

March 22, 2023

Via E-Mail

Honorable Commissioners of St. Michaels  
300 Mill Street  
P.O. Box 206  
St. Michaels, MD 21663

Re: Request for Commissioners to Hold a Public Hearing on Proposed Code Amendments

Dear Honorable Commissioners:

We appreciate your taking up the two Code amendments we have submitted for your consideration. We are deeply dismayed, however, by the Town staff's March 22, 2023 memorandum that includes a number of unhelpful recommendations concerning the proposed amendments.

You are at an inflection point and the course you take tonight will have long term ramifications. Our proposed Code amendments are born out of widespread, serious concerns in the community that are not addressed by the Town's current Code. We have spoken with hundreds of Town residents who uniformly have expressed their concerns regarding the hotel design and its negative impact on the surrounding area. As the Staff's memorandum expressly states, the Town's attorney has confirmed that you have the authority to adopt our proposed amendments. Given the overwhelming concerns for public safety and for the protection of Town residents, visitors, and native wildlife to enjoy the St. Michaels Nature Trail, the time for you to act is now and decisively. And, for the detailed reasons that follow, we respectfully urge you to do so without further delay.

In late December 2022, a preliminary site plan application was filed proposing to build a 73 room hotel in the gateway commercial district. The design and layout immediately raised concerns in the community. These concerns were reinforced in the January 25, 2023 Technical Advisory Committee (TAC) meeting to review the site plan, when it became apparent that the building, even if it were determined to meet existing building Code requirements, will present extraordinary challenges in the event of a fire or even just a false alarm. A separate but equally important issue is the hotel's proposed open pool and terrace, whose close proximity to the St. Michaels Nature Trail will adversely affect the use and enjoyment of the Nature Trail, the Nature Trail Extension, and the surrounding area, both for human visitors and wildlife.

Based on these developments, we proposed two Code amendments narrowly tailored to address omissions in the Town's existing Code in order to protect public safety and preserve the tranquility and enjoyment of the Nature Trail. At your March 8, 2023 meeting, Staff was asked to review the proposed amendments (or at least the fire lane access road amendment), which Staff has now done. Only yesterday afternoon did the Staff's recommendations become publicly available for review, and we therefore have had very little time to prepare this response. In sum,

Staff suggest a limited version of our proposed Code amendment addressing public safety and summarily dismiss our second proposed Code amendment. We address each of these Staff recommendations in turn.

#### 1. Fire Lane Access

With its recommendation to change our version of a Code amendment, Staff submits an email and letter from Fire Protection Engineer Amaryllis J. Linero in the Office of the State Fire Marshal and a five sentence summary of a telephone call with Fire Department Chief Larry Cooper. The attachments also reference a telephone call among Staff and Ms. Linero.

We have reviewed the Staff's modified Code amendment. While we agree with some of the suggested modifications, we disagree with others that diminish the public safety the amendment is intended to address. Please keep in mind that the language we proposed in our amendment was not pulled out of thin air. Rather, it is premised on model language from the International Fire Code (IFC), one of the two primary fire codes used in the United States.<sup>1</sup> As such, removal of any of the ten specified requirements from the IFC model code warrants careful consideration.

##### A. Where Staff Agrees with our Proposed Code Amendment

Staff expressly states it supports a “modified version” of our proposed Code amendment. It does so after noting that neither of the consulted fire safety experts objected to the proposed standards laid out in our proposed Code amendment and the Town attorney advised that you have the authority to adopt our proposed Code amendment which includes “more restrictive safety standards” than the minimum standards required in Maryland.<sup>2</sup>

##### B. Where we Agree with the Modification

Staff raises a legitimate concern regarding the application of the proposed Code amendment and whether it would disproportionately impact small lots or redevelopments in Town. Applying it only to larger buildings may be reasonable to consider. While Staff has selected 10,000 square feet as the minimum building size, they should confirm to you whether the proposed hotel, as currently designed, would fall within this size limitation and would therefore be subject to the amendment if adopted by you.

We agree that removing the two requirements for grading and angles of approach that are premised on the Fire Marshal's approval is appropriate in light of Fire Protection Engineer Linero's representations in her email and letter that neither of these requirements falls within the purview of her office.

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<sup>1</sup> The other fire code is the National Fire Protection Association or NFPA, which is followed in Maryland.

<sup>2</sup> Fire Protection Engineer Linero's March 14, 2023 letter confirms that the State Fire Prevention Code is based on the adoption of the NFPA 1, *Fire Code*, 2018 edition, and NFPA 101, *Life Safety Code*, 2018 petition.

Staff believes the proposed amendment, if adopted, should be incorporated into Section 340 of the Town Code rather than Section 108. They do so apparently to have the Town's Zoning Inspector, rather than its Building Inspector, enforce the provision. If you adopt the proposed Code amendment, we believe it is appropriate to determine whether enforcement is proper by the Town's Building Inspector or its Zoning Inspector. For purposes of this response, we simply note that if you choose to include the proposed Code amendment within the Code's zoning provisions, Staff has designed a new Section 340-87 but the Town Code already has a Code provision at that location. Instead, Sections 340-90 through 340-93 are reserved and are available for adding text.

### C. Where we Disagree with the Modification

Staff has removed the unambiguous language that the requirement for fire apparatus access shall apply to any new commercial building "for which a permit has not been issued as of the effective date hereof." Given that this proposed Code amendment is in response to concerns raised by the proposed hotel, which to date has not received a permit, there should be no question whether the amendment, if adopted, will apply to the proposed hotel.

Staff indicate that the fire safety experts advised that access to the front and back of a building and only one side is adequate for fire safety purposes. However, the email and letter from Fire Protection Engineer Linero does not make this express statement. According to Staff's summary of the call with Chief Cooper, he actually stated that "access to one side of the building is adequate as long as they can reach behind buildings..." While we do not have the benefit of a transcript of Staff's call with Chief Cooper, we do have a transcript of his extensive comments at the January TAC meeting, in which he unambiguously answered, when questioned about the hotel's design: "On access, in a perfect world, we could get down both sides [of the building]." It is also contrary to the IFC requirement for the fire apparatus access road **to provide access to all sides of the building**, which cannot be provided by the proposed hotel as currently designed.

Staff's modification does not indicate that the fire department could reach behind a building and access all sides, but instead, limits the proposed access to within 50 feet of the front and rear of the building. The modification is silent regarding access to the sides of the building. The lack of fire department access to the hotel's sides under its current design, except under difficult circumstances, is one of the most important issues flagged by Chief Cooper at the January TAC meeting.

Staff concludes that if a fire access road is required alongside a building, the requirement for a vertical clearance of 13.6 feet is not needed. The IFC included this requirement for a reason. If, as staff assumes, there is no ceiling limitation alongside a building, there is no harm leaving this language in the amendment. However, if a building has any build out, for example, a balcony, portico, awning, signage, overhanging vegetation, etc. that is less than 13.6 feet above the

ground, removing this requirement from the amendment will jeopardize emergency vehicle access contrary to the purpose of the fire access road.

Staff has determined that the requirements for an adequate turning radius and no dead ends greater than 150 feet without adequate turn-arounds “do not need to be in the code, but will be analyzed by engineers during the site plan review process.” Logically however, excluding these requirements from the Code will have the unintended effect of excluding them from consideration by engineers since a site plan reviewer will not have a statutory basis to incorporate these requirements into a site plan absent their inclusion in the Code itself.

Staff seeks to limit application of the proposed Code amendment to new developments solely within the Gateway Commercial Zoning District. In light of Staff’s concern that the amendment could be problematic for small lots or redevelopment in town, we suggest that consideration may be given to exempting the Town’s Historic District. There is no apparent reason to exclude any other Town zoning district as inclusion of a minimum building size as a predicate for enforcement adequately addresses the concern.

#### D. Revised Code Amendment

In light of our agreement with some of the Staff’s proposed changes to our originally proposed Code amendment, we submit for your review a revised Code amendment.<sup>3</sup> We have blended Staff’s modifications that improve the amendment, without detracting from its intent to protect public safety in St. Michaels.

#### § 340-91 Requirement for Fire Apparatus Access for New Developments

The requirement for a fire apparatus access road shall apply to any new commercial development outside the Historic District that is in excess of \_\_\_\_\_ square feet in size for which a building permit has not been issued as of the effective date of this section. To qualify as a fire apparatus access road, the road must include the following: (1) be at least 20 feet in width; (2) have a vertical clearance of at least 13 feet, six inches; (3) be designed to withstand the imposed load of fire apparatus as approved by the Town’s engineer in consultation with the Town Fire Department; (4) be designed as an all-weather surface; (5) have a turning radius adequate to permit fire apparatus to negotiate any turns; (6) have no dead-ends greater than 150 feet without adequate turn-arounds; (7) provide access to all sides of the building; and (8) be within 50 feet of at least one exterior door of the building which door is able to be opened from the outside and provides access to the interior of the building. In addition, all covered or underground parking ceilings must be at least ten feet six inches (10’6”) in height for ingress and egress of emergency service vehicles and ambulances.

#### 2. Swimming Pool Facilities

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<sup>3</sup> As noted, in the event the Commissioners seek to adopt the proposed Code amendment, you will need to determine whether enforcement will be pursuant to review by the Town’s Building Inspector or its Zoning Inspector and the appropriate development size that triggers application of this provision.

Staff states they do not support our second proposed Code amendment addressing outdoor swimming pool facilities in close proximity to the St. Michaels Nature Trail. Totally ignoring why our Nature Trail environment should be protected, they merely state “both swimming pools and nature trails are recreational facilities and are to be considered compatible uses for zoning and development purposes.”

The lack of any in-depth review is remarkable. First, unlike the fire access road proposal, Staff do not indicate they consulted with anyone prior to making this determination. They ignore that the proposal is limited to situations where pool facilities are in close proximity to the Nature Trail and, most surprisingly, reference the Bay Hundred Community Pool to support their conclusion, noting that it is across the street from the entrance to the Nature Trail. That pool is not next to, or even close to the Nature Trail. Rather, the Bay Hundred Community Pool is on the other side of Route 33 and is separated from this busy street by a high brick wall. While Staff may find the hotel’s proposed pool and the Nature Trail compatible, the blue herons, owls, and bald eagles that nest nearby along this trail undoubtedly have a different perspective.

As Commissioners, you represent a constituency of more than 1,000 residents. Many of these residents have grave concerns that the hotel, and in particular an open pool and terrace facing the Nature Trail, will ruin their enjoyment of the Nature Trail and the surrounding environment. While Staff assert that this proposed Code amendment is unnecessary and overly restrictive, in truth it is neither. It is limited by geographic area specifically to protect a prized Town asset, and it does not restrict a hotel from having a pool or a terrace. Instead, it simply requires that if a hotel in close proximity to the Nature Trail seeks to have a pool and/or a terrace, it must fully enclose them.<sup>4</sup> This is a balanced and reasonable approach that allows a hotel to serve its guests while preserving the adjacent Nature Trail’s natural beauty and tranquility for the enjoyment of residents, visitors, and wildlife.

### 3. Planning Commission Review

Town staff recommends that you direct it to include the modified fire access amendment to the Gateway Commercial Ordinance currently under review by the Planning Commission. We disagree.

The proposed Code amendment (no matter which version), is premised on public safety. The Gateway Commercial Ordinance deals with permitted uses and is wholly unrelated to public safety.<sup>5</sup> As the proposed Code amendment is wholly unrelated to the Gateway Commercial

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<sup>4</sup> Indeed, multiple earlier versions of the hotel design had an enclosed pool. In a prior version of the hotel sketch plan, hotel representatives stated the pool had been moved indoors and reduced in size in order to avoid building out towards the St. Michaels Nature Trail. See: May 13, 2022 Planning Commission TAC Zoom meeting at minute mark 42:30-43:02.

<sup>5</sup> To the extent Town staff seeks to link the proposed Code amendment to the Gateway Commercial Ordinance by limiting its applicability to new developments within the Gateway Commercial Zoning District, as noted, the proposed Code amendment should simply exempt the Historic District and impose a minimum building size to address concerns regarding smaller lots and redevelopment.

Ordinance, there is no basis to include it with the matter being considered by the Planning Commission.

Moreover, the Planning Commission's responsibility when reviewing a proposed Code amendment is to determine its consistency with the Town's Comprehensive Plan. Indeed, that is precisely the request that the Planning Commission was tasked to fulfill in connection with the Gateway Commercial Ordinance. Yet neither of our proposed Code amendments -- involving public safety and environmental/recreational protection -- concern the Comprehensive Plan in any way. Instead, we respectfully urge you to proceed immediately to exercise your authority under Town Code Sections 340-195 and 340-200 to publish notice and conduct a public hearing on both of our proposed Code amendments, without first submitting the fire apparatus access amendment to the Planning Commission for an unnecessary, irrelevant, and time consuming review.

A. A Review of the proposed Code Amendments is Outside the Scope of the Planning Commission's Review

Code Section 340-195 sets forth the procedures for amending the Town Code. For purposes of any referral, the most relevant provision is subsection C. That subsection provides that if the Commissioners determine that the proposed Code amendments merit further consideration, "**the Town Commissioners may, by vote, and in their sole discretion**, refer the proposal to the Planning Commission or other board, Commission or panel for review." (Emphasis added.)

As the highlighted language expressly makes clear, the decision to refer a proposed Code amendment to the Planning Commission or to another board or panel is entirely discretionary. On top of this, determining whether to exercise this discretion must be considered in light of the requirements under subsection 195(c)(1), which provides, in relevant part:

"The referral shall be in writing and shall request that the Planning Commission **evaluate the consistency of the proposal with the Comprehensive Plan.**" (Emphasis added.)"

The two Code amendments that we have proposed for your adoption are premised on the general and specific authority granted to the Commissioners by the Town Charter, **not** the Comprehensive Plan. Requesting the Planning Commission to review the proposed fire apparatus access amendment for consistency with the Town Charter is outside the scope of subsection 195(c)(1) and outside the Planning Commission's scope of authority. Thus, a review by the Planning Commission of either of our proposed amendments lacks a foundational predicate and there is no basis to refer either for review.

B. The Commissioners Already Have Sufficient Information to Warrant a Public Hearing

Even if a basis existed under Section 340-195 to refer either of our proposed Code amendments to the Planning Commission -- which it does not -- the Commissioners should not

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do so. Rather, as explained in our February 6, 2023 letter proposing the two amendments, you should act as soon as possible to protect both public safety in St. Michaels and the public's use and enjoyment of the St. Michaels Nature Trail, Nature Trail Extension, and surrounding area.

A review by the Planning Commission or another board or panel will not allay the public safety and use and enjoyment concerns that the proposed amendments address. Rather, these concerns mandate your immediate consideration of the two proposed amendments.

### C. The Commissioners Should Conduct a Public Hearing Without Delay

A referral of the Code amendments may result in significant and unnecessary delay. Again, a review of Subsection 195(c) is enlightening. Specifically, subsection (c)(3)(a) provides the timeline for the "required reporting date" by which the Planning Commission shall submit to the Commissioners its written report, stating:

"The required reporting date shall be either the 60th day following the date of the written referral or date requested by the Planning Commission and agreed to by the Town Commissioners, **whichever is later.**" (Emphasis added.)

Although Town staff seeks to tie the fire apparatus access Code amendment to the Gateway Commercial Ordinance and the timeline already established for that matter, it is not clear that you may forward an additional referral without triggering a new timeline. Referring either proposed Code amendment to the Planning Commission would risk, **at least**, a two month delay just for the Commissioners to receive a written report. The actual turnaround time could be longer. Thereafter, if the Commissioners seek to adopt the amendments, you will still be required by Subsection 195(d) to conduct a public hearing, which requires a minimum of at least another 14 days of notice (once a week for two weeks in a row), before you may conduct that hearing. The resulting delay easily could span a minimum of three months, and possibly longer.

We believe a multi-month delay, which is easily avoidable by you, is neither necessary nor warranted. Rather, the time for you to act is now.

We again respectfully urge that you immediately publish the proposed Code amendments and conduct a public hearing without first submitting them to the Planning Commission. Thank you for the opportunity to submit these comments.

Sincerely,

Mark Berman  
960 Marea Terrace  
St. Michaels, MD 21663

Langley R. Shook  
P.O. Box 4  
St. Michaels, MD 21663

cc: Mr. Rob Straebel, Town Administrator