



TOWN OF BEL AIR

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October 17, 2023

Bradley R. Stover, Esquire
Robinson & Stover
124 North Main Street
Bel Air, MD 21014

RE: The Standard on Bond, JV, et al.
128 & 130 North Bond Street and 100 Lester Way
Case No. 09B-23-01-VA/W

Dear Mr. Stover:

The Bel Air Board of Appeals held its regularly scheduled meeting on October 17, 2023 to render a decision on the above referenced project. The Board has reviewed this application during the previous two meetings on July 25, 2023 and September 19, 2023. Attached supporting documentation identified as Exhibit A is the procedural history, testimony of record, applicable law, and findings of fact made part of this decision of Bel Air Board of Appeals. In summary, the Board of Appeals has concluded the following:

- A. The Applicant's request for a five-foot building height variance from TOWN OF BEL AIR, MD CODE §165-33 (Table), referencing TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b) in the B3A zoning district is **DENIED**.
- B. The Applicant's request for a variance from TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b) to reduce the front yard set-back for buildings over 45' by 8', resulting in a set-back of 7' in the B-3A District for the property known as 128 North Bond Street, Building No. 1, along Lester Way is **APPROVED**.
- C. The Applicant's request for a variance from TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b) to reduce the front yard set-back for buildings over 45' by 6.5', resulting in a set-back of 8.5' in the B-3A District for the property known as 100 Lester Way, Building No. 2, along Lester Way is **APPROVED**.

- D. The Applicant's request for a parking waiver of 91 commercial parking spaces parking spaces as required under TOWN OF BEL AIR, MD CODE § 165-51(H) is **DENIED**.
- E. The Applicant's request for a parking waiver of 40 residential parking spaces as required under TOWN OF BEL AIR, MD CODE § 165-51(H) is **DENIED**.
- F. The Applicant's request for a variance from TOWN OF BEL AIR, MD CODE §165-51(E)(1) to reduce the drive aisle width from 24' to 20' for 130 North Bond Street in the B-3A District is **APPROVED**.

This decision can be appealed to the Harford County Circuit Court within thirty (30) days of the date of this letter. Should there be questions or need for additional information, please contact the Department of Planning & Community Development at 410-638-4540 or email planning@belairmd.org.

Respectfully,



Richard Gerety, Chair
Bel Air Board of Appeals

Attachment

cc Bel Air Board of Appeals
Bel Air Board of Town Commissioners
Edward Hopkins, Town Administrator
Elizabeth Thompson, Town Counsel
Kevin Small, Zoning Administrator

EXHIBIT A

IN THE MATTER OF: * **BEFORE THE**
THE APPLICATION OF * **TOWN OF BEL AIR**
STANDARD ON BOND, JV, * **BOARD OF APPEALS**
BAKERS HILL, LLC, & * **Case No. 09B-23-01-VA**
HICKORY KNOLL RENTALS, LLC *

* * * * *

SUPPORTING DOCUMENTATION FOR THE DECISION OF THE
TOWN OF BEL AIR BOARD OF APPEALS
THE STANDARD ON BOND

I. Procedural History.

On June 27, 2023, Standard on Bond, JV; Bakers Hill, LLC; and Hickory Knoll Rentals, LLC (hereinafter collectively referred to as “Applicant”) filed an application seeking four (4) variances and two (2) parking waivers. On July 25, 2023, the Bel Air Board of Appeals (hereinafter “the Board”) held a public hearing. Prior to the admission of any evidence in the case, the Applicant moved to table the requests and resubmit a revised application and site plan. That request was granted by the Board.

On August 30, 2023, the Applicant resubmitted its application and revised its site plan to remove several of the variances. The Applicant now seeks the following relief from the Board (as adjusted by the Department of Planning & Community Development staff report).

- A. A variance from TOWN OF BEL AIR, MD CODE §165-33 (Table), referencing TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b) to exceed the building height limit by 5’ for a total of 60’ in the B-3A District (128 N. Bond Street, Bldg. #1).
- B. A variance from TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b) to reduce the front yard set-back for buildings over 45’ by 8’, resulting in a set-back of 7’ in the B-3A District (128 N. Bond Street, Lester Way frontage, Bldg. #1).
- C. A variance from TOWN OF BEL AIR, MD CODE §165-33(C)(4)(b) to reduce the front yard set-back for buildings over 45’ by 6.5’ resulting in a set-back of 8.5’ for 100 Lester Way in the B3-A District (100 Lester Way, Bldg. #2).

- D. A waiver of parking requirements in TOWN OF BEL AIR, MD CODE §165-51(H) to reduce the minimum requirements by 92 parking spaces for commercial uses in a Mixed-Use Center for 130 & 128 North Bond Street and 100 Lester Way in the B-3A District.
- E. A waiver of parking requirements in TOWN OF BEL AIR, MD CODE §165.51(H) to reduce the minimum requirements by 40 parking spaces for residential uses in a Mixed-Use Center for 130 & 128 North Bond Street and 100 Lester Way in the B-3A District.
- F. A variance from TOWN OF BEL AIR, MD CODE §165-51(E)(1) to reduce the drive aisle width from 24' to 20' for 130 North Bond Street in the B-3A District.

The Board held an evidentiary hearing on September 19, 2023. At the conclusion, the Board closed the evidentiary hearing and tabled its decision on the Applicant's requests and directed staff to prepare this opinion, based on advice of Town Counsel, and issue its decision at its next regularly scheduled meeting. The Applicant requested permission from the Board to submit Post-Hearing Memorandum to provide the Board legal arguments concerning its requests. That request was granted and all participants, including the Applicant, were invited to submit Post-Hearing Memorandum no later than October 2, 2023. The Applicant submitted its memorandum on September 29, 2023. No other participants at the hearing submitted any Post-Hearing Memorandum for consideration.

The Board notes that the Applicant's Post-Hearing Memorandum contains proffers of additional evidence that the building height will be reduced, an attempt to supposedly withdraw the height variance and an unsubstantiated recalculation of the parking requirements as well as an attempt to amend the Applicant's parking waiver requests. The Board is required to observe the basic rules of fairness to parties. To rely on evidence submitted after the close of the hearing may violate due process if no opportunity is provided to challenge the evidence by cross-examination or rebuttal. *Schultz v. Pritts*, 432 A.2d 1319, 1323 (1981). Based on the Supreme Court of Maryland's holding in *Schultz*, the Board will not consider those portions of the Applicant's Post-Hearing Memorandum containing these provisions and will determine this matter only on the Applicant's written application and the testimony and evidence presented at the public hearing on September 19, 2023.

II. Testimony and Evidence of Record.

The Applicant introduced and the Board accepted into evidence the following documents as Exhibits during the hearing:

1. Exhibit 1 – Curriculum Vitale of Amy DiPietro.
2. Exhibit 2 – “Site Plan to Accompany Variance and Waiver Application,” dated August 18, 2023 which was prepared by Morris & Ritchie Associates, Inc. (hereinafter “the Site Plan”).

3. Exhibit 3 – Curriculum Vitale of Nestor Zabala, AIA.
4. Exhibit 4 – Architectural Rendering prepared Curry Associates, Baltimore, Maryland.
5. Exhibit 5 – The Standard on Bond, JV, Schematic Design, Interior Layouts, prepared by Curry Associates, Baltimore, Maryland and dated May 16, 2023
6. Exhibit 6 – "Parking and Land Use Regulation Opportunities to Support Redevelopment" prepared by Mead & Hunt, April, 2023.
7. Exhibit 7 – Burrier Letter of Support.
8. Exhibit 8 – "Real World" Drawings.
9. Exhibit 9 – Aerial Renderings depicting proposed Building No. 1, its proposed terrace and North Bond Street.

Kevin L. Small, Director of the Town of Bel Air Department of Planning and Community Development (hereinafter "the Department" or "Mr. Small") testified on behalf of the Department. Mr. Small submitted the Department's Supplemental Staff Report dated September 11, 2023 which is a part of the record in this case.

The Applicant called the following witnesses to testify on its behalf and the testimony is summarized as follows:

1. **Amy G. DiPietro, P.E.** Ms. DiPietro is a Maryland licensed engineer with Morris & Ritchie Associates and testified as an expert in engineering. Ms. DiPietro testified that she prepared the Site Plan and is familiar with the three (3) properties which are the subject to the Applicant's requests as described on the Site Plan. She identified the neighborhood as R1 Low Density Residential along Wallace Street which abuts the common lot line with 100 Lester Way; at the juncture of Wallace Street and Lester Way, is a portion of R2 residential; across the street from 100 Lester Way is a portion of B-2A and the bulk of the properties running south along North Bond Street are B-3A. Across North Bond Street (Maryland Route 924), the properties are predominantly B2.

She further testified that the interior road access will be on North Bond Street and Lester Way. An exit only on Lester Way to along the southwest side of Building No. 2 was also depicted. She testified that dumpsters will be located on the north from the drive aisle and are proposed to be screened. She further advised that existing landscape will be kept, and additional landscaping would be added. A buffer along the Wallace Street residential would be installed. She testified that there are no environmentally sensitive features on these properties. Ms. DiPietro testified that, in her expert opinion, the Applicant's proposed project would not adversely affect the public health, safety, security or general welfare, it would not result in any dangerous traffic conditions, nor jeopardize the lives or property of people living in the neighborhood.

2. **Nestor Zabala, AIA.** Mr. Zabala is a Maryland licensed architect. He has been an architect for 13 years and works for Curry Architects in Baltimore. Mr. Zabala was offered and accepted by the Board as an expert in architecture. Mr. Zabala testified and authenticated that the architectural renderings, which were offered as Applicant's Exhibit 4, were prepared by him. Mr. Zabala's testified to the height levels of each of the floors in each of the buildings which were designed as follows:

Building No. 1 – 128 N. Bond Street

- First Floor – Commercial Uses, likely retail and access to upper floors – 15 feet
- Second & Third Floors – Residential Uses – 10.6 feet
- Fourth Floor – Residential Uses – 10 feet, 7 7/8 inches
- Fifth Floor – Residential Uses – 10 feet, 8 1/8 inches
- Fifth Floor to Roof – 2 feet, 8 inches

The total height for Building No. 1 is proposed to be 60 feet.

Building No. 2 – 100 Lester Way

- Garage – Structured Parking with 14 spaces – 12 feet
- Second & Third Floor – Commercial, likely office space - 12 feet
- Fourth Floor – Residential - 11 feet, 3 inches
- Fifth Floor – Residential - 10 feet, 1 inch
- Fifth Floor to Roof – 2 feet, 8 inches.

The total height for Building No. 2 is proposed to be 60 feet.

Mr. Zabala stated that the design was conceived through a similar rendition of a building depicted in the Town of Bel Air Economic Development Plan. He testified that the buildings were unique as to anything currently existing within the Town of Bel Air. He testified that the 15' ceilings proposed on the first floor in Building No. 1 were to satisfy the market needs of upscale restaurants, who seek higher ceilings to utilize various implements needed for these businesses, such as cooking hoods and ventilation systems. He testified that the market for upscale residential units, in general, demands at least 9-foot ceilings where in years past, the market was accepting of lower ceiling heights, such as 8 feet. Mr. Zabala testified that this "market power dynamic" is propelling the ceilings higher and thus creates the need for higher buildings.

3. **Wayne Goddard** - 719 Glenangus Drive, Bel Air, MD 21015. Mr. Goddard is the owner of the Standard on Bond JV and the authorized agent for the owner of 130 N. Bond Street and testified that he received a letter of support from the Buerriers on Wallace Street which was admitted into evidence as Exhibit 7. Mr. Goddard testified that the penthouses would get 2 parking permits; the rest of the apartments would only receive 1 parking permit. He testified that he is willing to pursue other off-site parking leases. He testified that he believes that the project will revitalize the Town's downtown area and,

specifically, the Bond Street corridor. He advised that it is his intention to move his residence to one of the penthouse apartments and move his company, The Goddard Companies, into the office suites in Building No. 1, 100 Lester Way.

The following members of the public testified during the public comment portion of the hearing and a summary of their comments is set forth below:

Dean Holmes, 141 Wallace Street, testified that he is concerned about parking in this area and he opined he doesn't want 100 cars lined up on Wallace Street and these cars have to be parked somewhere.

Jen Rill, 157 Wallace Street, testified that she has lived on Wallace Street for almost 29 years. She is concerned about construction noise and equipment adjacent to her residential dwelling. She complained about issues with people cutting through the neighborhood and expressed concern about overburdening the hospital, fire and EMS services with an additional 75 more people and is concerned about the size of the buildings "looming" over the residences.

Doug Corselius, 137 Williams Street, identified the back of the Circuit Court of Harford County as a point of reference and expressed his opinion about the undesirability of having such large buildings around his home. He has concerns about traffic and parking and advised that he wouldn't have a problem with a 3-story building but believed that 4 or 5 story building is too much in that area.

Amy Corselius, 137 Williams Street, advised the Board of her involvement with a local nonprofit organization that sought permission to utilize Harford Mutual's parking lot and stated it has been very particular about the use of their parking spaces. She is concerned about parking in the area and concerned about Mr. Goddard's statement that parking "shakes itself out." She works at the Bel Air Library and attempts to walk to work when she can and believes that she is risking her life doing so and expressed concerns about the safety of the crosswalk at Lee Street and Bond Street.

Bill Coningsby, 110 Wallace Street, testified about his concerns about parking along Wallace Street. He advised that the permit parking is not enforced.

Nathan Booth, 135 Wallace Street, supports the project and understands everyone's concerns. He testified he would rather see something like this than the developments on Alice Ann Street.

Renee Kuhn, 121 Wallace Street, lives directly next to where 100 Lester Way is anticipated to be built. She is not opposed to progress and vacant structures could be remediated. She believes that the buildings are beautiful, but they are far too large for the area and does not believe they line up with the surrounding buildings. She believes that the project does not meet several sections of the Code, including parking. She does not believe there was any justification for the parking waiver. She testified that her property does not have a driveway and she utilizes a Town parking permit along with the guest passes.

John Kane, 33 E. Broadway, testified that parking is “atrocious”, and he does not believe there will never another parking garage. He believes that the Applicant’s proposed per unit parking spaces are unrealistic.

III. Applicable Law.

TOWN OF BEL AIR, MD CODE §165-92(B) sets forth the mandated legal standards the Board is required to follow, which states as follows:

B. Special Regulations.

(1) In order to grant a variance, the Board of Appeals...must find, by clear and convincing evidence, each of the following:

(a) Uniqueness. The subject property has an inherent characteristic or condition not generally shared by other surrounding properties, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, practical restrictions imposed by abutting properties or the uses thereon, or other restrictions.

(b) Practical difficulty.

[1] Strict compliance with the Town of Bel Air Development Regulations would unreasonably prevent the applicant from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; however, that the granting of the variance would make the property more profitable is not sufficient reason to grant a variance.

[2] Granting the variance would do substantial justice to the applicant, as well as to other property owners in the area.

[3] The variance can be granted in such a way that the spirit of the Town of Bel Air Development Regulations will be observed and public safety and welfare secured.

[4] The practical difficulty is caused by the property's uniqueness and is not personal to the applicant nor the result of acts of the applicant, the property owner, or his/her predecessor in title.

Additional citations to other sections of the TOWN OF BEL AIR, MD CODE will be included where applicable for review of the Applicant’s specific requests.

IV. Findings of Fact.

A. A variance from TOWN OF BEL AIR, MD CODE §165-33 (Table), referencing TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b) to exceed the building height limit by 5’ for a total of 60’ in the B3-A District (128 N. Bond Street, Bldg. #1).

The Department is recommending that the Applicant's request for a variance from TOWN OF BEL AIR, MD CODE §165-33 (Table), referencing TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b) be approved. Mr. Small testified that buildings in the B3-A zoning district are limited to 45' in height. Mr. Small testified that buildings at 45' in height or less have a zero set-back, however, any building over 45' must have a 15' set-back. The reason for requiring a 15' set-back for buildings taller than 45' is to alleviate a "tunnel effect" for individuals on the ground. Mr. Small identified the majority of the buildings in the area are one-story. Mr. Small testified and his staff report made note of the following structures in the downtown area, outside the defined neighborhood, which exceed the height restriction:

1. Harford Mutual Insurance Company building – 2 ½ stories.
2. Mary E. Risteau Building – 3 ½ stories. This building is owned by the State of Maryland and houses state offices and the District Court of Maryland for Harford County.
3. Circuit Court for Harford County (S. Bond Street side) – 4 stories.

The Applicant's expert, Ms. DiPietro also identified these buildings as examples in the downtown area of comparable buildings in height.

Mr. Small testified and his Supplemental Staff Report provided further specifications of these buildings in comparison to the height of proposed Building No. 1. Mr. Small details that based on the plans and elevations provided by the Applicant, the roof of Building No. 1 will be at or near elevation 432, assuming a 372 elevation at the ground floor. Mr. Small explained that elevation is calculated with sea level at 0. Mr. Small compared Building No. 1's elevation and height requests to a survey of the height of notable buildings made by the Town in 2017. He noted that the height of the Mary E. Risteau building, at 3 ½ stories, was approximately 55' in height. Furthermore, the Circuit Court for Harford County (S. Bond Street side), at 4 stories, was approximately 76' in height.

Notwithstanding, the Department's recommendation that the Board approve this height variance, the Department's Supplemental Staff Report notes that:

While the applicant has proposed several variances to the code, the specific uniqueness of the properties have not been addressed. Section 165-92 requires clear and convincing evidence of an inherent characteristic or condition not generally shared by other surrounding properties as an integral part of the required criteria to permit a variance and the applicant is encouraged to provide this argument at the hearing.

Supp. Staff Report at 8.

The Department's Supplemental Staff Report fails to identify any specific characteristic, such as "...shape, topography, subsurface condition, environmental factors, historical significance, practical restrictions imposed by abutting properties or the uses thereon, or other restrictions." See TOWN OF BEL AIR, MD CODE §165-92(B)(1)(a).

Mr. Zabala testified that his firm prepared interior architectural renderings of the buildings as outlined previously in this opinion. He described the 1 and 2 bedroom units as well as the penthouse levels that were anticipated to be 2 bedroom units. He further testified that for Building No. 2, TOWN OF BEL AIR, MD CODE §165-24(L) permits a 55' building height. However, since Building No. 2 provides for structured parking within the lower level of the building, it is entitled to an approximately 5' increase in height, making the full height of Building No. 2, 60' as a matter of right.¹

Mr. Zabala testified that the Circuit Court for Harford County and the Mary E. Risteau building exceeds the building heights set forth in the Town of Bel Air Code. Mr. Zabala testified that merchants require higher ceiling heights for commercial uses, including "quality" restaurants for various mechanical elements such as cooking hoods, HVAC systems. Mr. Zabala testified that the "quality" tenant market has changed to a demand from 8' ceilings in residences to more current market expectations of 9'. Mr. Zabala testified these market demands, or the "market power dynamic" make this property unique. He further testified that there would be no adverse impacts on neighboring properties, public safety, individuals living or working in Mr. Zabala testified that the floors to utilize the commercial uses the ceiling heights were designed at 15' ceiling and the fifth floor will have 10' ceilings. Floors two through four floors will have 9' ceilings.

On cross-examination, Mr. Zabala explained that the market which he is referring to expands beyond Harford County and, thus, outside the Town of Bel Air. Mr. Zabala testified that in comparison to the other buildings in the Town of Bel Air, this building was unique as it was a new building design in the Town of Bel Air. Mr. Zabala admitted on cross-examination that there were no unique features on the subject properties upon which the new buildings were intended to be constructed.

Upon review of all of the evidence, the Board concludes that the Applicant has failed to meet its evidentiary burden by clear and convincing evidence. There was no evidence or testimony submitted, either by the Department, Ms. DiPietro, nor Mr. Zabala that identified any unique inherent characteristic or condition that currently exists upon the property known as 128 North Bond Street. In fact, on cross examination, Mr. Zabala admitted that there was nothing unique about the property located at 128 North Bond Street. The Applicant and Department have failed to identify any uniqueness of the shape of 128 North Bond Street which sets it apart from other properties in the area, there was no

¹ The Board takes judicial notice of this fact. However, the increased height of Building No. 2 pursuant to TOWN OF BEL AIR CODE §165-24(L) is neither a part of the Applicant's requests and is subject to the approval by the Planning Commission, not the Board of Appeals.

evidence introduced to support any topography conditions, subsurface condition, environmental factor, any historical significance, or practical restrictions imposed by abutting properties or uses, or other restrictions.

The Applicant's entire case for uniqueness can be summarized as the property is *currently unique* because of the building that is *intended to be constructed* on that property will be unique to any other building in the neighborhood. A future prospect does not satisfy the requirements set forth in TOWN OF BEL AIR, MD CODE §165-92(B)(1)(a).

As a result, the Board is hereby denying the Applicant's request for a variance from TOWN OF BEL AIR, MD CODE §165-33 (Table), referencing TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b).

B. A variance from TOWN OF BEL AIR, MD CODE §165-33(C)(4)(b) to reduce the front yard set-back for buildings over 45' by 8', resulting in a set-back of 7' in the B-3A District (128 N. Bond Street, Lester way frontage, Bldg. #1).

The Department recommends approval for the variance of 8' for Building No. 1, 128 N. Bond Street. The Department testified that the Town would be requiring a right-of-way from the owner to expand the width of Lester Way from 20' wide to 24' wide, for the installation of pedestrian sidewalks along Lester Way, in the front-yard area of Building No. 1 and for future improvements. Mr. Small noted that Lester Way's current width does not comply with the Town of Bel Air Code and there are currently no pedestrian sidewalks along Lester Way.

Ms. DiPietro testified that the set back of 15' is required for buildings exceeding 45'. Building No. 1 requires a 8' variance and 6.5' for Building No. 2. DiPietro testified that the Town is making the request for right-of-way transfer and, but for the Town's request, the Applicant could meet the 15' set-back requirements for both properties. Ms. DiPietro testified that there will be no adverse impacts to surrounding properties. Ms. DiPietro concurred with Mr. Small's testimony that the existing pavement is 20' wide on Lester Way and, after the Town's acquisition of the right-of-way, Lester Way will be widened to 24' with pedestrian sidewalks to bring it in compliance with the current standards of the Town of Bel Air Code.

Upon review of all of the evidence, the Board concludes that the Applicant has met its evidentiary burden by clear and convincing evidence. The Department and the Applicant's expert, Ms. DiPietro, both concur that the shape of Lester Way is unique in that it is 20' in width, when the current width requirements under the Town of Bel Air Code are 24'. The Board concludes that a practical difficulty exists because strict compliance with the required 15' set-back requirement would unreasonably prevent the Applicant from using the property for a permitted purpose. Since the Town of Bel Air is requiring the grant of a right-of-way for road improvements and pedestrian sidewalk installations, the

Applicant is restricted from using the property for a permitted purpose in the B-3A district and that restriction would exist no matter what the Applicant's intended use was for the properties in the B-3A district. The granting of this set-back variance would do substantial justice to the Applicant, as well as other property owners in the area, specifically, the residents whose homes run along Wallace Street. The residents' main access in and out of their community, to North Bond Street, is along Lester Way and increasing the width would provide for better traffic safety flow in and out of their community. For this reason as well, the granting of this variance would secure public safety and welfare and the spirit of the Town of Bel Air Development Regulations will be observed. The Applicant would still have a front-yard set-back and the Town can bring Lester Way's width in compliance with current standards under the Town of Bel Air Code and install pedestrian sidewalks which, at this time, do not exist. The Board finds that this practical difficulty is caused by the property's uniqueness, affects all of the properties running along Lester Way and is not personal to the Applicant or as a result of the actions of the Applicant or its predecessors in title. *See* TOWN OF BEL AIR, MD CODE (B)(1)(b)[1]-[4].

For the reasons stated herein, the Board finds that the Applicant has met its evidentiary burden by clear and convincing evidence and is hereby granting a variance from TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b) to reduce the front yard set-back for buildings over 45' by 8', resulting in a set-back of 7' in the B-3A District for the property known as 128 North Bond Street, Building No. 1, along Lester Way.

C. A variance from TOWN OF BEL AIR, MD CODE §165-33(C)(4)(b) to reduce the front yard set-back for buildings over 45' by 6.5' resulting in a set-back of 8.5' for 100 Lester Way in the B3-A District (100 Lester Way, Bldg. #2).

The testimony and recommendations of the Department and the evidence supplied by the Applicant's expert, Ms. DiPietro were the same for both of the front yard set-back variances for 128 North Bond Street and 100 Lester Way. The only difference between the two requests is that 100 Lester Way requires a 6.5' variance, the lesser of the two. The difference appears to be, based on the Site Plan, a result of the varying width of Lester Way.

For the reasons stated herein previously, the Board finds that the Applicant has met its evidentiary burden by clear and convincing evidence and is hereby granting a variance from TOWN OF BEL AIR, MD CODE §165-51(C)(4)(b) to reduce the front yard set-back for buildings over 45' by 6.5', resulting in a set-back of 8.5' in the B-3A District for the property known as 100 Lester Way, Building No. 2, along Lester Way.

D. A waiver of parking requirements in TOWN OF BEL AIR, MD CODE § 165.51(H) to reduce the minimum requirements by 91 parking spaces for commercial uses in a Mixed-Use Center for 130 & 128 North Bond Street and 100 Lester Way in the B-3A District.

The Applicant seeks a collective parking waiver for all three (3) of the properties intended to be utilized for the Applicant's mixed-use development plan. Specifically, the Applicant seeks a waiver of 91 parking spaces from the 133 parking spaces required for the commercial uses. The Department recommends, in its Supplemental Staff Report, that the Board grant a parking waiver of 61 spaces for the commercial parking requirements under TOWN OF BEL AIR, MD CODE §165-33(H).

TOWN OF BEL AIR, MD CODE §165-51(C)(3) sets forth parking space reductions, or waivers, and the procedure that this Board is required to follow. Specifically, TOWN OF BEL AIR, MD CODE §165-51(C)(3) provides as follows:

(C) Flexibility.

...

(3) Parking and loading space reduction. Upon receipt of an application for a parking...waiver, a public hearing shall be scheduled before the Board of Appeals. A waiver or reduction of the parking...requirements in any district may be permitted by the Board of Appeals whenever the character or use of the building is such as to make full provision of the specific parking... requirements unnecessary, or where adequate community loading facilities are provided on site, or where, due to problems of access or to the size of the lot, the provision of the required loading spaces is impractical.

(a) In permitting such a waiver for new construction, the Board of Appeals must find the following:

[1] The requirements for parking...would result in particular or exceptional difficulties upon the owner of such property; and

[2] Such relief can be granted without substantial impairment of the intent or purpose of this article.

...

(c) In permitting mixed-use development, the Board of Appeals may reduce the cumulative parking space requirements after reviewing a parking impact study. The Board of Appeals must find the following:

[1] The peak requirements of several occupants occur at different times during the day; and

[2] The Board of Appeals determines the findings of the parking study prepared by a qualified consultant support the requested reduction and that no adverse impact will be caused by the reduction.

A copy of this Section was attached as an appendix to the Department's Supplemental Staff Report. In reviewing TOWN OF BEL AIR, MD CODE §165-51(C)(3), the Board first turns its attention to the specific requirements for mixed-use developments under Subsection (c). The Applicant offered and the Board admitted into evidence as

Exhibit 6, “Parking and Land Use Regulation Opportunities to Support Redevelopment prepare for the Town of Bel Air, Maryland,” prepared by Mead & Hunt, April, 2023 (hereinafter “the Mead & Hunt Report”). The Board takes judicial notice that this is a publicly available report that was commissioned by the Town of Bel Air Board of Commissioners to study available parking throughout the corporate boundaries of the Town of Bel Air. The Board takes further judicial notice that on July 17, 2023, the Board of Town Commissioners passed Ordinance No. 813-23, which provided for clarity to the mixed-use parking requirements and performance standards for mixed-use developments, which includes various provisions pertaining to parking. Given that this Ordinance was passed after the Mead & Hunt Report was issued, the Mead & Hunt Report does not address the new parking requirements and clarifications for mixed-use developments.

The Applicant admitted the Mead & Hunt Report in its entirety and its expert, Ms. DiPietro, supported the Mead & Hunt Report’s conclusions that “...there is sufficient parking in downtown Bel Air, with a good mix of public, semi-public and private parking.” Mead & Hunt Report at 3. The Applicant did not point to any specific information contained in the Mead & Hunt Report, it provided no further specific parking impact study, nor expert testimony to support its requests for a waiver of 92 commercial parking spaces.

The Applicant’s submission of the Mead & Hunt Report to support its parking waiver request is not persuasive. First, a review of the Mead & Hunt Report along with the testimony provided by the Applicant and its expert, Ms. DiPietro, does not elicit any evidence for this Board to determine “the peak requirements of several occupants occur at different times during the day.” See TOWN OF BEL AIR, MD CODE §165-51(C)(3)(c)[3]. Throughout all of the testimony heard during the hearing, the Board can only conclude as to the generalizations provided by the Applicant, such as, the development of this project is intended to attract “high-end” restaurants, “quality” residential tenants and other, nonspecific retail uses. The only discussions relating to the times of the day were the generalized, unsupported statements that the intended residents of the penthouse and apartments would likely utilize more parking during the evening and nighttime hours than the commercial uses. Speculation is not a basis for consideration of a parking waiver pursuant to TOWN OF BEL AIR, MD CODE §165-51(C)(3). This is legally insufficient to satisfy the specific requirements under TOWN OF BEL AIR, MD CODE §165-51(C)(3)(c).

Furthermore, the Mead & Hunt Report was a review of *all* parking available in the Town of Bel Air, including parking lots owned by the Town of Bel Air, State of Maryland and Harford County, Maryland in determining the overall availability to the public. Mead & Hunt Report at 7. The Mead & Hunt Report was neither commissioned, nor intended to be utilized to determine “the peak requirements of several occupants [of the Applicant’s proposed mixed-use development] occur at different times during the day.” TOWN OF BEL AIR, MD CODE §165-51(C)(3)(c)[3].

Similarly, the Applicant's reliance upon the Mead & Hunt Report does not support its requested reduction. Indeed, as previously stated, the Mead & Hunt Report says nothing about the property or the Applicant's intended mixed-use development. On the other hand, what the Mead & Hunt Report does provide is sufficient basis for the Department's conclusion that "...there are options to acquire parking in the downtown area without obtaining a waiver including fee-in-lieu payment and leasing of existing spaces in a nearby parking lot..." Supp. Staff Report at 7.

Lastly, the Board is required to find that no adverse impact will be caused by the parking reduction. Notwithstanding the lack of a parking impact study and expert testimony supporting the request for the parking waivers, the Board is highly concerned about adverse impacts to the adjoining residential neighborhood along Wallace Street. Several residents who live along Wallace Street provided public comment and the bulk of these comments were geared toward concerns about parking spilling over from the Applicant's proposed mixed-use development and the lack of current enforcement of the permit parking restrictions along Wallace Street. Mr. Goddard testified, as a fact witness, that he had no concerns about parking for retail uses and restaurants because parking would "open up" after 4:00 p.m., there was adequate, presumably, overflow parking available behind the Hamilton Building and in the Harford Mutual parking lot. He concluded that parking has a way of "shaking itself out." The Board is not persuaded by this totally speculative testimony in light of the testimony and comments of the residents along Wallace Street. The Board finds that without a parking impact study, as required under TOWN OF BEL AIR, MD CODE §165-91(C)(3)(c), there will be an adverse impact on the surrounding properties.

Since the Applicant has failed to comply with the express requirements of TOWN OF BEL AIR, MD CODE §165-51(C)(3)(c) and provide a parking impact study and introduce qualified expert testimony concerning the impact of the Applicant's requested mixed-use development, the Board cannot address the specific requirements set forth in TOWN OF BEL AIR, MD CODE §165-51(C)(3)(a) and it is not necessary for the Board to continue the inquiry. The Mead & Hunt Report, while sufficient for providing the Department and the Board of Town Commissioners adequate information for future planning and legislative action, the Board concludes that it is insufficient to satisfy the express requirements of TOWN OF BEL AIR, MD CODE §165-51(C)(3)(c). The Board finds that Mead & Hunt Report does support the conclusion that adequate alternatives exist for the Applicant other than a parking waiver.

For the reason set forth herein, the Board hereby denies the Applicant's requests for a parking waiver of 91 commercial parking spaces as required under TOWN OF BEL AIR, MD CODE § 165-33(H).

E. A waiver of parking requirements in TOWN OF BEL AIR, MD CODE § 165.33(H) to reduce the minimum requirements by 40 parking spaces for residential uses in a Mixed-Use Center for 130 & 128 North Bond Street and 100 Lester Way in the B-3A District.

The Applicant is also seeking a waiver of 40 parking spaces from the 90 parking spaces required for the residential uses on the three (3) properties. The Department recommends denial of a parking waiver of 40 parking spaces for the residential parking requirements under TOWN OF BEL AIR, MD CODE §165-33(H). The Applicant presented the same evidence and testimony in support of both parking waiver requests collectively and simultaneously and thus, the Board's findings of facts and conclusions of law are applicable to both requests.

For the reasons stated herein previously, the Board hereby denies the Applicant's request for a parking waiver of 40 residential parking spaces as required under TOWN OF BEL AIR, MD CODE §165-33(H).

F. A variance from TOWN OF BEL AIR, MD CODE §165-51(E)(1) to reduce the drive aisle width from 24' to 20' for 130 North Bond Street in the B-3A District.

The Applicant is seeking a variance from TOWN OF BEL AIR, MD CODE § 165-51(E)(1) which provides that a two-way drive aisle must be 24' or more in width. The Department is recommending this variance be approved.

Mr. Small testified that the parking lot at 130 North Bond Street was designed in 1992 with compact car parking lot spaces, with reduced width and lengths of the individual parking spaces and is deficient. Mr. Small testified that compact car parking configurations are no longer permitted under the Town Code. He further testified that a variance is required when the compact car spaces are being utilized for a new use such as in this case. Mr. Small identified only two other instances in the Town of Bel Air which utilizes compact car spaces – Tollgate Marketplace and Bel Air Town Center. He further testified that there would be no change to the existing conditions in this parking lot and the parking aisle cannot be brought into compliance with the current requirements of the Town Code without reducing the number of parking spaces.

Ms. DiPietro testified the Site Plan shows a 20' drive aisle on 130 N. Bond Street. Ms. DiPietro testified that the parking spaces were approved in 1992 with parking spaces 15' in length and thereafter, the parking spaces were lengthened. Ms. DiPietro testified that non-conforming uses exist around the Town of Bel Air, however, the decreased size of the drive aisle is an inherent uniqueness that only exists on 130 North Bond Street and no other property in the area. Ms. DiPietro confirmed that there will be no changes to the parking spaces if the variance is granted. Ms. DiPietro testified that she did not believe

that an increased use of this parking lot would result in any dangerous conditions or jeopardize public safety.

There was no cross-examination of either Mr. Small or Ms. DiPietro and no public comment concerning this request.

After reviewing all of the evidence submitted, the Board concludes that the Applicant has proven, by clear and convincing evidence, that the subject property has an inherent characteristic or condition not generally shared by other surrounding properties, specifically, the dimensions of the drive aisle at 20' feet pose a practical restriction on the property. Both Mr. Small and Ms. DiPietro concurred that this restriction exists only on this property out of the other two properties that are subject to this application. Mr. Small could only point to the same restriction being present at Tollgate Marketplace and Bel Air Town Center, both of which are not in the immediate area. The Board finds that strict compliance with the Town of Bel Air Development Regulations would render conformity with the current drive aisle width unnecessarily burdensome because, based on the testimony received, the drive aisle could not be increased without the loss of parking spaces. The Board finds that granting the variance would do substantial justice to the Applicant, as well as to other property owners in the area by keeping the current number of parking spaces intact, thus, alleviating the possibility that a reduction in parking spaces could result in overflow parking occurring in the abutting residential development. The Board finds that the granting of this variance ensures that the spirit of the Town of Bel Air Development Regulations will be observed and public safety and welfare secured based on Ms. DiPietro's testimony and no contrary testimony provided by the Department. The Board further finds that the practical difficulty is caused by the property's uniqueness and is not personal to the Applicant nor the result of acts of the Applicant or its predecessor in title. The testimony clearly establishes that the decreased width of the drive aisle was developed in 1992 in order to comply with the then existing Town of Bel Air Development Regulations which are no longer in use.

For the reason set forth herein, the Board finds that the Applicant has met its evidentiary burden by clear and convincing evidence and hereby grants the Applicant's request for a variance from TOWN OF BEL AIR, MD CODE §165-51(E)(1) to reduce the drive aisle width from 24' to 20' for 130 North Bond Street in the B-3A District.