

February 13, 2023

Via Hand-Delivery

Elissa Levan, Esq.
C/o Mr. Rob Straebel, Town Administrator
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: Meeting At Behest of Town of St. Michaels Commissioners

Dear Ms. Levan:

We are writing at the behest of the Commissioners of St. Michaels (COSM) to schedule a meeting with you. The purpose of the meeting is to discuss the authority of the Commissioners to adopt ordinances or amend the Town's Code.

For background, enclosed is a copy of a letter we jointly submitted to the Commissioners on February 6, 2023 in which we request that they take immediate action to adopt ordinances or amend the Code to address glaring omissions endangering public safety and threatening the St. Michaels Nature Trail, the Nature Trail Extension, and the surrounding area. We presented this request in person to the Commissioners during their most recent public meeting work session on February 8, 2023. It was during this meeting that the Commissioners expressly requested us to meet with you, the Town's attorney, and directed Rob Straebel, the Town Administrator, to arrange our meeting.

An applicant ("Applicant") recently filed a preliminary site plan for the construction of a hotel at 906 S. Talbot Street. The hotel's proposed design and layout underscores two important omissions in the Town's existing Code. Because adopting an ordinance or amending the Code could potentially impact the hotel's design and layout, the Commissioners seek confirmation that they have the authority to do so.

Please note we do not intend this letter to serve as a legal opinion or a legal brief. Rather, we seek to ensure that our meeting with you is appropriately focused and productive.

As a preliminary matter, there is no question that the Commissioners are generally empowered to enact ordinances "for the protection and preservation of the Town's property, rights, and privileges; for the preservation of peace and order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of and visitors in the Town." See, Town Charter §C-19A. Moreover, the Commissioners are specifically empowered, among other things:

“To make reasonable regulations in regard to buildings and structures to be erected, constructed, or reconstructed in the Town;”¹

“To suppress fires and prevent the dangers thereof...to issue regulations concerning fire hazards, and to forbid and prohibit the use of fire-hazardous buildings and structures permanently or until the condition of the Town fire-hazard regulations are met;”² and

“To establish and maintain public parks, gardens, playgrounds, and other recreational facilities and programs to promote the health, welfare and enjoyment of the inhabitants of the Town.”³

The question that arose during the recent COSM meeting is whether the Applicant, by having submitted a preliminary site plan, has obtained a “vested right” to proceed such that the Commissioners, in their otherwise lawful exercise of their general and specific powers, may not enact ordinances or Code amendments that apply to the proposed hotel.

A simple review of the Town Code is dispositive. Specifically, Code §110-9(1), *Effect of site plan approvals*, provides “[t]hat the general terms and conditions on an **approved** preliminary plan shall not be changed, and any change in Town zoning or site plan approval ordinances shall not affect the **approved** plan...” (Emphasis added.) Here, the Applicant has only recently filed its preliminary site plan application on December 23, 2023. The Applicant has not obtained any approval of its preliminary site plan and no construction has begun. Had the Town intended for the vesting of rights or the grandfathering of zoning code provisions to apply upon the mere **filing** a preliminary site plan, the Code would expressly state so.

It is logical that Code §110-9(1) does not apply to preliminary site plans that have merely been filed, but not approved. This is because it is impossible to draft a zoning code that comprehensively encompasses every possible situation and the Commissioners must retain their ability to exercise their lawful authority to adopt new ordinances or amendments when an application is filed that highlights one or more omissions in the existing Code.

Although we believe Code §110-9(1), on its face, answers the Commissioners’ question and allows them to amend the Code as outlined in our February 6, 2023 letter, this result also is mandated by controlling Maryland law. The seminal decision by the Maryland Court of Appeals (now Maryland Supreme Court) is *Prince George’s County v. Sunrise Development*, 330 Md. 297 (1993). In lieu of full case summary, we only need note the Court’s holding:

“[W]e hold that, in order for rights to be vested before a change in the law, the work done must be recognizable, on inspection of the property by a reasonable member of the

¹ Town Charter §C-19B(9).

² Town Charter §C-19B(21).

³ Town Charter §C-19B(41).

public, as the commencement of construction of a building for a **use permitted** under the then current zoning.” 330 Md. at 315 (emphasis added).

Not only has the Applicant done no construction work at the site, its recently filed preliminary site plan has not been approved. As such, there currently is no use permitted for the construction of a hotel at 906 S. Talbot Street and any zoning changes that the Commissioners implement will apply to this Applicant and any other that has yet to obtain preliminary site plan approval.

There are many reported Maryland cases, including subsequent Court of Appeals decisions, since the *Sunrise* decision, and they consistently apply the *Sunrise* holding to situations where a town, such as St. Michaels, implements a zoning change prior to a developer either obtaining a permit or initiating recognizable work on the property.

In anticipation of our meeting, we hope that this letter will be helpful to you and focus our discussion. We look forward to meeting you.

Sincerely,

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CC: Commissioner Breimhurt
Commissioner Harrod
Commissioner Mercier
Commissioner DuPont
Commissioner Whittington
Town Administrator Rob Straebel

Enclosure: February 6, 2023 Letter to the Hon. Commissioners