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\* ADMITTED IN MD AND PA

March 3, 2022

Mr. Joe Cosentini  
Town of Sykesville  
7547 Main Street  
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RE: Warfield – Petition for Zoning Text Amendment

Dear Mr. Cosentini:

In your correspondence of February 18, 2022, you have offered further clarification to some of the concerns raised in my letter of February 7, 2022. In response, we offer the following which we hope provides some additional explanation. Excerpts from your February 18, 2022 letter are in **bold**.

... the Applicant has continually stated that their intention is to provide over **77,000 sq. ft. of non-residential uses**. This total is already higher than the requested minimum non-residential category proposed in the text amendment. If the Applicant's intent is to provide the amount of non-residential they've stated then the floor (no less than) requested should be adjusted to reflect that intent. The constant referral to the Applicant's market studies leads many to believe that the intent is more residential.

To address these concerns Applicant proposes to increase the required minimum percentage of land dedicated to non-residential uses from 5% to 8.5%. This 8.5% reflects the non-residential land area proposed Parcel D's commercial core which would contain approximately 77,097 sq. ft. of building area between Buildings F, G, H and I, and the Dining Hall/Auditorium building.

...elimination of the different categories creates a situation where a single non-residential use can satisfy the minimum requirement. For example, Developer X



proposes a 96 unit assisted living community on Parcels A and B. According to the text amendment proposed, the minimum non-residential will have been met and the rest of the property, including all structures within Parcel D, could be used to convert it to residential...the categories are in place to ensure there is some sort of mix required within the Planned Employment Center zone. If the existing individual category percentages required were unworkable, then the Applicant could have suggested changes to the percentages while keeping the original intent of the zone intact.

With respect to Section 180-134(B) of the Sykesville Zoning Ordinance (hereafter "Ordinance" or "Zoning Ordinance") the proposed amendment does not eliminate individually named categories of non-residential uses throughout the Ordinance. "Office, retail, recreational, hotel, institutional, light industrial" was replaced with "Non-residential" to make this section consistent with the rest of the Ordinance and eliminate any potential conflict or ambiguity. Please note that Section 180-136 (principal permitted uses) and Section 180-137 (conditional uses) in their present form use the language "non-residential" and "residential" and an exhaustive list of potential uses are provided for each.

If it eliminates an issue for the Town, the Applicant will agree to leave Section 180-134(B) as it is currently written. Further, the Applicant will stipulate that Buildings F and the dining hall/auditorium will be non-residential. Of course, Buildings G, H and I are already non-residential uses (i.e., commercial office) and will remain as such. Buildings G and I are subject to long term ground leases and Building H was sold in 2019 to Alderson Loop.

...this proposed "clarification" combined with the elimination of different non-residential categories has the potential to make the Planned Employment Center zone entirely residential in nature ... and causing confusion as to the desired intent of the zone (Employment Center). The reason for having several categories of non-residential uses with assigned percentages is to require a blend of multiple types of uses. The Applicant's request to eliminate these non-residential categories and setting the floor so low basically creates an intentionally or unintentionally, a nearly open zone by the uses and percentages that would be permitted.

The Applicant believes the explanations given above address this issue.

The Town has a fiscal impact analysis conducted by Sage Group.... When the Applicant presented their own fiscal analysis, they only presented the findings of the report without providing access to the back up data. With both reports having been conducted post-COVID, it would be beneficial to be able to compare the data used to see what assumptions were made that drove the findings in the Applicant's (Tischler Bise) report since the conclusions differ from the Town's "Sage" report on the residential and commercial impact. Would the Applicant be willing to provide the data showing how the financial impact numbers were determined so a proper comparison could be made?

The Applicant will direct the consultant, Tischler Bise, to provide its most recent study to the Town. The Town already has the 2014 Tischler Bise study and 2016 update which provides a pre-COVID fiscal impact analysis.

**The Town is and will continue to be open to changes within the Planned Employment Center zoning district to make the district more accommodating to meaningful development. The issue we've attempted to convey is that the Applicant's proposed text amendment is a drastic change to the district and allows for many alternative scenarios well beyond what has been shown as the Applicant's intention for the Warfield development.**

It is unclear what is meant by "the proposed text amendment...allows for many alternative scenarios well beyond what has been shown as the Applicant's intention for the Warfield development." Currently, the Ordinance already allows for many alternative scenarios. What Applicant proposes is the flexibility to shift density from commercial to residential, while still enhancing its ability to attract non-residential uses.

Applicant proposed their text amendment recognizing the fact that the market for most non-residential uses in Sykesville and the surrounding area is weak while the residential market is strong, and that meeting the market is necessary to ensure the success of the project. Applicant understands that some of the Town feel the shift from commercial to residential is dramatic. However, the Applicant believes that the proposed shift may result in a reduction in overall development intensity and potential adverse impact to the community including, but not limited to, traffic impacts and water and sewer capacity. The Applicant looks forward to having additional discussions in this regard.

In any case, the proposed zoning amendment is necessary to make the project viable. The Applicant cited a number of factors demonstrating this need in our letter of February 7, 2022, particularly at pages 5 and 6. Among those factors mentioned were the fact that rehabilitation costs exceed the projected finished value of the historic buildings by at least \$30,000,000. The project is burdened by significant infrastructure costs, including, without limitation, the extension of Springfield Avenue, relocation of the water main on Parcel C and H along Buttercup Road. Water main and gas main on Parcels A and B and the need for wetlands remediation.

Both the Town and the Applicant have known for many years that significant State and Federal funding over and above what was available through the Federal and State Historic Preservation Tax Credit programs would be necessary to make the project viable. Now it is apparent that Applicant has accomplished what seemed virtually impossible four years ago; securing funding to solve the \$30,000,000.00 problem, revitalize substantially all of the historic structures in Parcel D and jumpstart the Warfield project in general. None of this will happen without approval of the proposed zoning amendment.

The following language was addressed to Applicant's discussion of government tax credit funding for aspects of the Warfield project and its relationship or linkage to housing or residential development.

**We just want to clarify that, in fact, based on the information provided, a majority of the funding that has been identified as not related to housing. The project Warfield is proposing may require housing, but this is not being dictated by the funding available.**

**Is it correct that the identified "Transactional Costs/Discounts" would be related to the Warfield owners' seller the awarded tax credits to outside investors in order to raise capital for the rehabilitation or construction efforts? It is also correct that State tax credits would be more heavily discounted due to a more limited investor pool since the potential investor would have to be paying taxes in State to benefit from the credit?**

Financing a project of Warfield's magnitude is complex. How the various layers of capital stack work together is also complex. The Town's analysis ignores that the \$30,000,000.00+ financial gap (which has likely grown due to swelling labor and materials costs) cannot be filled without all the tax credits working together. An "all of the above" approach is needed. In addition to all three tax credits, other financial incentives and subsidies, including State grants and housing related tax-exempt financing are needed to make the deal work. In fact, the amount of housing-related tax-exempt financing could exceed the value of the tax credits combined.

As the Town is aware, the CRTC's enabling legislation required that preference be given to projects promoting affordable housing and is taken into consideration when scoring applications. The CRTC was awarded with the understanding that the CRTC would be used in connection for the housing project utilizing LIHTC, and that a zoning change allowing for a shift away from non-residential to residential uses at Warfield was needed. The State also awarded the CRTC with the understanding that the State's investment would enable the developer to save all the major historic structures at Warfield at once.

Developers may claim LIHTCs themselves. However, due to limitations and the lack of enough taxable income and timing, most developers choose to find tax credit investors, who provide cash that is channeled into the development. The developer can either work with an investor who invests directly into the ownership entity and receives tax credits or work with a syndicator who acts as a broker between the developer and the investor. To benefit from economies of scale, syndicators pool several projects into one LIHTC equity fund. Then, syndicators market the tax credits to investors who essentially invest in a piece of the syndicator's fund.

It is too early to say whether the Applicant will work with an investor who would be active in the apartment project or a syndicator. And yes, tax credits are always sold at some

discount. Furthermore, it is true that Federal tax credits are typically sold at less of a discount than State tax credits because there is a bigger market for Federal tax credits. Use of these credits involves considerable costs for analysis, legal and underwriting costs. This is how the system works for all projects.

**The Town appreciates and applauds the Applicant's efforts in working with DHCD to obtain funding for the Warfield project. That said, other investments from the State in Town activities would still very much be available per the regular grant or loan processes regardless of the outcome of the proposed zoning text amendment request.**

The Applicant does not concur with this assessment and refers the reader to pages 9 and 10 of Applicant's February 7, 2022 correspondence. Because DHCD is so committed to Warfield's success and advancing housing goals, senior officials with DHCD have offered the Town significant funding for qualifying projects of the Town's choosing under various programs as an incentive to help save Warfield and make it a viable project. Although the Town may have worked with DHCD in the past, many of these new investments may not otherwise be available to the Town if not for the Applicant's efforts and the Warfield project.

**The comprehensive plan specifically states that "the Town work collaboratively with the developers of Warfield to engage in an urban design workshop to develop a new vision for the mixed use development. The outcomes of which may be used to inform future zoning". Discussions were held with the Applicant and Town staff in July, 2021, post comprehensive plan adoption, regarding the process for an urban design workshop. If the Applicant misunderstood the intent or purpose of these processes and undertook their own evaluation, then this has been an unfortunate missed opportunity to take the collaborative approach recommended in the comprehensive plan to amend the Town's Zoning Ordinance.**

Design is one aspect of a much more complex exercise. Design needs to be informed by a keen understanding of project feasibility taking into account, among other things, market factors, cost and financing. The Town's approach to Warfield both as the owner and as approving authority has long been to engage in or require design studies and discussions without respect for overall viability. For example, the first market study to the Applicant's knowledge ever performed on the Warfield project was commissioned in 2016 by the Applicant—14 years after the Town acquired the property—and we are not aware of a comprehensive study of project scope and cost before the Applicant's involvement.

Applicant is very much focused on viable solutions that will save Warfield's historic buildings, pay for major infrastructure investments that still need to be made within the project. We are working to build a high quality, vibrant community that will significantly expand the Town's tax base and generate economic development dollars for the community. Amending the Zoning Ordinance is the single most crucial step to allowing the project to move forward because the right zoning will enable major capital formation allowing the project

to move forward in a meaningful way.

In the Applicant's view, there will be many opportunities to discuss design in the future, as there are several steps yet to come after the zoning text amendment is approved: A revised concept plan for the overall project, a revised preliminary plan for the overall project, and then preliminary and final site or subdivision plans for each individual parcel within the project. What is ultimately built at the project will begin to take shape with an increasingly level of detail as the Applicant moves through these processes. The Applicant refers you to the Warfield Development Pattern book for a more detailed description of the approval processes established for Warfield.

A portion of the Town's February 18, 2018 letter states the Applicant partially quoted a component of general development standards listed in the Disposition and Development Agreement pointing out that in its totality that provision talked about smart growth neighborhoods incorporating a typical design of 200 to 1,000 foot blocks. That discussion continues that... **"Applicant's depiction of how they would like to develop Warfield creates no block structure and does not mix uses together within the blocks that don't exist. This is why a comment was made to remove the reference to the Disposition and Development Agreement in the justification letter prior to the text amendment moving forward as the illustration of the development does not meet the general development standards as they are intended to be implemented."**

**The Town remains willing to work with the Applicant to develop a plan that does properly integrate the general development standards which can also help dictate the necessary zoning text amendments to achieve the revised design.**

It is unclear to Applicant what is intended by the references to "grids" and "blocks", but it seems the Town may be some intermingling of "Smart Growth Principles" and "New Urbanism" (or neo-traditional site planning) which often emphasizes a traditional street grid. Smart Growth Principles—and the State of Maryland's "Smart Growth Protocols"—are not predicated upon a traditional street grid. In addition, a block is not necessarily defined as a traditional city block within a street grid. Applicant's understanding of "block" as used in Maryland's "Smart Growth Protocols" is an area of land bounded by arterial roads. Smart Growth can occur within a traditional suburban setting.

The Applicant encourages the reader to refer to pages 4 and 5 of the Applicant's Zoning Amendment Request and Justification Statement dated December 13, 2021 (*Rationale: Consistent with Disposition and Development Agreement*), as well as page 11 of Applicant's letter to the Town dated February 7, 2022. Both letters discuss the requirements of the Disposition and Development Agreement.

Most important, the Disposition and Development Agreement cannot simply be disregarded by the Applicant or the Town in any discussion around land use of Warfield because the Agreement runs with, and binds on the Warfield property. Further, compliance

with the Disposition and Development Agreement plays a role in commitment of DHCD resources to the Warfield project.

**The Town is open to removing the conditional use designation on uses that are agreed to be acceptable. As previously expressed, a potential issue arises when the different categories of commercial uses along with their associated percentages are placed under a general “non-residential” category allowing for a singular use to dominate the entire zone. This change makes the true mixed use intent of the zone unenforceable.**

See the Applicant’s explanation above. Non-residential and residential classifications are not new concepts. They are in the Zoning Ordinance as it stands today. Furthermore, Applicant did not propose reclassification of any uses from non-residential to residential or vice versa. The Applicant has merely proposed making certain uses, currently classified as conditional uses (requiring Board of Zoning Appeals approval), to permitted uses allowed as a matter of right.

For example, senior housing is currently classified as non-residential in the existing Ordinance as a conditional use. Applicant has merely proposed that that same use be made a permitted use. The Applicant has further tried to clarify what constitutes senior housing to avoid confusion in the future. Examples of senior housing covered by the Ordinance include independent living, assisted living, memory care and skilled nursing.

Thank you for your attention. Please feel free to contact me if you have any questions or comments.

Very truly yours,

HOFFMAN, COMFORT, OFFUTT,  
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David K. Bowersox

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