium units. Overall, this leaves an allowance of 157 unbuilt and undeveloped residential units. Only a small portion of the 120,000sf of retail/commercial has been developed. The Royal Farms (located on a 2.41 acre parcel) has been developed (consisting of approximately 4,650 square feet of interior finished area). The balance of the commercial area was intended for an anchor grocery store and several pad sites. Despite many years of efforts, no grocer has expressed interest in this site, despite extensive efforts and outreach.

First, the applicant seeks a modification of the PUD to change the previously designed commercial area to an additional residential area. The applicant seeks to develop up to 147 townhomes in the area where the 94,000 square foot commercial building was intended to be located. Due to the allowance of 157 units as originally permitted by the 2018 PUD, the applicant is not seeking to increase the total number of units in the C3 zone, nor increase the density.

Second, the Applicant seeks to reduce the remaining commercial component by eliminating the anticipated grocery store. This change requires a modification to the existing Special Exception, as well as a variance to Section 18-12-203(e) to reduce the minimum commercial component from 25% to 12%.

It is described that in the over seven years since the original PUD Special Exception approval, the need for housing, particularly housing choices for all different stages of life and income levels has increased significantly. As a result, the County Code has been amended on multiple occasions in order to liberalize and increase permissible density in commercial zones. In addition, changing consumer habits have made it increasingly difficult to develop the anticipated grocery store or other retail and commercial uses.

#### COMMENTS

The **Development Division (Residential Team)** had no comment on the proposal.

The **Cultural Resources Section** has no objection to the proposed variance/modification to the Special Exception. Please note that development applications should clearly identify in the plans the presence of the Warfield Family Cemetery (protected by easement) located just across the street, Twisted Oak Pl., from the project area. The plans should add a note that this area is to be protected from any disturbance, i.e., no heavy machinery is allowed to park or move across this area.

The **Long Range Planning Section** commented that the site is located within the Neighborhood Preservation Development Policy Area. The site is in the Commercial Planned Land Use category and within the Priority Funding Area. The site and all adjacent properties are within the Shipley Homestead planned unit development.

- **Plan2040 General Development Plan:** Plan2040 does not have recommendations that are specific to this site and the proposal is generally consistent with the goals, policies and strategies of Plan2040 including:
  - Goal BE11: Provide for a variety of housing types and designs to allow all residents housing choices at different stages of life and at all income levels.
  - This proposal is within Region Planning Area 2 and is generally consistent with the Region Plan goals and strategies.
- **2022 Water and Sewer Master Plan:** The site is within the Existing Sewer Service category and the Existing Water Service category. The proposal is consistent with the 2022 Water and Sewer Master Plan.

The **Zoning Administration Section** reminds the applicant that, in order for a variance to be approved, the applicant must demonstrate and the Hearing Officer must find that the variance standards provided under Section 18-16-305 have been met. While the Office of Planning and Zoning generally supports additional housing opportunities, a full analysis of the argument put forth by the applicant will take place when the applications are submitted.

#### INFORMATION FOR THE APPLICANT

Section 18-16-201 (b) Pre-filing meeting required. Before filing an application for a variance, special exception, or to change a zoning district, to change or remove a critical area classification, or for a variance in the critical area or bog protection area, an applicant shall meet with the Office of Planning and Zoning to review a pre-file concept plan or an administrative site plan. For single lot properties, the owner shall prepare a simple site plan as a basis for determining what can be done under the provisions of this Code to avoid the need for a variance.

\*\*\* A preliminary plan checklist is required for development impacting environmentally sensitive areas and for all new single-family dwellings. A stormwater management plan that satisfies the requirements of the County Procedures Manual is required for development impacting environmentally sensitive areas OR disturbing 5,000 square feet or more. State mandates require a developer of land provide SWM to control new development runoff from the start of the development process.

Section 18-16-301 (c ) Burden of Proof. The applicant has the burden of proof, including the burden of going forward with the production of evidence and the burden of persuasion, on all questions of fact. The burden of persuasion is by a preponderance of the evidence. A variance to the requirements of the County's Critical Area Program may only be granted if the Administrative Hearing Officer makes affirmative findings that the applicant has addressed all the requirements outlined in Article 18-16-305. Comments made on this form are intended to provide guidance and are not intended to represent support or approval of the variance request.