



TOWN OF BEL AIR

DEPARTMENTS OF PLANNING AND PUBLIC WORKS
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January 4, 2024

Mr. Kyle James
CDP North, LLC.
100 10th Street NE, Suite 300
Charlottesville, VA 22902

Re: 11P-23-03-SP/SD/SB
Residences at Harford Mall [600 Belair Road]

Dear Mr. James:

The Bel Air Planning Commission met on November 2, 2023, December 7, 2023, and January 4, 2024 to review the Site Plan, Landscape Plan, Subdivision Plan and Special Development for the requested approval of a Mixed-Use Center including a proposed 249 apartment complex with an integrated parking garage. The Bel Air Planning Commission approved the request of CDP North, LLC. for a new 249-unit Multi-Family building within a Mixed-Use Center based on the attachment outlining findings of fact and conclusions of law and the following:

2022 Bel Air Comprehensive Plan

The project as approved is consistent with the 2022 Bel Air Comprehensive Plan as required by Town Code Section 165-19.

Special Development for the Mixed-Use Center

Approval of the Special Development for a Mixed-Use Center is based upon the following findings of fact:

- [a] The applicant has provided a unified arrangement of buildings, service areas, parking, signage and landscaping.
- [b] The architecture, site design, lighting and signage incorporate consistent design and theme elements and materials, massing and facade design for the project that is in harmony with the character of the neighborhood.
- [c] The internal circulation system is be designed to minimize through traffic and traffic conflicts within the project.

- [d] Safe pedestrian movement and the provision of pedestrian walks within the parking lot and surrounding the building perimeter is considered in the design.
- [e] All proposed establishments have vehicular service access either from an individual service drive, space or from a common service yard. All loading, trash removal, compaction or similar activities are segregated from public areas and screened from public view.
- [f] Signs to identify the use of an occupant will be designed as part of the architectural design of the building. Proposed signage is conditioned for approval of the preliminary plan and is subject to review and approval by the Planning Commission.
- [g] Directional and informational signs will be adequately provided, and design coordinated.
- [h] Center management is responsible for providing on-site security service.
- [i] A traffic and/or parking study was submitted and approved prior to application.
- [j] The owners of all lots will execute a recorded Development Agreement with the Town providing that all owners acknowledge and agree to be bound by performance standards as an overall scheme of development, outlining all shared elements, granting reciprocal easements to permit each owner to access any other owner's lot or parcel of land for the purposes of compliance with the Town Code and for either remediating any zoning violation or to comply with the Town Code for the purposes of any approvals sought by any of the owners of the lot and agreeing that the Town shall permit enforcement of any portion of the Town Code upon one or more owners of any lot or parcel of land contained within the Mixed Use Center scheme of development.

Site Plan

At a minimum, approval of the preliminary Site Plan is conditioned on the following:

1. Prior to Building Permit Application, submission of a Final Site Plan for signature incorporating comments from this staff report, and comments from:
 - a. Bel Air Volunteer Fire Company dated October 25, 2023
 - b. Harford County Health Department dated October 18, 2023
 - c. Harford County Soil Conservation District dated October 23, 2023
 - d. Harford County and MD-SHA pending comments on any intersection or road improvements.
 - e. Bel Air Public Works comments dated October 13, 2023
 - f. Harford County Public Schools dated October 26, 2023
2. Prior to approval of utility construction drawings address comments from Maryland American Water Company.

3. Prior to signature of Final Site Plan, approval of revised architectural design exhibits based on the Town architectural consultant comments dated October 24, 2023, and dated November 20, 2023.
4. Prior to signature of Final Site Plan, revision of the streetscape to provide expanded pedestrian amenities along the south building edge for review and approval by the Planning Commission.
5. Execution of an agreement between the Town and the applicant to abandon a minimum of 34,307 square feet of commercial space within the project to exclude from parking calculation prior to issuance of a Building Permit. The Applicant will execute an agreement with the Town to prohibit from relocating uses amongst abandoned spaces.
6. In addition to the agreement concerning the abandoned space, the Applicant will be required to maintain fifty percent (50%) of the area as a commercial use throughout the Project Area.
7. The calculation of parking excluding the corridor space is consistent with normally accepted planning principles based on interpretation by the Zoning Administrator.
8. The abandonment of space within the mall for a minimum of one year meets the definition contained in Section 165-104 of the Development Regulations.
9. Provision of Open Space fee-in-lieu in the amount of \$176,500.00 in cash, subject to the Town of Board of Commissioner's approval prior to Building Permit issuance. The Applicant will agree, in writing, to notify the Department within thirty (30) days of any termination, for any reason, of the lease(s) on the Macy's Department Store and/or the Macy's Furniture Store.
10. Prior to issuance of the final Use and Occupancy permit:
 - a. Complete all site work on the Final Site Plan to include:
 - i. Construction of required improvements outlined in the Town Traffic Impact Analysis conditional approval letter dated September 11, 2023.
 - ii. Landscape installation.

Landscape Plan

At a minimum, approval of the Landscape Plan is conditioned on the following:

1. Prior to Building Permit issuance, submission, and approval of the Final Landscape Plan incorporating comments from the staff report.

Subdivision Plan

At a minimum, approval of the preliminary Subdivision Plan is conditioned on the following:

1. Prior to Building Permit Application, submission of a Final Subdivision Plat for signature incorporating comments from this staff report, and comments from:

- a. Harford Health Department comments dated October 18, 2023
- b. Bel Air Public Works comments dated October 25, 2023
- c. MD-SHA comments dated November 10, 2023
- d. Bel Air Dept. Planning & Community Development comments:
 - 1) Revise the Subdivision Plat to depict all existing and proposed easements.
2. Prior to Building Permit issuance, recordation of the Final Subdivision Plat along with any easement documents, and any other required documents to be recorded, amongst the Land Records of Harford County.
3. Submission of a Development Agreement to the Town for approval and recordation as required in Section 165-53.I(2)(g).
4. Complete all of the conditions of the Town of Bel Air Traffic Impact Analysis approval dated September 11, 2023 prior to use & occupancy. All conditions of MDOT SHA regarding State roads/intersections and all conditions of Harford County concerning County roads/intersections must be addressed prior to use & occupancy.

Should you have questions regarding this approval, please call the Bel Air Planning Department.

Sincerely,



Lois Kissinger-Kelly, Chair
Planning Commission

The signed original of this letter, indicating concurrence by the owner/developer with the conditions as stated herein and on referenced material, must be returned within sixty (60) calendar days of the date of this approval.

I hereby accept the conditions of this site plan approval.

Mr. Kyle James
CDP North, LLC.

Date

cc: Planning Commission
Kevin Small, Director of Planning & Zoning
Bel Air Town Commissioners
Edward Hopkins, Town Administrator
Elizabeth Thompson, Esquire, Town Counsel
Brad Stover, Robinson & Stover
Thomas Minor, Federick Ward Associates
Harford Mall Business Trust, Property Owner
file

IN THE MATTER OF: * BEFORE THE
THE APPLICATION OF * BEL AIR
CDP NORTH, LLC * PLANNING COMMISSION
(Harford Mall – Mixed Use Center) * Case No. 11P-23-03-SP/SD/SB

* * * * *

**ATTACHMENT TO DECISION OF
BEL AIR PLANNING COMMISSION
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. Introduction.

This matter comes before the Bel Air Planning Commission for the conversion of an existing Shopping Center approval to a Mixed-Use Center pursuant to TOWN OF BEL AIR, MD Code §165-53(I)(2)(g), approval to subdivide a 3.93 acre, more or less parcel from a 29.38 acre parcel known as 600 Belair Road and shown on the site plan submitted as Lot A1 and site plan and landscaping plan approval to construct a four-story, 249 dwelling unit, with associated parking garage, within the proposed Mixed-Use Center. The Applicant also seeks approval under TOWN OF BEL AIR, MD CODE § 165-52(C) to provide fee in lieu of complying with the open space requirements under the Code.

A. Basic Facts Concerning the Site.

The property subject to this case are two (2) separate, subdivided lots – 600 Belair Road, Tax Map 304, Parcel 1946 containing 29.38 acres, more or less and 111 North Tollgate Road, Tax Map 304, Parcel 1946, containing 4.43 acres of land and respectively shown on the Site Plan as Lot A1 and A2 (hereinafter collectively referred to as “the Property”). The gross acreage of the Property is 33.81 acres, more or less and the Property is zoned B3, General Business.

The Property is situated at the juncture of U.S. Business Route 1 and Maryland Route 24 in the northwest quadrant of the intersection. U.S. Business Route 1 and Maryland Route 24 are both controlled and maintained by the State Highway Administration. Bel Air Town Center is located across Maryland Route 24, in the northeast corner of the intersection; Tollgate Marketplace in the southeast corner of the intersection and Bel Air Plaza located in the southeast corner of the intersection. This intersection is substantially commercialized and identified as “Priority One – Commercial Center” in the Land Use Distribution Priorities under the 2022 Comprehensive Plan. TOWN OF BEL AIR, MD. COMPREHENSIVE PLAN (“Comp. Plan”), 82 (rev. 2022). The Property is also bordered on the west by North Tollgate Road and Boulton Street. North Tollgate Road is controlled

and maintained by Harford County, Maryland and Boulton Street is owned and maintained by the Town of Bel Air. Across North Tollgate Road from the Property are multiple small businesses, including a Jiffy Lube, a tire/automobile repair shop, a mini-storage facility and a small strip center. The northmost portion of the property is bordered by Boulton Street, which is owned by the Town of Bel Air. Across Boulton Street from the Property is another shopping center commonly referred to as Harford Mall Annex, which contains several “big box” stores such as Best Buy and Pet Smart. Just west of Harford Mall Annex is a large fitness center known as Coppermine Bel Air Athletic Club. The Property is not located in the downtown area of the Town and there are no historic buildings on the Property.

The Property is owned by Harford Mall Business Trust and Shops at Harford Mall, LLC. The Bel Air Planning Commission (hereinafter referred to as “the Commission”) accepts and acknowledges that the Property has been utilized as an indoor shopping mall since 1973. The Property is currently improved with several commercial buildings. The Harford Mall is 447,449 sq. ft., of which 140,578 sq. ft., contains a Macy’s Department Store. The Harford Mall also contains variety of shops and restaurants. On the opposite side of the Harford Mall from the Macy’s Department Store formerly contained a Sears Department Store.

In May of 2021 and June of 2022, the owners of the mall sought the Commission’s approval to demolish the former Sears Department Store to redevelop this portion of the Property into a 59,609 square foot addition to the Property to contain additional retail space, after demolition of the closed Sears Department Store, and a grocery store (*see* Case No. 05P-21-01-SP/SD/LP and Case No. 05P-21-02-SB). The owners of the Harford Mall have returned to the Commission since then for minor adjustments to these approvals (Case No. 06P-22-01-SD/SP/P for a drive-thru use and a later revision to this same case on February 2, 2023 for outdoor dining). The Commission notes that neither the owners, nor any member of the public sought an appellate review for any of these approvals and they are final.

Near the northwest corner of the Property is a smaller commercial building which houses the Macy’s Furniture Store and consists of 24,640 sq. ft. All of the businesses that operate on the Property are tenants. Nearly all of the remaining portions of the Property contain an asphalt parking lot, its vastness broken up, only intermittently, by landscape islands.

Based on information supplied by the Applicant at the public hearings in this matter and common knowledge of the members of the Commission, the Property, in relation to the other three commercial quadrants, is in a state of economic decline and a high vacancy rate. The Commission notes that the grocery store which was approved as part of the Shops at Harford Mall and Sears redevelopment has been fully built out but is still not occupied.

It further notes, based on additional information provided by the Applicant, that many of the leasable areas within the Harford Mall are vacant.

B. Procedural Facts.

The Applicant filed its application with the Town of Bel Air, Department of Planning and Community Development (hereinafter referred to as “the Department”) on October 5, 2023. The Department prepared and issued its Staff Report recommending approval of all of the Applicant’s requests, subject to multiple conditions. The first public hearing occurred on November 2, 2023 where the Commission heard from the Applicant, its experts, including its civil engineer and transportation planner, Kevin L. Small, Director of the Department and numerous members of the public. The public comments came from citizens of the Town of Bel Air, representatives of residential associations in the area and citizens who reside outside the Town, but in Harford County. Public comment expressed concerns about nearly every general element of the proposed project, from the economic resources of the proposed inhabitants of the building to traffic complaints in and outside the neighborhood of this proposal and the need to reject the Applicant’s proposal based on general school overcrowding. The Commission expressed concerns to the Applicant concerning the architecture and color scheme of the proposed building as it related to the overall architecture in existence on the Property as well as the desire to see the future vision of the Property given the Applicant’s presentation that this project was the first phase of a redevelopment of the entire site that included the demolition of a substantial portion of the existing Harford Mall. On November 2, 2023, the Commission voted to continue the public hearing to allow the Applicant time to address the concerns of the Commission, the Department and members of the public. The Commission issued a letter dated November 3, 2023, setting forth the additional information that was required to be produced by the Applicant. The public hearing was continued to December 7, 2023. Between November 2, 2023 and December 7, 2023, the Department issued its Supplemental Staff Report in response to the Applicant’s additional information that was submitted, included the written Interpretation of the Zoning Administrator dated November 27, 2023 and reaffirmed its recommendation for the Commission to approve all of the Applicant’s requests. Furthermore, during that time, the Commission received multiple e-mails from members of the public reiterating its concerns and additional concerns.

The public hearing reconvened on December 7, 2023 as scheduled. The Applicant addressed the Commission’s concerns at the public hearing and the Commission took additional public comment. The public hearing was closed on December 7, 2023 and the Commission commenced its deliberations. Given the multiple requests by the Applicant, the substantial documentation in the record, the nature of the two public hearings and the overwhelming response of the public, the Department and Town Counsel recommended that the Commission table its decision and direct the Department and Town Counsel to draft a written opinion for the Commission’s review and approval. By majority vote, the Commission adopted those recommendations. This written opinion is to address all of the

Commission’s required findings of fact under the TOWN OF BEL AIR, MD CODE and pursuant to Maryland law. *See, Elbert v. Charles Co. Planning Comm.*, No. 1755 & 1754, Sept. Term 2022, App. Ct. of MD (November 29, 2023).

II. Applicable Law.

Special Development for the Mixed-Use Center

TOWN OF BEL AIR, MD CODE §165-104 defines a Mixed-Use Center as “[a] building, or group of buildings consisting of two or more uses exceeding 10,000 square feet and developed as an integrated scheme of development containing both commercial and residential floor space, conceived and designed as a single environment in which both commercial and residential amenities are provided.”

Mixed-Used Centers are classified as Special Developments under the TOWN OF BEL AIR, MD CODE §165-94 and is required to adhere to the specific Mixed-Use Center Performance Standards under TOWN OF BEL AIR, MD CODE §165-53(I)(2)(g)¹ which provide:

(g) Mixed-use center.

[1] Performance standards.

[a] The applicant shall provide a unified arrangement of buildings, service areas, parking, signage and landscaping.

[b] The architecture, site design, lighting and signage shall incorporate consistent design and theme elements and materials, massing and façade design for the project shall be harmonious with the character of the neighborhood.

[c] The internal circulation system shall be designed to minimize through traffic and traffic conflicts within the project.

[d] Safe pedestrian movement and the provision of pedestrian walks within the parking lot and surrounding the building perimeter shall be considered in the traffic/parking study.

[e] All establishments shall have vehicular service access either from an individual service drive, space or from a common service yard. All loading, trash removal, compaction or similar activities shall be segregated from public areas and screened from public view.

[f] Signs to identify the use of an occupant shall be designed as part of the architectural design of the building and attached thereto. Proposed signage shall be submitted with the preliminary plan and shall be subject to review and approval by the Planning Commission.

¹The Commission notes that this section of the Code as well as the definition of a Mixed-Use Center was recently amended by the Board of Town Commissioners. Its modifications have not yet been codified on the Town’s eCode website nor is it in print. These new provisions are found at: <https://www.belairmd.org/208/Planning-Commission>

[g] Directional and informational signs shall be adequately provided, and design coordinated.

[h] Center management shall be responsible for providing on-site security service.

[i] A traffic and/or parking study shall be submitted and approved prior to application if required by the zoning administrator.

[j] The owners of all lots shall execute a recorded Development Agreement with the Town providing that all owners acknowledge and agree to be bound by these performance standards as an overall scheme of development, outlining all shared elements, granting reciprocal easements to permit each owner to access any other owners' lot or parcel of land for the purpose of compliance with the Town Code and for either remediating any zoning violation or to comply with the Town Code for the purposes of any approvals sought by any of the owners of the lot and agreeing that the Town shall permit enforcement of any portion of the Town Code upon one or more owners of any lot or parcel of land contained within the Mixed-Use Center scheme of development.

Since the Applicant's request involves the installation of a residential feature to a preexisting commercial use to complete the conversion of the existing Shopping Center approvals to a new Mixed-Use Center, this request is subject to review and findings under TOWN OF BEL AIR, MD CODE §165-21(B) for adequacy standards under the annual growth report which provides, in pertinent part:

(B) Adequacy standards (minimum acceptable level of service). Upon acceptance of the annual growth report by the Board of Town Commissioners, all approvals of...site plans for multifamily development shall be subject to findings of adequate school capacity based on the standards set in this subsection and the current and projected use level described in the annual growth report:

(1) Preliminary approval. Preliminary...site plans for multifamily residential developments exceeding five dwelling units shall not be approved at locations where either of the following conditions exist when impact of proposed development on school enrollment is included:

(a) The enrollment, at the elementary school which then serves the site and all abutting elementary school attendance areas is greater than 110% of the rated capacity or is projected to be greater than 110% within three years; or

(b) The enrollment, of either the middle school or high school which serves the site and all abutting respective middle and high school attendance areas is greater than 110% of the rate capacity or is projected to be greater than 110% within three years.

Site Plan

Review of Open Space Fee-in-Lieu Request.

The Applicant has requested that its obligations to provide Open Space be waived and the Commission permit it to pay, by way of letter of credit or bond, the fee in lieu amount of \$176,500.00. TOWN OF BEL AIR, MD CODE §165-52(C) provides:

- (1) The Planning Commission may permit the open space requirements to be satisfied through the payment of a fee in lieu of on-site recreation areas when provision of on-site open space is impractical due to the site conditions. Fees shall be determined by statute based on a per acre cost for active and passive recreation open space.
- (2) Open space fee in lieu payments shall be used for development of recreational space/facilities through the Town's Recreational Open Space Fund. If not used within 15 years for acquisition and/or development of passive or active open space, the funds shall be rebated to the property owner.

The Commission acknowledges that the Board of Town Commissioners has introduced Ordinance Numbers 818-23 and 819-23 which amends TOWN OF BEL AIR, MD CODE §§165-21(B) and 165-52(C). However, the Commission is bound to follow the current version of these code provisions. If, and when, the Board of Town Commissioners passes this proposed legislation, assuming it does not make any further amendments, the Applicant may seek any modifications it needs to comply. At this point in the proceedings, the Commission is not bound by what the law may be; it is bound by what the law is at the time the public hearing is closed.

Additional sections of the TOWN OF BEL AIR, MD CODE will be referenced as needed.

III. Conclusions of Law.

A. *Review pursuant to Town of Bel Air, MD §165-19 (Compliance with 2022 Bel Air Comprehensive Plan).* The Department's Staff Reports concludes that the proposal is consistent with the 2022 Comprehensive Plan. We agree. We note that there are multiple references throughout the Comprehensive Plan to encourage development of mixed-use centers to further multiple housing and economic development goals and objectives, such as implementing a more walkable community and integrating residential and commercial designs in one setting. Comp. Plan at 8, 44, 69, 70, 82, 83, 86, 88, 91 & 93. Furthermore, the project was anticipated by the Comp. Plan and furthers the Housing Element's goal of increasing the housing supply. *Id.* at 74, 77, 83, 89 & 94. The Fair Housing Act is built into the goals and objectives of the Housing Element. *Id.* at 68, 72 & 74. Maryland has codified and expanded upon the federal Fair Housing Act and includes "source of income" of potential occupants as prohibited considerations when approval of housing is sought.

See MD. CODE ANN., STATE GOV'T ART. §20-705(1). The Commission is prohibited from considering any information, whether express or implied, that relates to the “familial status” or “source of income” of the potential occupants of this project or any other housing project before it. Any information that was presented at the public hearings or in writing to the contrary of Maryland law is summarily rejected.

B. *Special Development for Mixed-Use Center.* The Commission notes that the Performance Standards for Mixed-Use Center are nearly identical to those for Shopping Centers under TOWN OF BEL AIR, MD CODE §165-92(H)(d) which the Commission has previously reviewed and approved most recently in June of 2022. The Commission will not disturb those unchallenged findings. The question before it now is how this proposed building fits into those preexisting approvals. The Commission finds as follows pursuant to the Performance Standards set forth in TOWN OF BEL AIR, MD CODE §165-53(I)(2)(g)(1)(a)-(j):

(a) The Applicant has designed the additional building to be a part of the unified arrangement of buildings already on the site and is proposed to be within walking distance from the existing Harford Mall. The proposed building will break up and utilize an underutilized parking lot on the Harford Mall and provide additional landscaping where asphalt currently exists. The Commission finds that the parking is sufficient, as interpreted by the Zoning Administrator, and is nearly self-contained within the proposed buildings, except for 12 spaces. *See Section D infra.*

(b) As stated previously, the Commission members initially rejected the Applicant's architecture plans. The permitted subjective assessment was that the proposed design and architecture failed to consider elements and color schemes that fit into the overall scheme of development and was not in harmony with the character of the neighborhood. The Commission has reviewed the amended architectural renderings and believes that the lighter color scheme and lighter brick provides a more cohesive design with the buildings already on site. The brick accents provide a connection to older buildings in the downtown area. The Commission accepts the Town architect's findings and believes the Applicant's amended renderings comply with the Performance Standards.

(c) The Commission finds that the internal circulation proposed on the site plan is designed to minimize through traffic and traffic conflicts by keeping the traffic generated by the new structure circular around the building and away from the busier areas of the Harford Mall along U.S. Business 1.

(d) The Site Plan depicts pedestrian walks and movement across Boulton Street as well as to the existing Harford Mall along the internal roads around the proposed building and adjacent parking lot.

(e) As previously stated, the established commercial buildings on the Property have already been determined to have appropriate vehicular service access either from individual service drive, space or from a common service yard. With respect to the loading and trash removal and compaction, the Site Plan shows that these facilities are contained

within the proposed parking garage servicing the proposed building and thus, the Commission finds that they are appropriately screened from the public view.

(f) The signage which identifies the building as “the Residences” is properly incorporated into the architectural design as depicted on the amended renderings and are approved by the Commission. Any deviation from the amended renderings will require additional review by the Commission.

(g) Directional and informational signs have been adequately provided, and design coordinated with the existing center. Directional signs currently provided are adequate for the proposed use.

(h) The Commission has already approved the existing requirement that the Applicant is responsible for on-site security service under the Shopping Center approvals.

(i) The Commission accepts the traffic impact study which was reviewed and approved by the Town’s recognized professional transportation planner. The State of Maryland and Harford County, Maryland have provided additional comments and requirements that the Applicant shall meet. There was no contrary traffic impact study provided by any recognized transportation planner to rebut the Applicant’s and Town’s experts.

(j) The Commission finds that the owners are ready, willing and able to execute the Development Agreement as required under the TOWN OF BEL AIR, MD CODE.

In conclusion, the Commission accepts the Department’s recommendations and finds that the Applicant has satisfied the Performance Standards, subject to the conditions set forth in the attached letter.

C. *Landscape Plan.* The Commission incorporates by reference, as if fully stated herein, the findings and recommendations of the Department concerning approval of the Landscape Plan and hereby approves the Landscape Plan.

D. *Subdivision Plan.* The Commission notes that the Department’s recommendations with respect to calculation of the parking requirements and interpretation of the required amount of Open Space that underpins the Commission’s decision was based in large part upon the written Interpretation dated November 27, 2023 and submitted with the Department’s Supplemental Staff Report. The Commission is not empowered under the TOWN OF BEL AIR, MD CODE to review the Zoning Administrator’s written interpretations. That power lies with the Bel Air Board of Appeals pursuant to TOWN OF BEL AIR, MD CODE §165-15(I). Based on information provided by the Department, no such challenge has been mounted to these interpretations and, therefore, the Commission is bound by them.

Considering that fact, the Applicant’s assertion that it may relocate the abandoned square footage to another space within the Harford Mall, so long as it continues to maintain 34,307 sq. ft. of abandoned area is rejected. The Zoning Administrator interpreted the abandonment of this space based on the definition set forth in the code, which requires that

the area be vacant or surrendered for a period of one year or more. TOWN OF BEL AIR, MD CODE §165-104. Relocation of uses to shift abandoned spaces destroys this required timeframe. This is also impractical from the perspective of enforcement. As a condition of approval, the Applicant will execute an agreement with the Town as set forth in the approval letter and be prohibited from relocating uses amongst abandoned spaces. Notwithstanding the Commission's required acceptance of the Zoning Administrator's interpretation of the abandonment of these otherwise functional commercial spaces, as a condition of approval and in addition to the agreement concerning the abandoned spaces, the Applicant will be required to maintain fifty percent (50%) of the area as a commercial use throughout the Property. This requirement is consistent with the Comp. Plan in promoting the economic viability of the U.S. Business Route 1 and Maryland Route 24 intersection and preserving the commercial character of the Property.

The Commission is only required to make findings of fact and conclusions of law on two (2) areas of concern on the subdivision plan. First, is the Applicant's request for fee in lieu of open space pursuant to TOWN OF BEL AIR, MD CODE §165-52(C) in the form of a letter of credit or bond. The Commission is required to make a finding that an impracticality exists on the site to warrant a fee in lieu rather than requiring the Applicant to meet the required active and passive open space requirements under the Code. Secondly, the Commission must make a finding of adequate school capacity pursuant to TOWN OF BEL AIR, MD CODE §165-21(B).

1. Review of Fee-in-Lieu Issue.

The Applicant provided, at the request of the Commission, a depiction of its vision for the future of the Property. This was commonly referred to as a "Master Plan." The Applicant's vision of the future redevelopment of the Harford Mall involves demolition of a substantial portion of the mall, excluding the areas occupied by the Macy's Department Store, Macy's Furniture Store and the string of stores and restaurants that front U.S. Route 1/Baltimore Pike. In its place, the Applicant is envisioning installing an open space area with significant landscaping, trees, and other greenery. Contained in that area are two retail buildings depicted of an unknown amount of square footage. The Commission acknowledges that the Master Plan was submitted by the Applicant for informational purposes only and it is not bound by that depiction.

According to the Department's Staff Report, "...the Applicant has provided both active and passive open space as part of this project. Open space is required at 15% of the total acreage (5.07 acres). A minimum of 40% of this requirement must be usable or active open space (2.03 acres) leaving 3.04 passive open space as the remainder. The Applicant has proposed to provide the following areas:

- Active Open Space – West Courtyard: 6,803 square feet
- Active Open Space – East Courtyard: 8,604 square feet

- Passive Open Space throughout the site: 51,371 square feet

The remaining passive and active open space required is 3.53 acres and is proposed to be provided through fee-in-lieu at \$50,000/acre.” Supp. Staff Rep. at 3. The total fee-in-lieu payment would be \$176,500.00.

The Applicant advised the Commission that it was impractical for it to provide the entire amount of required open space because the site was encumbered by long-term leases of a significant portion of the Harford Mall that make it impossible to relocate those uses or demolish those structures to make available the necessary area to comply with the open space requirements and still maintain the required parking for the Property. Specifically, the Macy’s Department Store is under a long-term lease on one side of the Property and contains 140,578 sq. ft., or approximately 31% of the leasable space in the Harford Mall. *See Harford Mall Lease Plan dated October 5, 2023.* On the opposite side of the Property, the Macy’s Furniture Store, or 24,340 sq. ft., is encumbered by a long-term lease. *See Passive Open Space Exhibit, Harford Mall Redevelopment Plan dated October 5, 2023.* The Commission finds that these facts support a finding of impracticality located on the site as required under TOWN OF BEL AIR, MD CODE §165-52(C).

The Applicant has also requested that the Commission approve its request to provide the \$176,500.00 fee in lieu in the form of a letter of credit or bond, rather than cash. This is a novel request that has not yet been posed to the Commission.

TOWN OF BEL AIR, MD CODE §165-94(G) provides, “Guarantees. The Town may require a bond, irrevocable letter of credit, or other appropriate guarantee as may be deemed necessary to *ensure satisfactory performance* regarding all or some of the conditions of the special development.” (Emphasis supplied). Fee in lieu of open space requirements is provided in TOWN OF BEL AIR, MD CODE §165-52(C). Subsection (1) provides, “[t]he Planning Commission *may permit the open space requirements to be satisfied through the payment of a fee in lieu of on-site recreation areas* when provision of on-site open space is impractical due to the site conditions. Fees shall be determined by statute based on a per acre cost for active and passive recreation open space.” (Emphasis supplied). Subsection (2) requires the Town to utilize the funds for recreational space or facilities within 15 years, otherwise the funds are returned to the property owner.

The concession granted under TOWN OF BEL AIR, MD CODE §165-52(C) is, in essence, a waiver of the physical provision of on-site open space requirements for a particular project, based on a finding of impracticality. In exchange for a waiver of the Code, the developer agrees to pay a per acre rate to the Town. In contrast, the powers the Commission has under §165-94(G) is to approve a designed open space and, “to ensure satisfactory performance,” the Applicant may be required to post an irrevocable letter of credit or bond to be utilized by the Town, if the Applicant failed to construct the required open space. Here, there is no required future construction of the remaining open space

because the Applicant would make the required payment, in cash, of \$176,500.00. This payment in lieu of open space does not absolve the Applicant, or any other subsequent Applicant, from complying with the open space requirements or seeking additional fee in lieu of open space should it seek a future approval for additional development of this site.

The Commission concludes that while the site conditions on the Property make providing open space impractical, it will not approve the Applicant’s request to provide a surety rather than a payment for the fee in lieu of open space. Based upon the Commission’s review of TOWN OF BEL AIR, MD CODE §§165-94(G) and 165-52(C), it is doubtful that it has the power to grant payment by surety. The Applicant will need to make a cash payment of \$176,500.00, subject to the approval of the Board of Town Commissioners. Furthermore, while the Applicant has represented and the Commission has accepted that an impracticality exists due to the existing long-term leases on the Property with the Macy’s Department Store and Macy’s Furniture Store, as a condition of this approval, the Applicant will be required to notify the Department within thirty (30) days of any termination, for any reason, of those leases.

2. Adequate Public Facilities / Adequate School Capacity.

With respect to the adequate school capacity pursuant to TOWN OF BEL AIR, MD CODE §165-21(B), the Commission was provided with comments from the Harford County Public School setting forth attendance and school capacity information as of September 30, 2023. On December 4, 2023, the Board of Town Commissioners passed Resolution No. 1216-23 and accepted the 2022 Harford County Annual Growth Report pursuant to TOWN OF BEL AIR, MD CODE §165-21 that sets forth school capacity standards as of December, 2022. Notwithstanding that the Harford County Public Schools’ comments provided more up-to-date information, the Commission is bound to follow the school capacity standards as set forth in the 2022 Harford County Annual Growth Report.

The Commission, after a review of the 2022 Harford County Annual Growth Report, makes the following findings of facts:

Elementary School	Current State Rated Capacity	Three-Year Projected State Rated Capacity
Red Pump Elementary School	102%	105%
Bel Air Elementary School	109%	113.17%
Homestead Wakefield E.S.	115%	117%

Red Pump Elementary School is the servicing elementary school for the site. Bel Air Elementary School and Homestead Wakefield Elementary School are abutting schools. The Commission finds that because Red Pump Elementary School is below and projected to remain below the 110% threshold that there is adequate elementary school capacity pursuant to TOWN OF BEL AIR, MD CODE §165-21(B).

Middle School	Current State Rated Capacity	Three-Year Projected State Rated Capacity
Bel Air Middle School	92%	97%
Fallston Middle School	91%	97%
Southampton Middle School	81%	88%

Bel Air Middle School serves the Property and the abutting middle schools are Fallston Middle and Southampton Middle. The Commission finds that because Bel Air Middle School is below and projected to remain below the 110% threshold that there is adequate middle school capacity pursuant to TOWN OF BEL AIR, MD CODE §165-21(B).

High School	Current State Rated Capacity	Three-Year Projected State Rated Capacity
Bel Air High School	84%	84%
Fallston High School	66%	66%
C. Milton Wright High School	79%	84%

Bel Air High School serves the Property and the abutting high schools are Fallston High and C. Milton Wright High. The Commission finds that because Bel Air High School is below and projected to remain below the 110% threshold that there is adequate high school capacity pursuant to TOWN OF BEL AIR, MD CODE §165-21(B).

For the reasons set forth herein and subject to the conditions stated herein and in the attached approval letter, the Commission hereby approves all of the requests submitted by the Applicant.