

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**ZAAP NUMBER 24-0018**

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**RIVERSIDE TOWNHOMES**

**EIGHTH ELECTION DISTRICT**

**DATES HEARD: February 13 & March 27, 2025**

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**ORDERED BY:**

**Mr. Hayden, Mr. Bradley, Mr. LaRocco,  
Mr. Payne and Ms. Weaver**

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**DATE SIGNED: May 22, 2025**

### **Pleadings**

LAHACO INVESTMENTS, LLC (“Applicant”) appeals the St. Mary’s County Planning Commission’s denial of a concept site plan proposing 42 townhouse units at 23200 and 23206 Three Notch Road, California, MD 20619.

### **Public Notification**

Public notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on January 24 and January 31, 2025. The file contains certification of the required mailings to all adjoining landowners and those owning property located within two hundred feet of the subject property. Evidence that required notice was physically posted on the property is also present. The agenda was also posted on the County’s website on February 7, 2025. These satisfy all applicable notice requirements for this matter’s first hearing on February 13, 2025. At that meeting, a motion to continue the matter to March 27, 2025 was made and approved on the record. Therefore, the Board finds compliance with all applicable public notice requirements.

### **Public Hearing**

This matter was heard before the public at 6:30 p.m. on February 13, 2025 and at 6:30 p.m. on March 27, 2025 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard, including staff, witnesses for the Applicant, and all members of the public wishing to offer testimony, were duly sworn. Both proceedings were recorded in full electronically. This order is a summary of the evidence presented, applicable law, and the Board’s decision in the matter at these meetings.

### **The Property**

Applicant owns contiguous parcels of real property situate 23200 and 23206 Three Notch Road, California, MD 20619 (collectively, “the Property”). The Property can be found at Tax Map 34, Grid 16, Parcels 42, 43, 434, Lots 7, 8, and 19-21 of the St. Mary’s County Tax Maps. The Property consists of 4.75 acres, more or less, is zoned Medium Intensity Mixed-Use (“MXM”), and has a land use designation of Mixed-Use Medium Intensity. The entirety of the property lies within the Lexington Park Development District.

### **Decision Appealed**

The St. Mary’s County Planning Commission, by a vote of 0-7, denied approval of the concept site plan for CSP 24-0018 on November 18, 2024. The Appellant filed a timely Notice of Appeal on December 11, 2024.

### **The St. Mary’s County Comprehensive Zoning Ordinance**

St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 60.6 requires that all non-residential and multi-family residential projects requiring a major site plan first receive concept site plan approval by the Planning Commission. To approve a concept site plan the Planning Commission must find that the proposed development:

- a. Is consistent with the Comprehensive Plan and applicable functional plans;
- b. May be served by adequate public facilities as required by § 70.2.2;
- c. Is consistent with the County Annual Growth Policy, including any required phasing plans;<sup>1</sup>
- d. Will promote the health, safety, and welfare of the general public;
- e. Adequately developed recreational and other community amenities are

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<sup>1</sup> Resolution 2016-22 suspended the County’s Annual Growth Policy, and this criterion is no longer applicable.

provided in accordance with the Comprehensive Plan and the Comprehensive Zoning Ordinance; and,

f. Is consistent with Chapter 62 design objectives.

CZO § 70.2.2 states adequate public facilities (“APF”) determination shall be based on the statutory criteria of CZO § 70.7 through 70.12. Considering the centrality of whether APF exists for the public roads to be served by Applicant’s proposal, we attach CZO § 70.7 and Schedule 70.7.3 in their entirety as an Appendix to this order. Here we call particular attention, with appropriate emphasis, CZO § 70.7.2.d:

Roads shall be considered adequate to accommodate traffic projected to be generated by the proposed development if ...

d. The development is located within designated revitalization areas and/or development districts where the County wants to encourage new development, or redevelopment. These developments would be allowed to proceed in certain areas experiencing unacceptable levels of service, provided that transportation improvements are made which would result in an improvement in traffic operations beyond what would have been expected if the development had not occurred. In addition, mitigation measures may be required by the Planning Commission to comply with the standards specified in Section 70.7.3.b.

(Emphasis added).

#### Staff Report

A staff report prepared by the Department of Land Use & Growth Management (“LUGM”) was received into the record. The staff report recommended the concept site plan be approved, with staff finding the project appeared to satisfy all applicable minimum criteria of the CZO. The only criteria not found satisfied were a certain buffer yard and setback, for which dimensional variances could be sought by the Applicant in a proceeding separate from the Concept Site Plan review.

With respect to the adequacy of the public roads that would serve the project, the staff report concluded the applicable portion of Three Notch Road (MD Route 235) currently has a Level of Service (“LOS”) “F” during peak hours, a failing level that does not satisfy the Adequate Public Facilities requirements of CZO § 70.7.3.b and Schedule 70.7.3.<sup>2</sup> The staff report noted that although the level of service was below the minimum required, a traffic mitigation measure is proposed to which Applicant agreed to make a proportional contribution. The specific mitigation measure contemplated is a new traffic signal at the intersection of MD Route 235 and FDR Boulevard, some several hundred feet away from the Property, which would create a “signaled full movement intersection at MD 235 and FDR Blvd” that would “positively affect” operations at the MD 235/MD 4 intersection by giving northbound motorists a potential means of bypassing the MD 235/MD 4 intersection. *Staff Report, Memorandum from Jesse Harper to Jessica S.B. Andritz.* The staff report lacks any concrete, specific estimates of how many motorists could potentially be diverted from MD 235/MD 4, nor does it estimate when the mitigation might be installed or what Level of Service might be attainable at the MD 235/MD 4 intersection if the mitigation is put in place.

Attachments to the Staff Report:

#1: Staff Report

#2: Land Use Map

#3: Zoning Map

#4: Site Plan

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<sup>2</sup> Per its definition in Article 9 of the CZO, a Level of Service is a “measurement of roadway use based upon a specified design capacity.” Levels of Service are “scored” A through F. A LOS-F, the lowest “score,” denotes a roadway where traffic flow has broken down, queues form, and “operations within the queue are characterized by stop-and-go waves and are extremely unstable.” While conditions “may be quite good” for pedestrians discharged from the queue, a LOS-F nevertheless represents the lowest level of service on the scale and is not considered an acceptable level of service in any zoning district.

- #5: Color Renderings
- #6: Department of Public Works & Transportation Concept Site Plan Approval
- #7: Adequate Public Facilities Report
- #8: State Highway Administration Concept Approval
- #9: Metropolitan Commission Approval
- #10: Addressing Comments/Approval
- #11: Health Department Approval
- #12: St. Mary's Soil Conservation District Approval
- #13: Board of Education Comments
- #14: Department of Natural Resources Approval
- #15: Environmental Approval
- #16: SMECO Comments
- #17: Parking Justification Letter
- #18: Notice of Appeal

**Staff Testimony**

Stacy Clements, an Environmental Planner from the Department of Land Use & Growth Management ("LUGM"), presented a short slide show that gave an overview of the proposed project, the Property, applicable regulations from the CZO, and the recommendations of the staff report. At the February 13 meeting, Deputy County Attorney John Sterling Houser answered a Board member's question on the nature of the staff report's recommendation by stating the staff report only contains recommendations and that the Board must act as the final fact-finder and, later, that it would potentially be constitutionally unsound to request the developer contribute more than the arrived-at proportional share to the proposed mitigation. At the March 27 meeting, James

Gotsch, the Director of the Department of Public Works & Transportation (“DPW&T”) answered a question related to public school bus routes by saying that, in his experience, school buses will not traverse private roads.

### **Applicant Testimony**

Applicant was represented before the Board by Sang Oh, Esq., of Talkin & Oh, LLP. Mr. Oh was joined by Joe Kadjeski, a Principal Engineer at COA Barrett, LLC and the lead engineer on the project, and Michael Lenhart, of Lenhart Traffic Consulting, Inc., a traffic consultant. The vast bulk of the testimony received by the Board came from these individuals over the course of, combined across both nights, approximately three hours of presentations, testimony, and questioning. We highlight the following from the evidence received by the Board.

In his opening remarks on February 13, Mr. Oh stated the project meets all criteria in the CZO, and that satisfying the minimum criteria should “carry an imprimatur, of sorts” that the project furthers the health, safety, and welfare of the general public.

Mr. Kadjeski explained certain technical aspects of the proposal. He explained the site is currently improved with two existing residences, which would be replaced. The proposed townhome development would include only one point of ingress and egress and that it would be directly off Route 235 just north of the intersection at Route 235 and Route 4. Mr. Kadjeski said a right-in, right-out turn into the residential development would be approximately 600 feet away from that intersection. He also spoke at some length about the project’s proposed parking, buffer yards, and setbacks and shared some details of the Applicant’s unsuccessful attempt to acquire a right-of-way over property behind the Property that could have provided an alternate means of ingress and egress from the Property.

Mr. Lenhart's testimony was lengthier, and concerned the project's potential traffic impacts. He gave a general summary of how the County's APF provisions for traffic and roads work, explained the methodology behind his Traffic Impact Analysis, and shared the results of that analysis. He confirmed that Route 4 and Route 235 "failed," noting that its failure is "no surprise to anyone" and that the intersection has been failing "for years." He reiterated that the project is approve by the State Highway Administration.

In his Traffic Impact Analysis, Mr. Lenhart explained the effect of the proposed mitigation as follows:

The signalization of the intersection of MD 235 & FDR Boulevard is anticipated to remove vehicles from the intersection of MD 235 & MD 4, thus reducing queue lengths at the intersection. The contribution to the planned traffic signal should be considered as mitigation of the minimal queue impacts of the proposed development at the intersection of MD 235 & MD 4.

*Traffic Impact Study, Pages 14-15.*

Mr. Lenhart's testimony did not include specifics about how the proposed mitigation would move the LOS-F at Routes 4 and 235 to a better LOS, but rather only addressed the "net betterment" concept. Accordingly, with no identifiable LOS improvement, the Board focused on interpreting the "net-betterment" concept based upon the testimony and evidence.

As for projected ingress and egress patterns out of the proposed development, Mr. Lenhart testified that drivers cannot exit from the existing driveways near the Property whenever "the platoon" of vehicles traversing Route 235 northbound are in flow, but that when the signal at the Route 235/Route 4 intersection cycles through a "substantial gap" opens that allows drivers to exit. He later elaborated that substantial gap is "about a minute" in length, and that the light cycle takes approximately four minutes. Mr. Lenhart said the proposed development will not generate a substantial amount of vehicles and estimated that 16 vehicles would leave at peak morning hours,

and in response to a query from the Board responded that he based that estimate on the statutory trip generation numbers found at CZO 70.7.4. He also said that he was able to access traffic accident records and that there was no indication of any traffic accidents at any of the driveways near the Property in the last three years.

Anticipating questions about school bus pick-up and drop-off procedures, Mr. Kadjeski testified that data he acquired showed that other school bus stops existed on Route 235. Mr. Kadjeski also explained that Applicant's proposal includes lengthening the shoulder improvement to provide a place for a school bus to pull off outside of the merge lane. He did acknowledge that the St. Mary's County Public Schools' comment on the proposal was that the location for a bus stop "is not an ideal location," further elaborating his opinion that "I don't know that any stops along Maryland Route 235 are ideal with the volume of traffic." Mr. Kadjeski stated the roads within the development are planned to remain private roads and that, consequently, school buses will not enter them. Mr. Kadjeski did state at the March 27 meeting that it is conceivable the project could be redesigned to upgrade the roads to the County's standards for public roads, but that it would take a complete redesign of the project.

#### **Public Testimony**

The Board of Appeals meeting on February 13 adjourned before opening for public comment. On March 27, the hearing was open to public comment and the following members of the public appeared to offer testimony:

- *Dr. John Seisman, 23192 Three Notch Road, California*
  - Dr. Seisman operates Three Notch Dental, a dental practice adjacent to the Property. He agreed with concerns expressed about the school bus, sharing that a school bus parks right in front of him on Wednesdays and that it is

“terribly difficult” to get around. He also acknowledged that modifications to the buffer yards and fencing alleviated his privacy and nuisance concerns.

In addition to the in-person testimony, letters were received from Three Notch Dental, Gregory Stevens, Eric Giles, Stephanie Hallisey, Christopher Longmore, Esq. on behalf of PJ Land Development, LLC, Donna Bradburn, and James Tyler Bell. These letters were made available to the Applicant prior to the hearing, reviewed during the meeting, and received into the record. With the exception of the letter sent on behalf of PJ Land Development, LLC, comments and issues raised in the letters were negative. Common concerns expressed were those concerns over traffic and stormwater management.. Many of the concerns expressed in these letters were vague and lacked particularity.

### **Decision**

#### Standard of Review

Land Use § 4-306(f)(2) states that, on appeal, the Board of Appeals shall have “all the powers of the administrative officer or unit from whose action the appeal is taken.” In other words, the Board’s review of an appealed decision is *de novo*. *Board of County Commissioners for St. Mary’s County v. Southern Resource Management*, 154 Md. App. 10, 30-31 (2003).

#### Discussion

In the Board’s view, the central and dispositive factor in this matter is whether Applicant’s proposal does, in fact, meet the statutory criteria of the CZO for adequate public facilities. That is the basic hinge on which three of the five applicable criteria turn. If the Applicant met its burden and demonstrated full compliance with the statutory regulations, then Applicant will benefit from the strong presumption in Maryland law that a project proposed in a zoning district where it is permitted-by-right and conforms with the legislatively-prescribed regulations applicable in that

zoning district is a project that furthers the jurisdiction's Comprehensive Plan and, consequently, the general welfare of its people. If found not to satisfy the statutory criteria in full, then for the same reason the presumption turns against the Applicant, and the assumption must then be made that the project does not further the goals of the Comprehensive Plan or the general public welfare. See, e.g., *Sheetz, Inc. v. Frederick City Planning Commission*, 106 Md. App. 531, 543 (1995) (referencing *Friel v. Triangle Oil Co.*, 76 Md. App. 96 (1988); *Schultz v. Pritts*, 291 Md. 1 (1981); *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 190 (1970)).

In this matter, Applicant proposes a development served by an intersection that all parties and witnesses, including Applicant's expert witness, acknowledge is failing. The intersection at Maryland Route 235 and Maryland Route 4 operates at a LOS-F. The minimum acceptable level is LOS-D, two rungs on the ladder higher. To overcome this, Applicant and the staff report point to an "exception," of sorts, found at CZO § 70.7.2.d, a regulation this Board is familiar with and has invoked before. That exception, in so many words, allows the Planning Commission – and the Board of Appeals when it acts in the Planning Commission's place on an appeal like this case – to approve a concept site plan served by roads with otherwise inadequate levels of service if the plan proposes road improvements that would result in a net betterment of "traffic operations." For the reasons discussed further below, we do not find the Applicant has met its burden to persuade the Board such a net betterment will occur. The lack of particularity concerning how much impact the hypothetical signalization of the intersection of Route 235 and FDR Boulevard will have on the intersection of Route 235 and Route 4, legitimate concerns over the safety of approving a use that will require school bus stops in such close proximity of the failing intersection, and the general confusion, disorder, and propensity for poor traffic conditions that would be engendered by installing in the same area a new right-in, right-out turn that will be the sole point of access for 42

new homes require us to deny this appeal and uphold the Planning Commission's denial of the concept site plan.

Before discussing in greater detail the evidence produced in this case we turn to the actual statutory language upon which our denial is based. CZO § 70.7.2.d, copied in full further above, is only reached if an applicant is unable to satisfy its APF requirements with respect to roads by more traditional means: either identifying that adequate levels of service already exist (CZO § 70.7.2.a), that improvements that will bring levels of service to adequate levels are already programmed (CZO § 70.7.2.b), or that the applicant itself is willing to undertake road improvements that will raise levels of service to acceptable levels (CZO § 70.7.2.c). If adequate levels of service do not presently exist and are not expected to exist in the future by function of programmed improvements, then and only then does an applicant reach the provisions CZO § 70.7.2.d.

CZO § 70.7.2.d has two decision points for the Planning Commissioner laden within it. First, the Planning Commission must decide whether or not the development proposal before it will, in fact, yield a net betterment in traffic conditions if approved.. It is not enough to merely mitigate for the traffic a development will add to the existing mix; the statutory language is “an improvement in traffic operations beyond what would have been expected if the development had not occurred.” If the Planning Commission does not feel the facts before it support such a finding, then an application must be denied for failure to satisfy Adequate Public Facilities requirements.

The second decision point is reached if a finding of a net betterment is made. The final sentence of the paragraph could be interpreted to allow the Planning Commission, at its discretion, to require compliance with the normally required road and traffic standards anyways. *Id.*, (“... In addition, mitigation measures may be required by the Planning Commission to comply with the

standards specified in Section 70.7.3.b”) (emphasis added); see also, CZO 11.4.7, (“The following rules shall apply to the construction of language in this Ordinance... Use of “shall,” “will” or “must” is mandatory; “should” is directive, but not binding, and “may” is permissive”) (emphasis added). The same basic canons of statutory construction apply to local ordinances that do to interpretation of state statutes. *Anne Arundel County v. 808 Bestgate Realty, LLC*, 479 Md. 404, 420 (2022).

We do not reach the question of interpreting how far the Planning Commission’s discretion on the second “decision point” may reach because we do not find sufficient facts before us to convince us Applicant can pass the first. As noted in our recitation of the testimony and evidence, few specific, concrete details of the actual effects of the hypothetical traffic mitigation were produced in the record. We do not possess a reliable estimate of the actual number of vehicles the proposed mitigation may siphon from the intersection at Route 235 and Route 4. We do not possess a reliable estimate of the levels of service either the intersection at Route 235 and Route 4 or the new signalized intersection at Route 235 and FDR Boulevard would operate at in the future.

Beyond traffic counts, other concerns regarding traffic operations at Route 235 and Route 4 were voiced by stakeholders, acknowledged by the Applicant, and find deep purchase with this Board. Applicant conceded the location is not “ideal” for a school bus stop, a concern that was brought up by the Board extensively in its questioning and by the Board of Education in its official comments. Any general concerns over the prudence and safety of a school bus stop in close vicinity to such a major intersection are heightened by the fact that this particular major intersection is failing and experiencing unacceptable levels of service. Short of redesigning the plan to upgrade the internal roads such that they could be accepted into the County’s public road network upon completion, thereby allowing school buses to enter the townhome complex directly

instead of stopping on the shoulder of Route 235, we perceive no ready avenue by which this concern can be alleviated as long as the nearby intersection continues to fail. Mr. Kadjeski acknowledged such a redesign may be possible, but it was not a proffer made by the Applicant.

Similar concerns face the sole right-in, right-out turn that would serve the development. As stated above, the turn would be located approximately 600 or so feet north of the intersection at Route 235 and Route 4. Board members raised concerns about the possibility of motorists entering Route 235 from Route 4 accelerating quickly, or potentially using the lane as an extended through lane to reach the light and turn at Route 235 and Oak Crest Road further north. Though these particular concerns are speculative to a certain degree, they are distinct possibilities – particularly when keeping in mind the existing poor operations at the Route 235 and Route 4 intersection.

In short, we find this proposal, even with the mitigation offered, fails to adequately satisfy the County's APF standards for road adequacy. Adequate public facilities review exists in St. Mary's County to ensure that development is performed responsibly, that necessary and critical infrastructure will be in place by the time development is complete, and that the public health, safety, and welfare will not be adversely affected. CZO § 70.1. When an applicant satisfies the statutory criteria for adequate public facilities review, they should receive the benefit of those laws and enjoy the presumption of advancing the public good that comes from developing in full conformance with the statutory code. But by the same token, when an applicant fails to meet those same criteria, or encounters a situation where the determination is fairly within a fact-finder's discretion and fails to meet its burden of persuasion, disapproval of the project is necessary, proper, and in furtherance of the Comprehensive Plan and the health, safety and general welfare of the

County.

We conclude the Applicant failed to meet this burden in the present matter. Accordingly, we deny the appeal and affirm the Planning Commission's denial of the Applicant's concept site plan.

**ORDER**

**PURSUANT** to Applicant's appeal from the Planning Commission's denial of Concept Site Plan CSP 24-0018 on November 18, 2024; and,

**PURSUANT** to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

**ORDERED**, by the St. Mary's County Board of Appeals, that the Applicant's appeal in ZAAP 23-0266 is **DENIED**; and it is further,

**ORDERED**, that the Planning Commission's denial of Concept Site Plan CSP 24-0018 is **AFFIRMED**.

Date: May 22, 2025

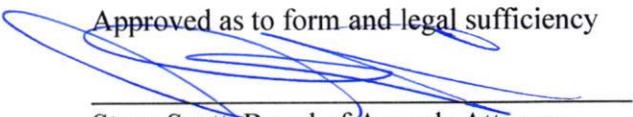
  
George Allan Hayden, Chairman

Those voting to grant the appeal:

Those voting to deny the appeal:

Mr. Hayden, Mr, LaRocco, Mr. Payne,  
Ms. Weaver

Approved as to form and legal sufficiency

  
Steve Scott, Board of Appeals Attorney

**NOTICE TO APPLICANT**

Any person, firm, corporation, or governmental agency having an interest in this case and aggrieved by this Decision, may file a Petition for Judicial Review with the Circuit Court for St. Mary's County, Maryland, within thirty (30) days following the date that this Order is signed. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

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

- 1 4. *Disapproval of Project.* If an applicant fails to agree to a mitigation program to assure adequate  
2 levels of essential public facilities, the Planning Director (for major site plan) or Planning  
3 Commission (for major subdivision) shall disapprove the project for want of adequate public  
4 facilities as required by this chapter.
- 5 5. *Bonding or Surety.* The Planning Commission shall require bonding or surety as appropriate to  
6 cover the costs of the facilities and lands not under the applicant's ownership that are part of a  
7 mitigation program. Upon default, the County shall have the authority to redeem the bonds or  
8 surety in addition to any other remedy provided by law.

9 **70.7. Roads.**

- 10 1. *Access.* Service drives; acceleration, deceleration, passing, or turning lanes; traffic control signal  
11 or other traffic control measures and shared access with adjacent sites may be required by the  
12 appropriate approving authority, either the Planning Commission or the Planning Director, at the  
13 request of the Director of Public Works and Transportation, at principal vehicular access points,  
14 with length and width as appropriate to the anticipated flow of traffic. Roads to serve the  
15 proposed development shall be designed and constructed in accordance with the County Road  
16 Ordinance and shall be adequate to accommodate the vehicular traffic projected to be generated by  
17 the development. Pedestrian and bicycle access shall be coordinated with the vehicular access and  
18 separated to the maximum degree possible from vehicular access points to reduce congestion,  
19 friction, and hazard.
- 20 2. *Determining Adequacy.* Roads shall be considered adequate to accommodate traffic projected to  
21 be generated by the proposed development if:
- 22 a. Roads serving the project are a minimum of 18 feet wide and are or will be capable of  
23 accommodating existing traffic, traffic projected to be generated from developments for  
24 which plats and plans have been approved, and traffic projected from the proposed  
25 development at an adequate level of service, as set forth below. Service levels shall be  
26 met from the first points of egress from and ingress to the proposed development to and  
27 including the intersection with the first county or state collector or arterial road or state  
28 road in all directions from the development; or
- 29 b. The County or State has programmed for construction in a capital improvements program  
30 or similar plan, at least 75 percent funded in the then current fiscal year, additional roads  
31 or road improvements necessary in combination with existing roads and intersections to  
32 comply with the standards specified in Section 70.7.3.b; or
- 33 c. The applicant agrees to undertake the construction of the roads or road improvements  
34 necessary to comply with the standards specified in Section 70.7.3.b.
- 35 d. The development is located within designated revitalization areas and/or development  
36 districts where the County wants to encourage new development, or redevelopment.  
37 These developments would be allowed to proceed in certain areas experiencing  
38 unacceptable levels of service, provided that transportation improvements are made  
39 which would result in an improvement in traffic operations beyond what would have been  
40 expected if the development had not occurred. In addition, mitigation measures may be  
41 required by the Planning Commission to comply with the standards specified in Section  
42 70.7.3.b.
- 43 e. The project must comply with the provisions of the St. Mary's County Subdivision  
44 Ordinance for private roads, as amended from time to time, for lots served by a private  
45 drive or road.
- 46 3. *Standards for Level of Service.*
- 47 a. Service levels shall be as defined by the current edition of the Highway Capacity Manual  
48 (Special Report #209) published by the Transportation Research Board or other  
49 acceptable methodology, as amended from time to time; or

- 1           b.       The established minimum level of service (LOS, as computed per the critical lane  
2                   analysis method) for intersection capacity for developments in base zoning districts  
3                   within planning districts designated in the Comprehensive Plan as follows:

4                   **Schedule 70.7.3: Allowable Levels of Service**

Base Zoning District	Comprehensive Plan District		Peak Hour
Residential Districts	Development Districts		LOS D
	Town Centers and Village Centers		LOS C
Commercial and Mixed Use Districts	Development Districts		LOS D
	Town Centers and Village Centers		LOS C
Industrial and Office Districts	Development Districts		LOS D
	Town Centers and Village Centers		LOC C
Rural Districts and Commercial Marine Districts	Rural Preservation District		LOS C

- 5           4.       *Traffic Impact Study.* The applicant shall submit a traffic impact study including traffic flow  
6                   studies of the roads, highways, and intersections identified in the preliminary analysis, if deemed  
7                   necessary by the Director of the Department of Public Works and Transportation given the vehicle  
8                   trip generation data submitted as part of the adequate public facilities study. A traffic impact study  
9                   shall meet the following requirements:
- 10           a.       A link capacity analysis shall be performed on the major public roadways within the  
11                   study area where the traffic signal spacing exceeds two miles.
- 12           b.       An unsignalized analysis shall be utilized at intersections not programmed to be  
13                   signalized at the time of the study. The result of the analysis shall be to determine proper  
14                   lane usage at the intersection, and the need for traffic signal warrant analysis.
- 15           c.       A traffic signal warrant analysis shall be performed when appropriate using standard  
16                   methodologies and criteria.
- 17           d.       Any pass-by trip percentage, and any trip generation rates not listed below, will be in  
18                   accordance with the latest edition of the Institute of Transportation Engineer's Trip  
19                   Generation Manual. If a trip generation rate has been calculated for a specific  
20                   development, usage of that rate may be approved by the Director of Department of Public  
21                   Works and Transportation.
- 22           e.       Estimated queue lengths will be calculated to check the adequacy of the length of all turn  
23                   lanes at each intersection. Maryland State Highway Administration (SHA) criteria shall  
24                   be used to estimate the queue lengths.
- 25           f.       Special circumstances (such as wide medians or closely spaced intersections) may exist  
26                   that prevent an accurate measure of level-of-service by conventional analysis. Under  
27                   these circumstances, adjustments to the analysis assumptions or analysis using  
28                   specialized traffic models may be required.
- 29           g.       Applicants may elect to render fee payment to the County Department of Public Works  
30                   and Transportation to have the traffic impact study performed by an independent  
31                   consultant.
- 32           h.       Traffic impact studies submitted to the Department of Public Works and Transportation  
33                   may be reviewed by an independent, qualified professional at the expense of the  
34                   applicant. The review fee shall not be revenue-producing, but shall be for cost recovery  
35                   purposes only.

**Schedule 70.7.4: Trip Generation Tables**

Use	Average Daily Trips (ADT)	AM Peak Hours			P.M. Peak Hours		
		IN	OUT	TOTAL	IN	OUT	TOTAL
Single-family Residence	9.55 /DU	.20	.56	.76	.66	.36	1.02
Apartment	6.47 /DU	.09	.42	.51	.43	.20	.63
Condo/Townhouse	5.86 /DU	.07	.37	.44	.36	.19	.55
Industrial	6.97 per 1000 s.f.	.72	.16	.88	.09	.72	.91

General Office Trip Generation Vehicle Trips per 1000 square feet Gross Floor Area								
1000 s.f. Gross Floor Area	Average Daily Trips (ADT)		A.M. Peak Hours			P.M. Peak Hours		
	Rate	Volume	Rate	IN	OUT	Rate	IN	OUT
<10	24.6	246	3.20	2.85	.35	3.40	.58	2.82
10-<25	19.72	493	2.60	2.31	.29	2.68	.46	2.22
25-<50	16.58	829	2.22	1.98	.24	2.24	.38	1.86
50-<100	14.03	1403	1.90	1.67	.21	1.87	.32	1.55
100-<200	11.85	2369	1.64	1.46	.18	1.56	.27	1.29
200-<400	10.77	3230	1.50	1.34	.17	1.40	.24	1.16
>=400	9.96	3984	1.40	1.25	.15	1.30	.22	1.08

Shopping Center Vehicle Trip Generation Vehicle Trips per 1000 square feet Gross Leasable area								
1000 s.f. Gross Floor Area	Average Daily Trips (ADT)		A.M. Peak Hours			P.M. Peak Hours		
	Rate	Volume	Rate	IN	OUT	Rate	IN	OUT
<10	167.59	1676	4.19	2.64	1.55	15.14	7.57	7.57
25-<50	91.65	4683	2.16	1.36	.8	8.44	4.22	4.22
50-<100	70.67	7067	1.62	1.02	.6	6.56	3.28	3.28
100-<200	54.5	10899	1.22	.77	.45	5.10	2.55	2.55
200-<400	46.81	14043	1.03	.65	.38	4.40	2.2	2.2
>=400	42.02	16809	.92	.58	.34	3.97	1.99	1.99

**70.8. Sewerage.**

1. *Types of Service.* An adequate public community sewerage system, multi-use sewerage system, or individual sewerage system shall serve the proposed development. New development requiring subdivision or site plan approval within an area designated for service under the Comprehensive Water and Sewerage Plan (i.e., within an S-1, S-3D or S-6D service area) shall be required to connect to the public community sewerage system. The Director may waive or defer this requirement with concurrence from the Metropolitan Commission and from the Office of Environmental Health upon demonstration by the applicant (namely the owner or contract purchaser of or agent for the owner or contract purchaser of subject property) that a connection would not be feasible considering the property's linear distance from existing facilities, topography, environmental constraints, hydraulics, or denied off-site easements. The applicant has the burden of proving that the waiver or deferral is justified based on the facts. Following a waiver or deferral, the resulting private sewer service shall be:

- a. Approved by the Office of Environmental Health;
- b. Designed for future connection to a public system when the Metropolitan Commission determines that a connection is feasible and the private sewer service shall be discontinued and the property shall be connected to the public system; and
- c. In compliance with Section 70.8.3 below.

2. Determining Adequacy.

- a. *Community Sewerage System.* The system shall be considered adequate to accommodate the proposed development if: