

PAUL JOHN CISAR, et al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
F.O. MITCHELL & BRO., et al.,	*	ANNE ARUNDEL COUNTY
Defendants.	*	Case No. C-02-CV-22-000988

HARFORD COUNTY’S MOTION TO DISMISS
– HEARING REQUESTED

Defendant Harford County, Maryland by its undersigned counsel, hereby moves, pursuant to Rule 2-322, to dismiss Plaintiffs’ Verified Complaint for Injunctive Relief and Declaratory Judgment and Private Action for Nuisance and Public Nuisance (“Complaint”) because of improper venue, failure to state a claim upon which relief can be granted, and lack of jurisdiction over the subject matter.

Factual Background

Alleging no connection between this case and Anne Arundel County, Plaintiffs nevertheless have brought suit in the Circuit Court for Anne Arundel County against Defendants F. O. Mitchell & Bro. (“Mitchell”), Frederick Ward Associates, Inc. (“Ward”), Chesapeake Real Estate Group, LLC (“CREG”), and Harford County, Maryland (“Harford County” or the “County”) complaining about a “planned development” of the Mitchell Farm on the “Perryman Peninsula” in Harford County (the “Property”). Compl. ¶¶ 1-2. The Property is zoned as Light Industrial (“LI”). Id. ¶ 2.

Plaintiffs allege that Defendants CREG and Ward have “begun development of the Mitchell Farm by seeking approvals” from the County, including submission of “Forest Stand Delineation Plans, Preliminary Plans, [and] Site Plans.” Compl. ¶ 32. The development of the Property is subject to the Harford County Subdivision Regulations found in Chapter 268 of the

Harford County Code (“Code”).¹ Defendants activities are part of the administrative subdivision process required by those Regulations, which process has not reached a final decision. *See* Code §§ 268-19 (preliminary plans and site plans), 267-35(A)(1)(a) (forest stand delineation needed for subdivision approval). In addition, Defendants CREG and Ward have “presented a traffic impact study” (Compl. ¶ 32), which is required under the Adequate Public Facilities regulations found within the Zoning Code (Chapter 267 of the Code) and Subdivision Regulations. Code, §§ 267-126(B)(3)(c); 268-19(C)(12).

Plaintiffs repeatedly refer to the planned development as a “Freight Terminal,” despite the fact that public records relating to the proposed development refer to the use as “warehouses” and “commercial retail.” *See* Compl. ¶ 3 (quoting Ward as saying, “We are proposing 5 warehouses” and “commercial retail use”). The description of the “planned development” contained in the Complaint is taken from the minutes of the January 19, 2022 meeting of the Development Advisory Committee (“DAC”), of which this Court can take judicial notice. Exhibit A at 3; <https://hcgweb01.harfordcountymd.gov/weblink/0,0/doc/8276210/Page1.aspx> (last visited 6/28/2022).²

Review by the DAC is part of the subdivision process under Section 268-19(C). DAC meetings are required to be open to the public. Code § 268-19(C)(2). Notice must be published prior to the meetings, including “information about the type of subdivision, *proposed use* and number of units requested in the plan.” *Id.* § 268-19(C)(5) (emphasis added). DAC meetings allow for citizens to make comments about the proposed development plan. *Id.* § 268-19(C)(7).

¹ The Code is available online here: <https://ecode360.com/HA0904> (last visited 6/28/2022). The Harford County Charter (“Charter”) is available here: <https://ecode360.com/12066517> (last visited 6/28/2022).

² As a service to the public, the Harford County Department of Planning and Zoning has made the public records relating to the proposed subdivision of the Mitchell Farm available online. *See* <http://hcgweb01.harfordcountymd.gov/weblink8/search.aspx?dbid=0&searchcommand={LF:ID=8098795}> (last visited 7/06/2022). As noted below, this Court may consider in deciding this Motion facts of which it may properly take judicial notice, such as the existence of the official public documents in the subdivision record. *E.g. Chesek v. Jones*, 406 Md. 446, 456 n.8 (2008).

The subdivision review process also includes review and approval of stormwater management (“SWM”) plans, designed to prevent any damage to water resources. Section 268-17(A)(2) provides: “Every subdivision shall be provided with a stormwater drainage system adequate to serve the area being platted, including any surface drainage water originating outside the limits of the area, which would ordinarily run through the area being platted, and otherwise meeting the drainage specifications as set forth in the Harford County Road Code and the [SWM] Regulations, as amended.” The purpose of the SWM Regulations (Chapter 214 of the Code) is “to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff,” to reduce pollution, and “to restore, enhance and maintain the chemical, physical and biological integrity of streams, minimize damage to public and private property and reduce the impacts of land development.” Code § 214-24(D). Although there are allegations in the Complaint concerning alleged damage to water resources (§§ 56, 58, 59), there are no allegations concerning an approval of a SWM plan under the SWM Regulations.

The “traffic impact study” (Compl. ¶ 32) also is not alleged to have received approval under the Adequate Public Facilities provision of the Zoning Code. Code § 267-126(B)(3)(c). There is no certainty that there will be a finding of adequate capacity, what additional improvements might be required to achieve such a finding, or whether the developer will be willing to fulfil any such requirements. Without such a finding, the Preliminary Plan and Site Plan cannot be approved. *See* Code § 267-126(B)(3) (“Approval of nonresidential development and site plans shall be subject to findings of adequate capacity based on the standards set in this subsection...”). Developers may be required to construct substantial improvements to the public road system in order to meet adequate facilities requirements. Code § 267-126(B)(3)(c)(4); *see also* § 268-12(E).

If all requirements are met under the Subdivision Regulations, the Zoning Code, and all other applicable provisions of the Code, the Director of the Department of Planning and Zoning

will send the developer a written approval of the Preliminary Plan or Site Plan (or both), including any conditions that must be met to comply with the Zoning Code, Subdivision Regulations, Floodplain Management Regulations (Chapter 131 of the Code), or other applicable provisions of the Code. *Id.* § 268-19(C)(10). After the Preliminary Plan and Site Plan approvals have been issued, the developer must submit a “final plat” which is reviewed by the appropriate agencies prior to being recorded in the land records. *Id.* §§268-21, 268-24. Such a recorded plat is a necessary prerequisite to a transfer of lots within the subdivision and to the issuance of building permits. Code §§ 268-7 (“No lot in a subdivision or any section thereof shall be transferred, nor shall a building permit be issued for a structure thereon, until a final plat of such subdivision or any section thereof has been recorded in accordance with these Regulations.”).

The approval of the Preliminary Plan or Site Plan is subject to appeal within 30 calendar days to the Circuit Court for Harford County. Code § 268-28.

Although the Complaint is vague about the subdivision process, it does not allege that there has been any approval of the Preliminary Plan or Site Plan by the Director of the Department of Planning and Zoning. The Complaint repeatedly references what the plans “include” or “call for” but does not allege that the plans have been approved. Compl. ¶¶ 49-51. The Complaint also repeatedly uses the future tense to refer to the development. *See* Compl. ¶¶ 54 (“will render”); 55 (“will exponentially increase”); 56 (“will exacerbate”).

As of now, the Mitchell Farm Preliminary Plan and Site Plan have not been approved. There is no certainty that they will be approved. Nor is there any certainty, if they are approved, what conditions may be imposed in order to comply with the Zoning Code, Subdivision Regulations, Floodplain Management Regulations, or other applicable provisions of the Code. Code § 268-19(C)(10). There is no development approval or recorded plat and therefore cannot be any building permits issued for the construction of warehouses or any other buildings on the Property. Code § 268-7.

Legal Standards

Maryland Rule 2-322(a) provides that a motion to dismiss for improper venue must be filed before the answer. Such motions are to be supported by affidavits. *E.g., Lampros v. Gelb & Gelb, P.C.*, 153 Md. App. 447, 452 (2003). In considering this motion, the Court may make necessary findings of fact in order to decide the legal issues presented. *Neimeyer & Schuett, Maryland Rules Commentary*, Rule 2-322 at 205 (3rd ed. 2003) (“If determinations of fact become necessary in deciding the motion, the court may consider affidavits or, in connection with any hearing, take testimony. The court, not the jury, makes the necessary findings and decides the ultimate legal issues.”).

“Pursuant to Maryland Rule 2-322(b)(2), ‘a party may seek dismissal of a complaint if the complaint fails to state a claim upon which relief may be granted.’” *Holden v. Univ. Sys. of Md.*, 222 Md. App. 360, 366 (2015). A complaint’s exhibits are part of the complaint on a motion to dismiss, as are uncontroverted matters that supplement the complaint’s allegations. *Wireless One, Inc. v. Mayor of Baltimore City*, 239 Md. App. 687, 692–93 (2018), *aff’d*, 465 Md. 588 (2019).

“In considering a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Maryland Rule 2-322(b)(2), a trial court must assume the truth of all well-pleaded relevant and material *facts* in the complaint, as well as all inferences that reasonably can be drawn therefrom.” *Bobo v. State*, 346 Md. 706, 708 (1997) (citations omitted) (emphasis added). “Bald assertions and conclusory statements by the pleader will not suffice.” *Id.* at 708-709. The Court of Appeals has explained:

Facts must be pleaded with some specificity to demonstrate that the elements which are required to sustain the cause of action exist. It is not sufficient to merely assert conclusory allegations suggesting that the elements are in fact present in the controversy.

Valentine v. On Target, Inc., 353 Md. 544, 549 (1999). *See also Anderson v. Meadowcroft*, 339 Md. 218, 230 (1995) (“[A] conclusory allegation, without supporting facts, is insufficient to state

a cause of action.”); Maryland Rule 2-305 (“A pleading that sets forth a claim for relief ... shall contain a clear statement of the facts necessary to constitute a cause of action....”).

In addition to the facts alleged in the Complaint, the Court may consider documents expressly referenced in the Complaint because they merely supplement the allegations and cannot be controverted. *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015) (agreement could be considered on motion to dismiss because it “merely supplements the allegations of the complaint, and the document is not controverted”). *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 710 n.4 (2015) (permitting consideration of agreement referenced in complaint).

The Court may also consider facts of which it may properly take judicial notice, such as adjudicative facts in “official public documents.” *Chesek v. Jones*, 406 Md. 446, 456 n.8 (2008); *see also* Md. Rule 5-201 (permitting judicial notice of fact “not subject to reasonable dispute”); *Faya v. Almaraz*, 329 Md. 435, 444 (1993) (“to place a complaint in context, we may take judicial notice of additional facts that are either matters of common knowledge or capable of certain verification.”).

Argument

Plaintiffs’ Complaint must be dismissed because venue is improper in this Court. In addition, the claims against the County must be dismissed because the claims are not justiciable, because there is no final administrative decision and because Plaintiffs have not exhausted administrative remedies. In addition, if not dismissed, the case should be transferred under Maryland Rule 2-327(c) and the principles of *forum non conveniens*.

A. Venue is improper in Anne Arundel County.

Anne Arundel County is not the proper venue for this action because Defendants Mitchell and Harford County do not reside, carry on a regular business, have employment, or habitually engage in a vocation in Anne Arundel County. Plaintiffs make no attempt in the Complaint to allege facts establishing venue for Mitchell or Harford County.

Regarding venue, Plaintiffs merely allege that “Anne Arundel County is the proper venue pursuant to Maryland Code Ann., Cts. & Jud. Proc. § 6-201 because Defendant CREG's principal place of business is in Anne Arundel County.” Complaint ¶ 27. This statement is incorrect as a matter of law because venue must be established for *each* defendant. The Court of Appeals has held that “[t]he privilege of a defendant to be sued only in the county of his residence is a substantial right not to be denied except in strict compliance with the exceptions established by law.” *Capron v. Mandel*, 250 Md. 255, 260 (1968).

Section 6-201(a) of the Courts and Judicial Proceedings Article provides that “a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed or habitually engages in a vocation.” Venue is not proper for Mitchell and Harford County because they do not reside, carry on a regular business, have employment, or habitually engage in a vocation in Anne Arundel County, and Plaintiffs make no effort to allege otherwise. Affidavit of Barry Glassman, ¶ 3 (Exhibit B); Affidavit of Louis F. Friedman, ¶ 3 (Exhibit C).

Plaintiffs cannot and do not maintain that venue is proper under the multiple defendants provision of Section 6-201(b) of the Courts and Judicial Proceedings Article because Harford County is a single venue applicable to all Defendants. All Defendants carry on a regular business in Harford County and would be subject to venue there. Affidavit of Barry Glassman, ¶ 4 (Exhibit B); Affidavit of Louis F. Friedman, ¶ 4 (Exhibit C); Affidavit of James Lighthizer, ¶ 3 (Exhibit D); Affidavit of Torrence Pierce, ¶ 3 (Exhibit E). The entire case is about the development efforts of CREG in Harford County on land owned by Mitchell in Harford County, utilizing the services of Ward in Harford County. Thus, Harford County is the single venue applicable to all Defendants, and Section 6-201(b) cannot be used to establish venue in Anne Arundel County.

Venue is not proper in this Court over Defendants Mitchell and Harford County, making this case subject to dismissal under Rule 2-322(a)(2). Alternatively, the case must be transferred to Harford County Circuit Court pursuant to Rule 2-327(b). If this case is transferred, the

remaining issues concerning dismissal for failure to state a claim should be decided by the Circuit Court for Harford County.

B. Plaintiffs' claims must be dismissed because of the related doctrines of exhaustion, finality, and justiciability.

Plaintiffs' attempt to circumvent the remedies provided in the Harford County subdivision process must be rejected. Despite the facts that no development plans have been approved and that the Harford County Code would provide them a remedy even if plans had been approved, Plaintiffs have asked this Court – more than 50 miles away from the subject Property and in a different jurisdiction – to intervene and dictate the outcome of the Harford County development process. This cannot succeed because Plaintiffs have not exhausted their administrative remedies in Harford County, there is no final decision by the Harford County Director of Planning, and there is no justiciable controversy to be decided by this Court.

1. There is no final decision by the Harford County Director of Planning, and Plaintiffs have not exhausted their administrative remedies.

Plaintiffs' Complaint must be dismissed based on the related concepts of finality and exhaustion. There is no final decision of the Harford County Director of Planning, and Plaintiffs have failed to exhaust their administrative remedies in the subdivision process. *See, e.g. Laurel Racing Ass'n, Inc. v. Video Lottery Facility Location Comm'n*, 409 Md. 445, 460 (2009) (“party must exhaust the administrative remedy and obtain a final administrative decision ... before resorting to the courts”).

The Complaint is based upon Plaintiffs' objections to the development process relating to the Mitchell Farm. *See, e.g.,* Compl. ¶¶ 1, 3, 8, 23, 24 (repeatedly referring to the “development”). Indeed, the relief Plaintiffs seek is to stop the development process and prevent the County from issuing permits and approvals. Compl. at 17, ¶ B (seeking to enjoin “obtaining any permitting or approvals”), ¶ C (seeking to enjoin “any steps in furtherance of the development” including “permitting, approvals, subdividing”). This relief is unavailable for multiple reasons.

First, Plaintiffs have failed to exhaust their administrative remedies. The development of land in Harford County is controlled by an extensive administrative process, described above, which includes “seeking approvals” from the County of “Forest Stand Delineation Plans, Preliminary Plans, [and] Site Plans,” among other submissions. Compl. ¶ 32. Indeed, Plaintiffs expressly allege that Harford County is “responsible for the approval and granting of permits for development of real property in its jurisdiction.” *Id.* ¶ 24. Without such approvals, the Property cannot be developed. Code § 268-7. Local citizens, especially adjacent land owners, have multiple opportunities to raise objections to the development during this administrative process, and anyone affected by the approval of a preliminary plan or site plan has the right to appeal to the Circuit Court for Harford County. Code §§ 268-19(C), 268-28(A).

With respect to the development of land in Harford County, the Harford County Code “provides an administrative remedy as the exclusive or primary means by which an aggrieved party may challenge a government action.” *Priester v. Baltimore Cnty., Maryland*, 232 Md. App. 178, 193 (2017). That being the case, Plaintiffs are required to “use that form rather than any other.” *Soley v. State Comm'n on Hum. Rels.*, 277 Md. 521, 526 (1976). If the Plaintiffs were to be ultimately unsuccessful at the administrative level, they “must seek the judicial review provided by the [Harford County Code] rather than invoke the ordinary jurisdiction of the courts.” *Id.*

This rule of administrative exhaustion exists for good reasons. First, the agency should be afforded the initial opportunity to exercise its discretion and apply its expertise to the decisions that “are often of a discretionary nature, and frequently require an expertise which the agency can bring to bear in sifting the information presented to it.” *Id.* Second, judicial intervention in the process might “undermine the very efficiency which the Legislature intended to achieve in the first instance.” *Id.* Third, premature court involvement might call upon the courts “to decide issues which perhaps would never arise if the prescribed administrative remedies were followed.” *Id.*

All three of these policy goals are implicated here. First, the Harford County Department of Planning and Zoning exercises discretion and uses its expertise in reviewing, imposing conditions upon and approving preliminary plans and site plans; this discretionary review is still ongoing regarding the development of the Property. Second, court intervention at this stage would disrupt the development process and hinder the efficiency that the Harford County Subdivision Regulations are designed to achieve. Third, many of the issues presented in the Complaint may never arise or might be substantially different by the time the administrative review process is complete, such as the complaints about traffic. For these reasons, Plaintiffs are required to exhaust their administrative remedies, which they have failed to do.

Second, there is no final administrative decision for this Court to review. “[T]he requirement of a final administrative decision” overlaps with the principle of administrative exhaustion. *Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 485 (2011). *See also Dorsey v. Bethel A.M.E. Church*, 375 Md. 59, 76 (2003) (finality overlaps with exhaustion). The court in *Priester* explained this overlap: “Exhaustion requires a grievant to invoke and pursue the administrative process until he or she receives a final decision from the agency at the utmost level of the administrative hierarchy.” *Priester*, 232 Md. App. at 194.

Under Maryland law, “[w]here an administrative agency has primary or exclusive jurisdiction over a controversy, the parties to the controversy must ordinarily await a final administrative decision before resorting to the courts for resolution of the controversy.” *Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 443 Md. 199, 215 (2015), quoting *State v. Maryland State Bd. of Contract Appeals*, 364 Md. 446, 457 (2001). “To be ‘final,’ the order or decision must dispose of the case by deciding all question of law and fact and leave nothing further for the administrative body to decide.” *Willis v. Montgomery Cnty.*, 415 Md. 523, 535 (2010) (emphasis added). “The salutary purpose of the finality requirement is to avoid piecemeal actions in the circuit court seeking fragmented advisory opinions with respect to partial or intermediate agency decisions.” *Driggs Corp. v. Maryland Aviation Admin.*, 348 Md.

389, 407 (1998). Moreover, piecemeal review of interlocutory agency decisions “could raise serious separation of powers concerns.” *Id.*

In this case, there plainly is no final administrative decision because there is much more for the administrative body to decide. There has been no approval of the Preliminary Plan or Site Plan by the Director of the Department of Planning and Zoning, and there is no certainty that they will be approved. Compl. ¶¶ 49-51 (allegations concerning plans do not allege approval); ¶¶ 54-56 (allegations concerning development in future tense). Even if there were to be a final decision by the Director, Plaintiffs’ appeal rights would be “to the Circuit Court for Harford County” under Section 268-28(A) – not to this Court in the form of a declaratory judgment action. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-409(b) (“If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of a proceeding under this subtitle.”); *Soley v. State Comm’n on Hum. Rels.*, 277 Md. 521, 526 (1976) (requiring resort to judicial review provided by code rather than “invoke[ing] the ordinary jurisdiction of the courts”). This Court must reject Plaintiffs attempt to obtain piecemeal review of the Harford County development process in the wrong court and outside the process established by the Harford County Code.

2. There is no justiciable controversy to be decided by this Court.

This case must also be dismissed because there is no justiciable controversy. “A controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded.” *Reyes v. Prince George’s County*, 281 Md. 279, 288 (1977). “The existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action.” *Hatt v. Anderson*, 297 Md. 42, 45 (1983). Addressing “non-justiciable issues would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State.” *Hatt*, 297 Md. at 46.

In this case, there is “nothing that rises to the level of an actual dispute between the parties.” *120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore City (“Superblock II”)*,

413 Md. 309, 357 (2010). The County “has not yet adopted or approved any plans.” *Id.* Any plans that might be adopted could be different than the plans currently being considered. If the court were to intervene at this point, it would be improperly asked “to decide purely theoretical questions or questions that may never arise.” *Hamilton v. McAuliffe*, 277 Md. 336, 340 (1976). Like the plaintiffs in *Superblock II*, Plaintiffs have “failed to allege facts sufficiently ripe to rise to level of a justiciable controversy.” *Superblock II*, 413 Md. at 359.

C. Count Four seeking injunctive relief does not allege a cause of action.

Count Four, seeking injunctive relief, must be dismissed because it does not state an independent cause of action. An injunction is a remedy, not a cause of action and cannot stand on its own. *Orteck Int'l Inc. v. Transpacific Tire Wheel, Inc.*, 704 F. Supp. 2d 499, 521 (D. Md. 2010), *aff'd sub nom. Orteck Int'l v. TransPacific Tire & Wheel, Inc.*, 457 F. App'x 256 (4th Cir. 2011). *See also Fare Deals Ltd. v. World Choice Travel.Com, Inc.*, 180 F. Supp. 2d 678, 682 n.1 (D. Md. 2001) (“request for injunctive relief does not constitute an independent cause of action” but “is merely the remedy sought for the legal wrongs alleged”). The only substantive count against Harford County is Count One seeking a declaratory judgment, which must be dismissed for the reasons stated above. Therefore, Count Four seeking an injunction must also be dismissed.

D. This case must be dismissed because Plaintiffs failed to join a necessary party.

This case also must be dismissed because Plaintiffs have failed to join a necessary party – one of the owners of the Property. The Preliminary Plan and Site Plan – both referenced in the Complaint (Compl. ¶ 32) – expressly list Charles A. Maslin III as an owner of one of the parcels. *See* Exhibit F (Preliminary Plan excerpt); Exhibit G (Site Plan excerpt).³

³ *See also* <https://hcgweb01.harfordcountymd.gov/weblink/0,0/doc/8314776/Page1.aspx> (full Preliminary Plan) (last visited 7/6/2022); <https://hcgweb01.harfordcountymd.gov/weblink/0,0/doc/8314781/Page1.aspx> (full Site Plan). (last visited 7/6/2022).

As an owner of part of the Property, Mr. Maslin's rights would be affected by any declaration concerning the development of the Property. Section 3-405(a) of the Maryland Uniform Declaratory Judgments Act mandates that any "person who has or claims any interest which would be affected by the declaration shall be made a party." Md. Code Ann., Cts. & Jud. Proc. § 3-405(a). Likewise, Maryland Rule 2-211(a)(2) requires joinder of any person if "disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action." Plaintiffs have violated these provisions and have failed to join a necessary party: Mr. Maslin, an owner of part of the Property. Having failed to join a necessary party, Plaintiffs' claims should be dismissed under Rule 2-322(b)(3).

E. This case should be transferred to Harford County based on *forum non conveniens*.

Even if venue were somehow proper in this Court (which it is not), this Court could and should transfer the case to Harford County under Maryland Rule 2-327(c) and principles of *forum non conveniens*.

In this case, all Plaintiffs live in Harford County, not in Anne Arundel County. Complaint, ¶¶ 13-19. The case relates to the development of property in Harford County and has no relationship to Anne Arundel County. *Id.* ¶ 1. Under these circumstances, any "deference owed to the plaintiff may face significant diminishment to the point of non-existence." *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 408 (2017). Such deference shrinks where the plaintiff does not reside in the chosen forum and shrinks even more "if a plaintiff's choice of forum has no meaningful ties to the controversy and no particular interest in the parties or subject matter." *Id.* at 406, quoting *Stidham v. Morris*, 161 Md. App. 562, 569 (2005).

In deciding a motion based on *forum non conveniens*, courts consider both convenience and the interests of justice. *E.g.*, *Stidham v. Morris*, 161 Md. App. 562, 568 (2005). Regarding convenience, the court should consider where the parties reside, the relative convenience of haling defendants or plaintiffs into the others' choice of venue based on residence or where they carry on business," "where the cause of action arose," "the convenience of the witnesses," and

“the ease of access to sources of proof.” *Kerrigan*, 456 Md. at 415. With respect to the interests of justice, the court should consider “court congestion, the jury duty burden, and keeping localized concerns decided in their place of origin.” *Id.* at 418.

In this case, *all* of the convenience factors weigh in favor of transferring the case to Harford County. All of the parties except CREG live or have a principal office in Harford County. Complaint ¶¶13-24. CREG does significant business in Harford County, including the proposed development that is the subject of this action. *Id.* ¶ 22; Exhibit D, ¶ 3.⁴ To the extent there even is a cause of action, it would have arisen in Harford County where the property is located and all activity has occurred. The witnesses, including all Plaintiffs, all adjacent property owners, and all County officials are in Harford County. All of the sources of proof are in Harford County where the property is located and the development submissions have been made. In contrast, there is no nexus to Anne Arundel County.

With respect to the interests of justice, the courts consider both the public interest and the private interest. *E.g., Stidham*, 161 Md. App. at 568. “[P]ublic interests include, among other things, considerations of court congestion, the burdens of jury duty, and local interest in the matter.” *Id.* at 569. Most significant in this case is the fact that Anne Arundel County has no local interest in deciding this dispute over the development of land in Harford County. Indeed, there is a strong public policy in favor of local control over planning and zoning issues. Maryland Code, Local Gov’t Art., § 10-324(b)(2) (“It is the policy of the State that planning and zoning controls shall be implemented by local government.”). The Court of Appeals, quoting the United States Supreme Court, has indicated:

Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. There

⁴ CREG’s website shows two other developments in Harford County: Trimble Road Business Park in Edgewood and Perryman Logistics Center already existing on the Perryman Peninsula. <https://www.cregllc.com/properties/development-portfolio> (last visited 6/16/2022). Another property at 350 Old Bay Lane in Havre de Grace is listed under current availabilities. <https://www.cregllc.com/properties/current-availabilities> (last visited 6/16/2022).

is a local interest in having localized controversies decided at home.

Johnson v. G.D. Searle & Co., 314 Md. 521, 526 (1989), quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-509 (1947). This case has a substantial connection to Harford County, given the fact the land involved in the case is located there, and the entire case relates to zoning and development regulations under the Harford County Code and administered by Harford County officials. In contrast to these very strong connections to Harford County, the only connection to Anne Arundel County is the fact that the developer's corporate office happens to be in Anne Arundel County. However, the developer regularly conducts business in Harford County, and the developer's activities, as they relate to the development at issue in this case, occurred in Harford County. The location of the developer's office, therefore, is insignificant.

Regarding court congestion, Anne Arundel County Circuit Court, with 13 judges, had a total of 16,659 new case filings in fiscal year 2020 (1,281 cases per judge), compared to 6,619 new cases in Harford County with 6 judges (1,103 cases per judge). See Maryland Judiciary Annual Statistical Abstract 2020, prepared by Maryland Judiciary, <https://mdcourts.gov/sites/default/files/import/publications/annualreport/reports/2020/fy2020statisticalabstract.pdf> (last visited 6/16/2022) (showing 2020 cases filed); Maryland Manual On-Line, <https://msa.maryland.gov/msa/mdmanual/31cc/html/cccounty.html> (last visited 6/16/2022) (showing number of judges). Therefore, the factor of court congestion weighs slightly in favor of transferring the case from Anne Arundel County to Harford County.

Private interests include, among other things, "practical problems that make trial of a case easy, expeditious and inexpensive." *Stidham v. Morris*, 161 Md. App. 562, 568 (2005), quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). There are significant benefits to litigating this case in the same forum where the other issues related to the development of the property are already being considered by the relevant administrative agencies. This case has no relation to Anne Arundel County and should never have been filed in this Court.

WHEREFORE Defendant Harford County, Maryland requests that its Motion to Dismiss be granted and the case dismissed.

/s/ David M. Wyand

David M. Wyand, AIS No. 9412150301

Rosenberg Martin Greenberg, LLP

25 South Charles Street, Suite 2115

Baltimore, Maryland 21201

Phone: 410-727-6600

Fax: 410-727-1115

dwyand@rosenbergmartin.com

Attorneys for Defendant

Harford County, Maryland

REQUEST FOR HEARING

Defendant Harford County, Maryland hereby requests a hearing on the foregoing Harford County's Motion to Dismiss.

/s/ David M. Wyand

David M. Wyand, AIS No. 9412150301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2022, a copy of the foregoing Harford County's Motion to Dismiss was served through MDEC on: Rignal W. Baldwin V, Esq., Michael A. Cuches, Esq., Baldwin Seraina, LLC, 111 South Calvert Street, Suite 1805, Baltimore, Maryland 21202, rbaldwinv@baldwin-seraina.com, mcuches@baldwin-seraina.com; any by regular mail on: F. O. Mitchell & Bro., 427 Michaelsville Road, Perryman, Maryland 21130; Frederick Ward Associates, Inc., c/o Torrence Pierce, 845 Flintlock Drive, Bel Air, Maryland 21015; Chesapeake Real Estate Group, LLC, c/o James Lighthizer, 1 Boone Trail, Severna Park, Maryland 21146.

/s/ David M. Wyand

David M. Wyand, CPF No. 9412150301

PAUL JOHN CISAR, et al.,

Plaintiffs,

v.

F.O. MITCHELL & BRO., et al.,

Defendants.

*

*

*

*

*

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

Case No. C-02-CV-22-000988

ORDER

Upon consideration of Harford County's Motion to Dismiss, and any response thereto, it is this _____ day of _____, 2022, ORDERED:

1) That Harford County's Motion to Dismiss is GRANTED; and

2) that the Verified Complaint for Injunctive Relief and Declaratory Judgment and Private Action for Nuisance and Public Nuisance is hereby DISMISSED.

Judge,
Circuit Court for Anne Arundel County

PAUL JOHN CISAR, et al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
F.O. MITCHELL & BRO., et al.,	*	ANNE ARUNDEL COUNTY
Defendants.	*	Case No. C-02-CV-22-000988

INDEX OF EXHIBITS TO
HARFORD COUNTY'S MOTION TO DISMISS

Ex.	Description
A	Excerpt of Development Advisory Committee Meeting Minutes for January 19, 2022, available at https://hcgweb01.harfordcountymd.gov/weblink/0,0/doc/8276210/Page1.aspx
B	Affidavit of Barry Glassman, Harford County Executive
C	Affidavit of Louis F. Friedman, Trustee for Owner of F.O. Mitchell & Bro.
D	Affidavit of James Lighthizer, Member of Chesapeake Real Estate Group, LLC
E	Affidavit of Torrence Pierce, Officer of Frederick Ward Associates, Inc.
F	Excerpt of Preliminary Plan, available at https://hcgweb01.harfordcountymd.gov/weblink/0,0/doc/8314776/Page1.aspx
G	Excerpt of Site Plan, available at https://hcgweb01.harfordcountymd.gov/weblink/0,0/doc/8314781/Page1.aspx

DEVELOPMENT ADVISORY COMMITTEE MINUTES

The Development Advisory Committee (DAC) met on January 19, 2022, at 9:00 a.m. in the County Council Chambers, 212 South Bond Street, Bel Air, Maryland. The meeting was chaired by Moe Davenport, Department of Planning and Zoning.

The following members were in attendance:

Moe Davenport	Chairman, DAC
Glen Hebel	DPW Engineering
Robert Anderson	DPW Engineering
Bill Snyder	Volunteer Fire & EMS
Paul Magness	Parks and Recreation
Daryl Ivins	Water and Sewer
Sr. Deputy Niles	Harford County Sheriff's Office
Eric Vacek	Planner, Development Review
Crysta Draayer	Planner, Development Review
Jenni Daniels	Planner, Development Review
Kaliel Barmer	Planner, Development Review
Jennifer Freeman	Planning and Zoning

Also in attendance:

Donna Baker	Sandy Leonard
Ralph Geisel	Robin Ishak
Deb Bowers	Shawn Warnick
Justin Pickering	Ruth Maciejewski
Casey Dawes	Genene La Cour
Lori Maslin	Greg La Cour
Harry Webster	Kevin Dolan
Ken Shannon	Rich Greene
Anthony Saxon	Glenn Dudderar
Sarahia Benn	Harry Pappas
Tracey Kelley	Tracey Besante
Justus Eapen	Bill McGuire
Robert Lockman	Katrina McDonald
Greg Pessagno	Theresa Anderson
E Messner	Chuck Mezan
Matthew Laraway	Jacqueline Walker
Janet McCormack	Elaina Heslin
Paul Russell	Melinda McGuire
Britney Russell	Lauren Anderson
Mary Martin	Lisa Thomas
Ron Stuchinski	Delaney Mezan
Shelley Mezan	Sandy Jacob
Lisa Massa	Ron Walker
Chip Riley	Eva Shannon
Erika Phelps	Mitch Ensor
Leigh Maddox	Jo Lucas

Harford County's
Motion to Dismiss

Exhibit A

Development Advisory Committee Minutes
January 19, 2022
Page 2 of 64

Kathleen Fallace
Sherry Riley
Dawn Haag
Rebecca Slentz
Jo Anne Gunther
Richard Tracey
Christina Eldreth
Dominique Gillis
Glenn Gillis
Ruth Kohl
Kaareen Harrison
Susan Byers
Eliz Pearce
WB Pearce
Eleanora Dudderar
Roland Asp
Alicia Taylor
Kristin Kirkwood
Loretta Cook
Hunter Haag
Stacy Stone
Jeff Haag

Tom Slentz
Holly McComas
Nathan Osborne
Ellen Cianelli
Ann Asem
Robert Lynch
Whit MacCuaig
John Freudenthal
Sheryl Davis
Shawn Krout
Gerry Powell
Coningsby Burdon
Tracey Geisel
Dagmar Sachs
Daniel Salter
Paul Fallace
Brendan Patton
Jerry and Judy Clark
Marsh Bassick
Brian Miller

Moe Davenport, of the Department of Planning and Zoning, welcomed everyone to the meeting. Mr. Davenport explained that a brief presentation will be given by the consultant for each project. The DAC members will give their comments on the project. The meeting will then be opened up for anyone in attendance that may have questions or comments. There is an attendance sheet on the back table. If a correct email address is given, a copy of the minutes will be e-mailed to you. The minutes are recorded and will also be published to the Department of Planning and Zoning's website.

Mitchell Property Development- Preliminary

Located on the north and south sides of Canning House Road and Fords Lane, east and west sides of Perryman Road. Tax Map 63; Parcels 53, 62, 216, 306. Second Election District. Council District F. Planner Crysta.

Plan No. P628-2021 Create six lots /708.4223 acres / LI

Received 12/22/2021 F.O. Mitchell & Bro/Charles Maslin/Chesapeake Real Estate Group/FWA

Mitchell Property Development - Site

Located on the north and south sides of Canning House Road and Fords Lane, east and west sides of Perryman Road. Tax Map 63; Parcels 53, 62, 216, 306. Second Election District. Council District F. Planner Crysta.

Plan No. S629-2021 Develop one 908,280 sf warehouse building, one 1,322,400 sf warehouse building, one 595,080 sf warehouse building, one 1,722,600 sf warehouse building, one 648,000 sf warehouse building, and one 2,000 sf retail service building / 708.4223 acres / LI

Received 12/22/2021 F.O. Mitchell & Bro/Charles Maslin/Chesapeake Real Estate Group/FWA

Verbatim Transcript

Gerry Powell – Fredrick Ward Associates

The subject property is over 700 acres and mostly zoned Light Industrial. A small portion is zoned General Industrial fronting Chelsea Road. And there are some AG parcels, some residential parcels also, and a business parcel. A portion of the property, about 10%, is in the Chesapeake Bay Critical Area, Designations Limited Development Area, and Resource Conservation Area. And about 31% in the Water Source Protection District of the Perryman Well Field. We are proposing 5 warehouses totaling 5.2 million square feet. And another 2,000 square feet of commercial retail use integrated into the overall project. Presently the primary access to the property is from Perryman and Canning House Road. We are proposing a new primary access via connection road from Chelsea Road to Perryman. The development will be served by public Water and Sewer.

Bill Snyder – Volunteer Fire & EMS

- All five (5) warehouses and the one (1) Retail/Service building will require Knox Key Boxes. Please contact Bill Snyder at wrsnyder@HarfordCountyPublicSafety.org to order box and identify box installation locations.
- Building #1 & Building #2 shall have their addresses and business names clearly marked to identify their locations from both entrance points from Canning House Rd.
- Any trail system on the property shall-be constructed to allow a pick-up truck sized vehicle to access.

The above bulleted statements are the only comments on this project directly related to the plans presented

- Both the Department of Emergency Services and Aberdeen Fire Department have concerns about the overall road infrastructure in the Perryman area. Currently, tractor-trailers traveling to/from this site use Perryman Road and Rt.7 as the sole, main arteries to this area. Emergency apparatus also uses this access to Perryman area. There are also secondary access points from Mitchell Lane and Spesutia Road, but these create additional travel times. A secondary means of entry/exit to this area would reduce response times and allow for secondary emergency access in case one of these roads is blocked. In fact, at a DAC Meeting dated 12/17/2014, I personally stated that a secondary entrance/exit point be constructed from Rt.715 to Woodley Rd to both relieve traffic back-ups, and to allow emergency apparatus a secondary mean of access to the Perryman area. Currently, this has not been completed and this project will further increase the traffic hazards and congestion in this area even more if there are no other road infrastructure improvements to this area.

There is an additional project in the planning stages, by the City of Aberdeen, to add an additional 750,000sq feet of warehouses in the 1100blk of Rt.7. The Aberdeen Fire Department identifies that on Rt.7 between Rt.715 and Perryman Rd-circle, that tractor-trailers line-up along the side of the road waiting to enter the weigh-stations. This causes back-ups, traveling hazards, and increased response times. At this time, it is our stance that the City of Aberdeen, Harford County Government, State Highways, and developers work together to upgrade the overall road infrastructure in this area before any additional large, commercial complexes are built.

- Harford County Department of Emergency Services and Aberdeen Fire Department have also met with community-representatives who have expressed their concerns about this project. We were presented with a map they have titled "Option-A". Both Emergency Services and the Aberdeen Fire Department would support such an option as presented to us.

We do not feel that the community's safety is "compromised" but obviously, there is an increased chance of "bad things" happening simply because there is nothing there now but an open field.

Emergency response times increase just as a citizen's travel times increase whenever there is added buildings and general population. So yes, there will be increased response times, but to what degree I cannot say.

Forest Green Rd & Clubhouse Rd @ *Deep Spring Branch* are prone to flooding. These 2 roads are 2/3 of the choices for the community to reach their homes. This also shows the need for increase road infrastructure.

Emergency Services – Read by Bill Snyder

Proposed building 1 is to be addressed 200 Canning House Road. Proposed building 2 is to be addressed 300 Canning House Road. Proposed building 3 is to be addressed 301 Canning

Development Advisory Committee Minutes
January 19, 2022
Page 5 of 64

House Road. Proposed building 4 is to be addressed 331 Canning House Road. Proposed building 5 is to be addressed 351 Canning House Road. Proposed Retail/Service Building located on Lot 6 is to be addressed 350 Canning House Road. All proposed buildings must display 10-12" numbering where it is clearly visible from Canning House Road. Address signs with directional arrows must be installed at roadway splits to identify building's address number in order to help first responders navigate the complex. Any change in this plan will require addressing to be reevaluated by DES. "Public safety wireless radio communications inside a building is essential to the safety of those occupying the structure as well as fire, law enforcement and emergency medical providers responding to a call for help. Buildings that are greater than 5,000 square feet, higher than 50 feet, contain underground storage or parking and are constructed of materials that impede wireless radio signals that may adversely affect the response of public safety providers. Please consider including wiring, electrical connections and other infrastructure that may be needed for an in-building 700/800 MHz amplifier. Department of Emergency Services will test coverage in your facility once construction is finished. Call 410-638-4900 for this assistance." "Please advise if the facility will have Closed Circuit Television (CCTV) Cameras. If so, please comment on Emergency Service's ability to access the camera feeds or provide a point of contact to comment on this matter. DES will follow up after use & occupancy permit approved."

Darryl Ivins – DPW Water & Sewer

The following comments shall be included as conditions of Site Plan approval for the above-described project:

A portion of this project is located within the Perryman Wellhead Protection Area. As such, development of this site is subject to Section 267-66 of the Zoning Code. There are prohibited uses within the protection area. These are listed in the previously mentioned section of the Code. All prospective purchasers and future tenants shall be advised of the limitations and standards established by Section 267-66.

The proposed water main in Canning House Road shall be connected to the existing main in Mitchell Road to provide a redundant water system to the region. A sixteen-inch diameter water main will be required to provide adequate service to the project. The proposed main must connect directly to the sixteen-inch main in Perryman Road, and the existing twelve-inch diameter stub at this location must be abandoned.

Since the proposed uses in the building on this site are not yet known, the location of the meter setting and backflow preventer will be determined at the time of the Commercial Service Application. If an inside meter setting is required, locate the water service connection at the building to minimize the length of the unmetered private water service. If an outside meter is required, it shall be located within a public drainage and utility easement.

The sewer service from each building to the public main shall connect at an existing manhole using a gravity connection. Existing manholes 22, 25 and 26 of Sewer Contract 6692-A are PVC lined. Connections made to these manholes must preserve the integrity of the

Development Advisory Committee Minutes
January 19, 2022
Page 6 of 64

lining. The method of connections to the manholes shall be shown as a detail on the construction drawings.

A sampling manhole shall be installed on the sewer services at the edge of the public road right of way for all lots except for Lot 6. If the connection to the sampling manhole is a force main, the manhole shall have a factory installed PVC liner in it.

The public water and sewer mains and services for all of the lots shall be constructed as a single contract. The contract numbers for this project are 20199 for water and 20200 for sewer. The numbers shall be placed on the utility construction drawings before their initial submittal to the county for review.

Any sewer cleanouts that are located within the paved area shall be installed using the County cleanout in paving detail S-28. The detail shall be shown on the utility plan and referenced on the plan and/or profile drawing.

Stormwater management devices may not be located within twenty feet of existing or proposed water or sewer mains or services. The construction contract numbers for the existing utilities shall be shown on the drawing submitted with the Commercial Application.

A Public Works Utility Agreement (PWUA) is required for the construction of the public water and/or sewer mains associated with this project prior to the issuance of a building permit. A building permit cannot be issued until the public utilities that serve them are either operational or bonded for construction. It is the developer's/owner's or their representative's responsibility to contact the Division of Water and Sewer, W&S Administration Section at wspemits@harfordcountymd.gov to request the preparation of the PWUA following the submittal of the water and sewer contract drawings for review.

A Commercial Service Application must be completed by the owner and approved by Harford County before a building permit will be issued for each building or lot. Contact the Division of Water and Sewer Administration and Permitting Section at 410-638-3300 for additional information.

Glen Hebel – DPW Engineering

Required Plan Approvals/Public Works Agreement

Road and storm drain plans for the Connector Road and Canning House Road will need to be approved and Public Works Agreement will need to be executed prior to the issuance of building permits for the site.

A Perryman Access Road has been identified on the Harford County Transportation Element Plan from the US 40 to Canning House Road. The developer shall design/construct the road from their property line east of Ford's Lane to Canning House Road

Required Design Standards

1. Harford County Road Code

2. Maryland Manual on Uniform Traffic Control Devices (MdMUTCD) 2011 or latest edition (for the pavement striping and traffic control signs.)

Rights-of-way/Easements required

1. Drainage and utility easements are required along all storm drains from the edge of the right-of-way to the end of the outfall treatment.
2. A 30-foot-wide right-of-way dedication is required from the center line of the road along Ford's Lane

Sidewalks

1. Handicap ramps shall be provided at the intersections of Connector Road with Perryman Road MD Route 159 and Chelsea Road; and at the proposed access point off of Canning House Road

Drainage

1. Suitable outfalls must be provided for the proposed storm drain systems along the Connector Road and Canning House Road and shall be approved at the time of final design.

Design Comments

1. Connector Road and Canning House Road shall be constructed in accordance with the Harford County Road Code design criteria for Business/Industrial local roads that specifies a 40-foot-wide pavement on a 60-foot-wide right-of-way with 5-foot-wide sidewalks on both sides. A modified typical section as shown on the preliminary plan consisting of a 44-foot-wide pavement on a 70-foot-wide right-of-way with 5-foot-wide sidewalks on both sides will be acceptable for both the Connector Road and Canning House Road if preferred. If there is a need for a right-of-way width greater than 70' justification will be needed. Note that no Stormwater facilities, other than grass swales, will be allowed within the right-of-way.

1. Adequate sight distance for a 40 mph and 45 mph design speed shall be provided for Connector Road at Perryman Road MD Route 159 and Chelsea Road, respectively. Sight line profiles shall be provided prior to the preliminary plan approval.
2. Curve radii for horizontal alignment of Connector Road shall be a minimum of 380'. A design waiver is required if this condition cannot be met.
3. All pavement striping and traffic control signs shall conform to the Manual on Uniform Traffic Control Devices and State Highway Administration Supplement.
4. A traffic impact analysis was submitted for review. Comments will be forwarded to Planning and Zoning.

Robert Anderson – DPW Engineering

Sediment Control

Required Design Standards

1. MDE-Maryland Standards and Specifications for Soil Erosion and Sediment Control, Dec 2011, or latest edition.

Required Plan Approvals

Development Advisory Committee Minutes
January 19, 2022
Page 8 of 64

1. A sediment control plan is required for the development of this site
2. A grading permit is required
3. Stormwater management must be addressed.

Stormwater Management (SWM)

Required Design Standards

1. MDE-Maryland Stormwater Design Manual Volumes I & II (October 2000, Revised May 2009) or latest edition
2. SWM-Harford County Code Chapter 214.

Required Plan Approvals

(All comments must be addressed on subsequent submittals)

1. SWM Concept Plan
2. SWM Site Development Plan
3. SWM Final Plan (approval required before issuance of grading permit)

Required Permits

1. Grading (needs final SWM plan approval before issuance)
2. Stormwater Management Permit
3. Note: Building permits require SWM permits before issuance

Required Easements

1. A 20' wide access easement is required to the stormwater management facilities for maintenance purposes.

Outfall investigation

1. A suitable outfall must be provided for the stormwater management facility and shall be approved at the time of final design.
2. Additional topo shall be shown for the outfalls from Ponds 2-1 and 4-2 to ensure that the adjacent property owner will not be adversely affected by runoff from the site
3. Discharges toward Amtrak will need to investigate the 100-yr storm impact.

Maintenance

1. Practices located on individual lots are the maintenance responsibility of the owner.

SWM Design Comments

1. A Stormwater Management Concept Plan has been submitted for review and must be approved before preliminary plan approval.
2. Stormwater management shall be provided and designed to the redevelopment criteria of the Harford County Code and the 2000 Design Manual as amended.
3. Any design and/or construction of the Perryman Access Road will require SWM design and construction as required to accompany the road.
4. Truck parking will be considered as a hot spot with SWM Designed accordingly.

Sr. Deputy Niles – Sheriff's Office

The sheriff's office has no comments.

Paul Magness – Parks and Recreation

No comment. There has been discussion of a trail system. I want to raise the fact that our Department is developing Perryman Park, the property at the end of Fords Lane. If there is a trail system that is created as a part of this project, we would like to coordinate with you so we can connect that trail system up with a trail system we are going to be proposing in the park.

Crysta Draayer – Planner

1. The preliminary plan and site plan were submitted concurrently. The preliminary plan (P628-2021) proposes to consolidate and subdivide multiple existing parcels to create six (6) lots. The site plan (S629-2021) proposes to develop five warehouse buildings and one 2,000 sf retail service building.
2. This project is subject to the Harford County Forest Conservation Regulations. A Forest Stand Delineation (FSD584-2021) has been submitted to the Department of Planning and Zoning but cannot be approved. A new version of the FSD has been requested to address the following comments:
 - a. The plan must include the property deed reference(s).
 - b. The plan must include owners' name and zoning designations of adjacent properties.
 - c. The 100-year floodplain is mentioned on the cover page with an area tabulation, but no 100-year floodplain is shown on the detail sheets. Also, flood protection setbacks should be shown on all waters of the state.
 - d. All Natural Resource District areas must be shown with the correct associated buffers.
 - e. The Chesapeake Critical Area Buffer expanded buffer due to slopes or soils, and Habitat Protection Areas (with buffers) are all either not shown or are inaccurate. These features must be shown correctly on the plan.
 - f. Forest Interior Dwelling Species areas and Habitats of Local Significance must be shown.
 - g. Multiple ponds were identified during the site inspection that are not definitively labeled/buffered on the plan. These ponds must be clearly delineated and given the appropriate buffers.
3. A Forest Conservation Plan (FCP630-2021) has been submitted to the Department of Planning and Zoning but cannot be approved. A new version of the FCP is required to address all comments provided above for the FSD, in addition to the following:
 - a. The proposed locations of the Forest Retention Area signs must be shown.

- b. The Forest Retention Area shading pattern used on the plan does not match the pattern depicted in the Legend. This should be corrected.
 - c. The value of 11.25 acres given in the Forest Conservation Calculations for Forest Credit is incorrect. The correct value is 7.248 acres of forest credit, with 3.096 acres of net unused credit.
- 4. The following comments must be addressed on new versions of the Preliminary plan, Site plan, and Landscaping plan:
 - a. There are several errors in the adjacent property owner information.
 - b. The area described as Parcel 4B is zoned LI, not B1 as is listed on the plan.
 - c. The proposed Forest Retention Areas must be clearly delineated and labeled.
 - d. Any and all streams and/or ponds must be delineated, labeled, and given the appropriate buffers.
 - e. The areas of steep slopes shall be given the same shading as they were on both the FSD and FCP.
 - f. A label for the proposed Lot 5 appears to be in the Lot 4 area.
- 5. A new version of the preliminary plan is required to address the comments listed in Number 4, as well as the following:
 - a. The extent of forest cover in acres to be removed must be noted.
 - b. The new version of the preliminary plan needs to clarify the delineation of the lot lines and the disposition of Parcels A through F.
- 6. A new version of the site plan is required to address the comments listed in Number 4, as well as the following:
 - a. The height of the proposed buildings must be noted in the Site Development Data.
 - b. The number of employees for the proposed retail/service use must be noted.
 - c. Per the Harford County Zoning Code Section 267-27 Accessory Uses and Structures, “retail sales in industrial districts shall be permitted, provided that the goods sold are manufactured or produced on site”.
 - d. Traffic flow patterns must be provided on the plan.
 - e. The extent of forest cover in acres to be removed must be noted.
 - f. The new version of the site plan needs to clarify the delineation of the lot lines and the disposition of Parcels A through F.
 - g. The loading parking spaces are not identified.
 - h. The following errors in the parking counts and totals shall be addressed:
 - i. The plan states that 635 parking spaces are provided for Building 1. 614 parking spaces were counted.
 - ii. On Page 3, the areas with trailer spaces have incorrect values listed.
 - iii. On Page 5, the 114 proposed trailer spaces are counted to be 100 trailer spaces.

Development Advisory Committee Minutes
January 19, 2022
Page 11 of 64

7. A Landscape and Lighting Plan (633-2021) has been submitted but cannot be approved. The new version must address the comments listed in Number 4, as well as the following:
 - a. All of the proposed Inkberry Holly foundation plantings are listed as being in groups of 10, but are actually counted to be in groups of 12.
 - b. For Lot 6, the number and type of the proposed foundation plantings and parking lot trees are not shown on the plan itself.
 - c. The appropriate buffer yard(s) must be provided on Parcel C (which is zoned GI) along the property lines shared with the adjacent R1 and AG zoned properties.
 - d. On page 9, the typical 15' wide buffer should be Type B. It is incorrectly labeled as Type D.
 - e. The Type D Buffer must have 8 large trees, 6 medium/small trees, and 30 shrubs for every 100 linear feet. The current proposal only shows 11 total trees and 20 shrubs.
 - f. The following errors in the parking lot tree counts and totals shall be addressed:
 - i. The plan proposes Lot 1 to have 64 parking lot trees. 58 parking lot trees were counted.
 - ii. The plan proposes Lot 2 to have 101 parking lot trees. 99 parking lot trees were counted.
 - iii. The plan proposes Lot 4 to have 112 parking lot trees. 109 parking lot trees were counted.
8. All 100-year floodplain areas (zones and DFIRM panel information) need to be mapped and shown, not just referenced in the notes. Additionally, all "waters of the state" need to be identified and have the non-disturbance flood protection setback shown.
9. The Critical Area buffers (100' from tidal wetlands) need to be shown on the plans. These buffers are expanded for steep slopes, and both hydric and erodible soils. Habitat protection areas need to be shown within the Critical Area (buffers to wetlands, streams, forest interior dwelling bird habitat, etc.) Additionally, any new lot coverage in the LDA must be mitigated for with mitigation plantings in the Critical Area.
10. This site is partially located within the Perryman Wellfield Protection District. If any of the proposed parcels are going to be included with the lots for the calculation of impervious cover within the Protection District (and to assure meeting the impervious surface requirements of the Water Source Protection District regulations with future permitting), the parcels need to be formally included as part of the lots, not as separate parcels. Therefore, Parcels C and D would be absorbed into Lot 4 and Parcels A and B would become part of Lot 5. Alternatively, the parcels must be recorded with

permanent conservation easements restricting any future impervious surface in accordance with the Perryman Wellfield Protection District.

11. A Traffic Impact Analysis (TIA) was submitted to the Department of Planning and Zoning and is currently under review. Questions concerning the TIA may be directed to Alex Rawls of the Department of Planning and Zoning.
12. This site is located in the Aberdeen/Havre de Grace Enterprise Zone. Please contact the Office of Economic Development for additional information
13. Lighting shall be designed and controlled so that any light shall be shaded, shielded, or directed so that the light intensity and brightness does not adversely affect the operation of vehicles or reflect onto residential lots or buildings.
14. All proposed signage shall conform to the Sign Code. Permits shall be obtained from the Department of Planning and Zoning.

Health Department – Read by Moe Davenport

The Harford County Health Department has extended its approval for the above referenced site plan. The site is located on the north and south sides of Canning House Road and Fords Lane, east and west sides of Perryman Road.

This project is located within the Perryman Wellhead District-Zone 3 which is a large valuable source of potable groundwater in Harford County. The HCHD fully supports the objectives of the Water Source Protection Districts (Harford County Zoning Code, section 267-66) requirements and is of the position that this project must meet or exceed the requirements of the Code to protect this resource from both a quality and quantity perspective. This office strongly urges the use of “best management practices” for the management of stormwater. Engineering designs must maximize stormwater quality and optimize groundwater recharge.

This office has the following general comments regarding this proposal:

- Generally, warehousing operations handle a wide range of products which may include hazardous and toxic materials. Such materials could potentially impact the Perryman well field if a release were to occur. Information must be available on all regulated substances passing through or stored on the property, including procedures for loading and unloading operations. Regulated substances may be used or stored in quantities not exceeding the “Reportable Quantity” for each regulated substance, as designated in the 40 CFR 302. The owner/operator should adhere to Section 6.3.3

Development Advisory Committee Minutes
January 19, 2022
Page 13 of 64

“Toxic, Hazardous, and Other Materials Handling Regulations” in the Perryman Maryland Well field Protection Plan.

- If the site will be used for food storage or processing, review will be required by the Maryland Department of Health (MDH), Office of Food Protection. If there are any questions regarding this review, please contact their office.
- If a snack bar or vending machine area is planned, review will be required by the HCHD’s Division of Permits and Plan Review. If there are any questions concerning this review process, please contact that office.
- At the discretion of the Department of Public Works, Division of Water and Sewer, drainage and utility easements should be platted along appropriate tract boundaries to facilitate the connection of neighboring properties to public utilities.
- The owner/developer is reminded that during the development of this project when soil moisture conditions are low, measures must be implemented to prevent the generation of dust until a permanent vegetative cover is established and all paving is completed.
- If this facility will produce air pollution, create emissions, or utilize boilers over 1,000,000 BTUs, permits will be required from the Maryland Department of the Environment, Air and Radiation Management Administration.
- Additional comments from this office will be provided at the time of the building permit or certificate of occupancy permit. It is the responsibility of the owner/operator to be aware of any regulatory requirements for the proposed use and for obtaining appropriate permits.

State Highway Administration – Read by Moe Davenport

An access permit will be required to construct the two proposed entrances, proposed frontage improvements on MD 159 as well as any off-site improvements. The MDOT SHA is currently reviewing the traffic impact study (TIS) prepared for this development. When comments become available, they will be forwarded to all interested parties. We will defer making specific requirements for the entrances and road improvements until our review of the TIS is complete.

Public Comments:

Paul Fallace said I have 4 questions. The first one is the Mitchell property developer has brought forth 2 items today, the subdivision of the property and overall development plan. Is there a sequence that should be followed for the overall plan approval and then the subdivision?

Mr. Davenport said typically they run together. The subdivision is the subdividing of the

PAUL JOHN CISAR, et al.,

Plaintiffs,

v.

F.O. MITCHELL & BRO., et al.,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No. C-02-CV-22-000988

AFFIDAVIT OF BARRY GLASSMAN

1. I, Barry Glassman, am over the age of 18 and am competent to testify.
2. I am the County Executive of Harford County and have personal knowledge of Harford County's activities.
3. Harford County is a political subdivision of the State of Maryland and, by definition, does not carry on a regular business in Anne Arundel County, Maryland.
4. Harford County conducts regular business only in Harford County, Maryland. Its principal office is in Harford County.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Date

6/30/2022

Barry Glassman



Harford County's
Motion to Dismiss

Exhibit B

PAUL JOHN CISAR, et al.,

Plaintiffs,

v.

F.O. MITCHELL & BRO., et al.,

Defendants.

*

IN THE

*

CIRCUIT COURT

*

FOR

*

ANNE ARUNDEL COUNTY

*

Case No. C-02-CV-22-000988

AFFIDAVIT OF LOUIS F. FRIEDMAN

1. I, Louis F. Friedman, am over the age of 18 and am competent to testify.

2. I am the Trustee of Trusts under the Last Will and Testament of Parker Mitchell, Jr. dated April 14, 1985, that collectively own a fifty percent partnership interest in F. O. Mitchell & Bro., and I have personal knowledge of its activities.

3. F. O. Mitchell & Bro. does not carry on a regular business in Anne Arundel County, Maryland, and has never done so.

4. F. O. Mitchell & Bro. carries on a regular business in Harford County, Maryland, and owns property there. Its principal office is in Harford County.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Date

July 12, 2022

Louis F. Friedman

Louis F. Friedman

Harford County's
Motion to Dismiss

Exhibit C

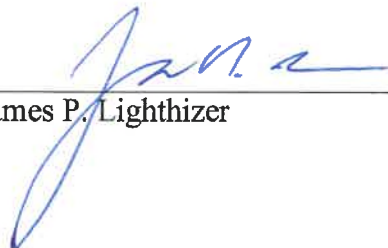
PAUL JOHN CISAR, et al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
V.	*	FOR
F.O. MITCHELL & BRO., et al.,	*	ANNE ARUNDEL COUNTY
Defendants.	*	Case No. C-02-CV-22-000988

AFFIDAVIT OF JAMES P. LIGHTHIZER

1. I, James P. Lighthizer, am over the age of 18 and am competent to testify.
2. I am a member of Chesapeake Real Estate Group, LLC and have personal knowledge of its activities.
3. Chesapeake Real Estate Group, LLC carries on a regular business in Harford County, Maryland.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

7/6/2022
Date


James P. Lighthizer

PAUL JOHN CISAR, et al.,

Plaintiffs,

v.

F.O. MITCHELL & BRO., et al.,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No. C-02-CV-22-000988

AFFIDAVIT OF TORRENCE PIERCE

1. I, Torrence Pierce, am over the age of 18 and am competent to testify.
2. I am an officer in Frederick Ward Associates, Inc. and have personal knowledge of its activities.
3. Frederick Ward Associates, Inc. carries on a regular business in Harford County, Maryland. Its principal office is in Harford County.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Date

7/6/22

Torrence Pierce

Harford County's
Motion to Dismiss

Exhibit E

13. THE PROPERTY IS WITHIN THE CHESAPEAKE BAY CRITICAL AREA. ±73.11 ACRES ARE WITHIN THE CONSERVATION AREA (RCA) AND ±5.88 ACRES ARE WITHIN THE LIMITED DEVELOPMENT AREA CHESAPEAKE BAY CRITICAL AREA.
14. THERE ARE ± 225.14 ACRES OF THE PROPERTY THAT FALL WITHIN THE WELLHEAD PROTECTION EXISTING WELLHEAD REFERENCE INFORMATION WAS OBTAINED FROM PERRYMAN, MARYLAND HEAD PROTECTION PLAN. SOURCE WATER ASSESSMENT FOR PERRYMAN WELL FIELD PREPARE 2000.
15. WATER METERS TO BE PROVIDED INSIDE BUILDINGS IN UTILITY ROOMS.
16. PER HARFORD COUNTY ZONING CODE SECTION 267-27 ACCESSORY USES AND STRUCTURES, "IF INDUSTRIAL DISTRICTS SHALL BE PERMITTED, PROVIDED THAT THE GOODS SOLD ARE MANUFACTURED ON SITE.
17. THE SITE IS LOCATED INSIDE THE PRIORITY FUNDING AREA.
18. NO RARE, THREATENED, OR ENDANGERED SPECIES WERE OBSERVED DURING THE FIELD INVESTIGATION. MARYLAND DEPARTMENT OF NATURAL RESOURCES (DNR) RESPONDED TO A REQUEST FOR RE-THREATENED, AND ENDANGERED SPECIES ON SEPTEMBER 13, 2021 STATING THAT THERE ARE NO RARE, THREATENED, OR ENDANGERED SPECIES WITHIN THE BOUNDARY OF THE SITE.
19. HANDICAP RAMPS SHALL BE PROVIDED AT THE INTERSECTIONS OF PUBLIC ROADS. TO BE SHOWN IN DESIGN.

SITE DEVELOPMENT DATA

1. PROPERTY ADDRESS: 1714 PERRYMAN ROAD
PERRYMAN, MD 21130
2. OWNER: F.O. MITCHELL & BRO.
P.O. BOX 36
PERRYMAN, MARYLAND 21130
(PARCEL 1, 2, 3, 4A, & 4B)

CHARLES A MASLIN III
100 SOUTH WASHINGTON STREET
HAVRE DE GRACE, MARYLAND 21078

PARCEL 1 - PARK FARM NORTH

TAX MAP 63, GRID 2B, PARCEL 53
TAX ACCOUNT NO.: 02-060833
ADDRESS: 1714 PERRYMAN ROAD
ABERDEEN, MARYLAND 21001-4219
DEED REFERENCE: CGH 2174/633
PRESENT ZONING: LI - LIGHT INDUSTRIAL
AREA: ±357.8324 ACRES

PARCEL 2 - PARK FARM SOUTH

TAX MAP 63, GRID 3B, PARCEL 53
TAX ACCOUNT NO.: 02-098393
ADDRESS: PERRYMAN ROAD
PERRYMAN, MARYLAND 21130
DEED REFERENCE: CGH 2174/633
PRESENT ZONING: LI - LIGHT INDUSTRIAL
AREA: ±280.5230 ACRES

PARCEL 3 - FORDS LANE COUNTY SWAP

TAX MAP 63, GRID 1B, PARCEL 306
TAX ACCOUNT NO.: 02-095734
ADDRESS: FORDS LANE
ABERDEEN, MARYLAND 21001
DEED REFERENCE: CGH 2256/904
PRESENT ZONING: LI - LIGHT INDUSTRIAL
AREA: ±36.0809 ACRES

PARCEL 4A - LEE FIELD, SOUTH PART

TAX MAP 63, GRID 2C, PARCEL 62
TAX ACCOUNT NO.: 02-060868
ADDRESS: 1625 PERRYMAN ROAD
ABERDEEN, MARYLAND 21001-4216
DEED REFERENCE: CGH 2174/633
PRESENT ZONING: GI - GENERAL INDUSTRIAL
AREA: ±23.9054 ACRES

PARCEL 4B - LEE FIELD, NORTH PART

TAX MAP 63, GRID 2D, PARCEL 62
TAX ACCOUNT NO.: 02-060868
ADDRESS: MICHAELSVILLE ROAD
PERRYMAN, MARYLAND 21130
DEED REFERENCE: CGH 2174/633
PRESENT ZONING: LI - LIGHT INDUSTRIAL
AREA: ±5.4436 ACRES

Harford County's
Motion to Dismiss

Exhibit F

13. THE PROPERTY IS WITHIN THE CHESAPEAKE BAY CRITICAL AREA. ±73.11 ACRES ARE WITHIN THE CONSERVATION AREA (RCA) AND ±5.88 ACRES ARE WITHIN THE LIMITED DEVELOPMENT AREA CHESAPEAKE BAY CRITICAL AREA.
14. THERE ARE ± 225.14 ACRES OF THE PROPERTY THAT FALL WITHIN THE WELLHEAD PROTECTION EXISTING WELLHEAD REFERENCE INFORMATION WAS OBTAINED FROM PERRYMAN, MARYLAND HEAD PROTECTION PLAN. SOURCE WATER ASSESSMENT FOR PERRYMAN WELL FIELD PREPARE 2000.
15. WATER METERS TO BE PROVIDED INSIDE BUILDINGS IN UTILITY ROOMS.
16. PER HARFORD COUNTY ZONING CODE SECTION 267-27 ACCESSORY USES AND STRUCTURES, "IF INDUSTRIAL DISTRICTS SHALL BE PERMITTED, PROVIDED THAT THE GOODS SOLD ARE MANUFACTURED ON SITE.
17. THE SITE IS LOCATED INSIDE THE PRIORITY FUNDING AREA.
18. NO RARE, THREATENED, OR ENDANGERED SPECIES WERE OBSERVED DURING THE FIELD INVESTIGATION. MARYLAND DEPARTMENT OF NATURAL RESOURCES (DNR) RESPONDED TO A REQUEST FOR REEVALUATION OF RARE, THREATENED, AND ENDANGERED SPECIES ON SEPTEMBER 13, 2021 STATING THAT THERE ARE NO RARE, THREATENED, OR ENDANGERED SPECIES WITHIN THE BOUNDARY OF THE SITE.
19. HANDICAP RAMPS SHALL BE PROVIDED AT THE INTERSECTIONS OF PUBLIC ROADS. TO BE SHOWN IN DESIGN.

SITE DEVELOPMENT DATA

1. PROPERTY ADDRESS: 1714 PERRYMAN ROAD
PERRYMAN, MD 21130
2. OWNER: F.O. MITCHELL & BRO.
P.O. BOX 36
PERRYMAN, MARYLAND 21130
(PARCEL 1, 2, 3, 4A, & 4B)

CHARLES A MASLIN III
100 SOUTH WASHINGTON STREET
HAVRE DE GRACE, MARYLAND 21078

PARCEL 1 - PARK FARM NORTH

TAX MAP 63, GRID 2B, PARCEL 53
TAX ACCOUNT NO.: 02-060833
ADDRESS: 1714 PERRYMAN ROAD
ABERDEEN, MARYLAND 21001-4219
DEED REFERENCE: CGH 2174/633
PRESENT ZONING: LI - LIGHT INDUSTRIAL
AREA: ±357.8324 ACRES

PARCEL 2 - PARK FARM SOUTH

TAX MAP 63, GRID 3B, PARCEL 53
TAX ACCOUNT NO.: 02-098393
ADDRESS: PERRYMAN ROAD
PERRYMAN, MARYLAND 21130
DEED REFERENCE: CGH 2174/633
PRESENT ZONING: LI - LIGHT INDUSTRIAL
AREA: ±280.5230 ACRES

PARCEL 3 - FORDS LANE COUNTY SWAP

TAX MAP 63, GRID 1B, PARCEL 306
TAX ACCOUNT NO.: 02-095734
ADDRESS: FORDS LANE
ABERDEEN, MARYLAND 21001
DEED REFERENCE: CGH 2256/904
PRESENT ZONING: LI - LIGHT INDUSTRIAL
AREA: ±36.0809 ACRES

PARCEL 4A - LEE FIELD, SOUTH PART

TAX MAP 63, GRID 2C, PARCEL 62
TAX ACCOUNT NO.: 02-060868
ADDRESS: 1625 PERRYMAN ROAD
ABERDEEN, MARYLAND 21001-4216
DEED REFERENCE: CGH 2174/633
PRESENT ZONING: GI - GENERAL INDUSTRIAL
AREA: ±23.9054 ACRES

PARCEL 4B - LEE FIELD, NORTH PART

TAX MAP 63, GRID 2D, PARCEL 62
TAX ACCOUNT NO.: 02-060868
ADDRESS: MICHAELSVILLE ROAD
PERRYMAN, MARYLAND 21130
DEED REFERENCE: CGH 2174/633
PRESENT ZONING: LI - LIGHT INDUSTRIAL
AREA: ±5.4436 ACRES

Harford County's
Motion to Dismiss

Exhibit G