

STAFF EVALUATION

Case No.: Rezoning No. 21-00012
Use Permit No. 22-00001

Planning Commission Date: March 17, 2022

City Council Date: September 14, 2022

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General Information

Applicant Westview Landing, LLC.

Property Owners Sarah Bonwell Hudgins Foundation, Inc.

Site Location 10 Doris Carlson Dr [LRSN: 5000040], 51 Battle Rd [LRSN: 5000041], 30 Singleton Dr [LRSN: 5000042, portion], and 60 Battle Rd B [LRSN: 5001596]

Aerial Map:



Requested Action Rezone four parcels, totaling ± 37.86 acres, from One Family Residential (R-11) District to Multifamily Residential (MD-3) District with proffered conditions.

Use Permit to allow for the construction of multifamily dwellings within the Multifamily Residential (MD-3) District.

*Description of Proposal***General**

The development, as described in the application, includes two (2) two-story buildings, five (5) three-story buildings, and two (2) four-story buildings. Combined, the total proposed unit count is 368 units. In addition, the development includes community amenities such as a clubhouse, swimming pool, fitness center, car washing stations, EV charging stations, dog park, 42 storage units, six (6) RV/Boat storage spaces, and 21 enclosed garages.

Site Layout

The primary entrance to the proposed development is from Thomas Nelson Drive. A second entrance would be off of Battle Road. The layout of the site is a typical garden-style apartment development. There are nine (9) separate apartment buildings surrounded and separated by parking lots. A multi-functional community amenity building would be located near the entrance to the development. The two four story buildings would be located in the center of the development. These two buildings are oriented around a shared community green space. In the proposed layout, the two-story and three-story buildings are distributed throughout the site. In addition to the community amenities and residential buildings, the applicant is proposing 21 enclosed garages distributed between two (2) buildings and 42 storage units distributed between two (2) buildings. The garages, car wash stations, storage units, and RV/Boat storage spaces would be limited to resident use.

A 30 foot wide landscape buffer is proposed along the western boundary and a 20 foot wide landscape buffer along the southern boundary of the site where buildings, parking, or other improvements are adjacent to existing single family lots, which are zoned for low density residential.

Building Materials

The exterior of the buildings is proposed to be constructed primarily of brick veneer with accents of fiber cement siding and prefabricated cellular PVC columns. In addition, roofing is proposed to be architectural grade shingles.

Unit Composition

The two four-story residential buildings are closed-corridor buildings, where the entrances to the units are accessed by an internal hallway. The two (2) two-story buildings and five (5) three-story buildings are open-corridor, where the entrances are accessed by a staircase and hallway open to the exterior of the building.

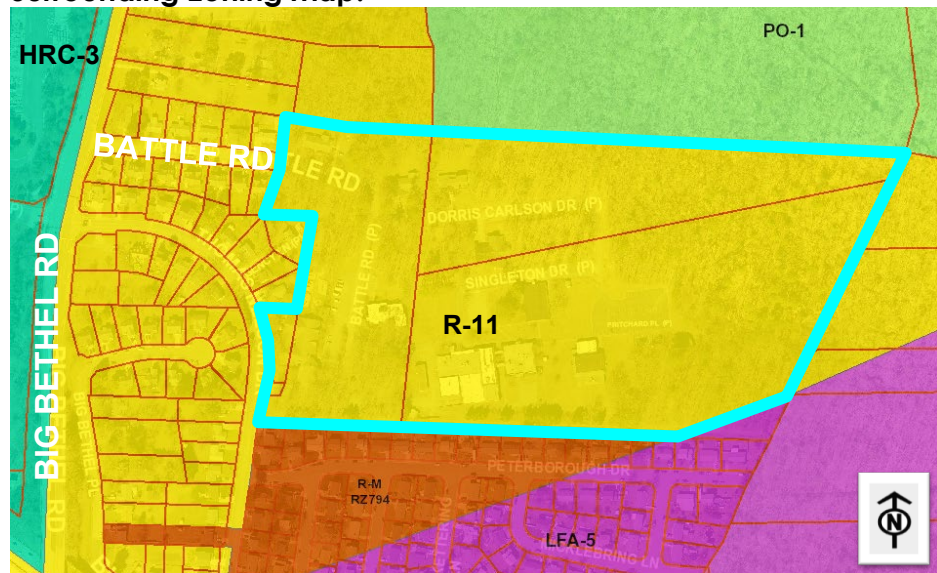
Existing Land Use

Day Care 2/Group Home (Sarah Bonwell Hudgins Foundation) some of the buildings are vacant

Zoning One Family Residential (R-11) District
 Chesapeake Bay Preservation District Overlay (O-CBPD) District
 Air Installation Compatible Use Zone Overlay (O-AICUZ): 65-70 dB
 DNL and Aircraft Accident Potential Zone II

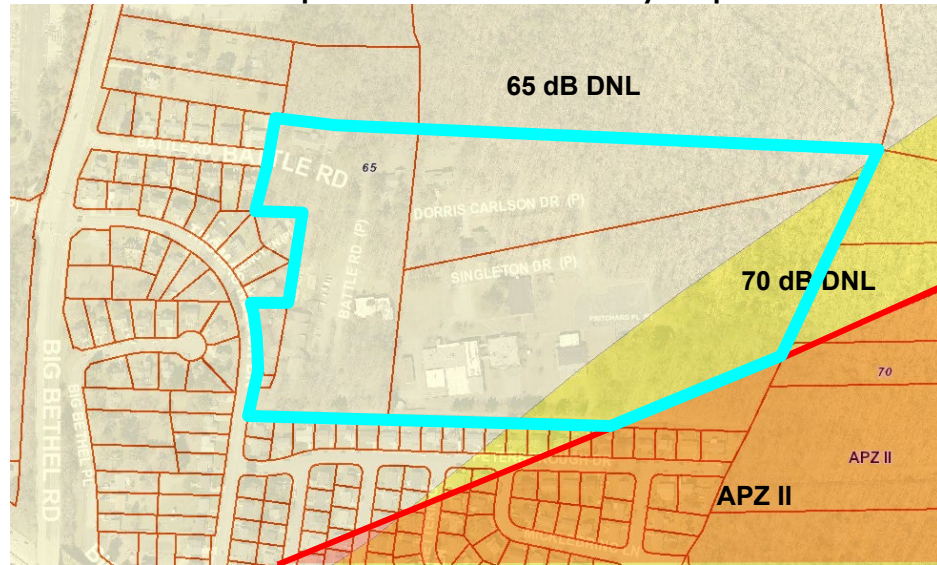
Surrounding Land Use and Zoning **North:** One Family Residential (R-11) District, Parks and Open Space General (PO-1) District; Vacant
South: Multiple Residential (R-M) District, Langley Flight Approach (LFA-5) District; single-family residential
East: One Family Residential (R-11) District, Langley Flight Approach (LFA-5) District; Vacant
West: One Family Residential (R-11) District; single-family residential

Surrounding Zoning Map:



A majority of the subject property is zoned One Family Residential (R-11) District. This zoning district is consistent with other single family home neighborhoods in this area of the City along Big Bethel Road and adjacent to the site.

The southeastern corner of the subject property is zoned Langley Flight Approach Limited Residential (LFA-5) District, but is not part of the rezoning request. The purpose of the LFA districts is to provide reasonable regulation of land use for properties under the flight approach to JBLE- Langley runways. LFA-5 limits the intensity of development, specifically the concentration of people living in the area within the flight approach.

Air Installation Compatible Use Zone Overlay Map:

The subject property is also within the Air Installation Compatible Use Zone Overlay (O-AICUZ) District. The purpose of the AICUZ Overlay is to minimize any noise impacts from flight operations and limit the degree of property damage and loss of life that could result from potential aircraft accidents in proximity to the flight approaches into and out of JBLE-Langely runways. O-AICUZ also ensures that residential construction developed in proximity to these flight approach areas are constructed in manners that will mitigate the noise impacts through appropriate noise attenuation construction methods.

O-AICUZ is divided into two sections: airport noise zones and aircraft accident potential zones. The subject site is within the 70 and 65 dB DNL airport noise zones. This means that the proposed residential development is required to use noise attenuation construction methods. A portion of the subject site is within the aircraft accident potential zone II (APZ-II). The APZ zones are those areas in which there is the highest probability of flight accidents from take-off and landing operations. According to Sec. 9-6 Table 2 of the City of Hampton Zoning Ordinance, multiple-family dwellings are not a compatible land use within APZ-II.

Public Policy

The Hampton Community Plan (2006, as amended) is adopted as the guiding policy document for the City of Hampton with regards to future growth and development of the community. The Hampton Community Plan includes the following policy recommendations pertinent to this case:

Land Use and Community Design Policies:

LU-CD Objective 3: Promote compatibility and synergy among different land uses.

LU-CD Policy 4: Evaluate land use proposals from a regional, city-wide, and neighborhood perspective.

LU-CD Policy 7: Safeguard the integrity of existing residential neighborhoods.

LU-CD Policy 11: Promote high quality design and site planning that is compatible with surrounding development.

LU-CD Policy 29: Encourage high quality new developments that are compatible with surrounding neighborhoods.

Resilience Policies:

LU-CD Policy 39: Prioritize protecting natural systems and restore or recreate natural systems where they have been compromised.

Environmental Stewardship Policies:

EN Policy 22: Partner with Langley Air Force Base to promote compatible land uses within the flight approach zones and noise areas associated with the AICUZ program.

Economic Development Policies:

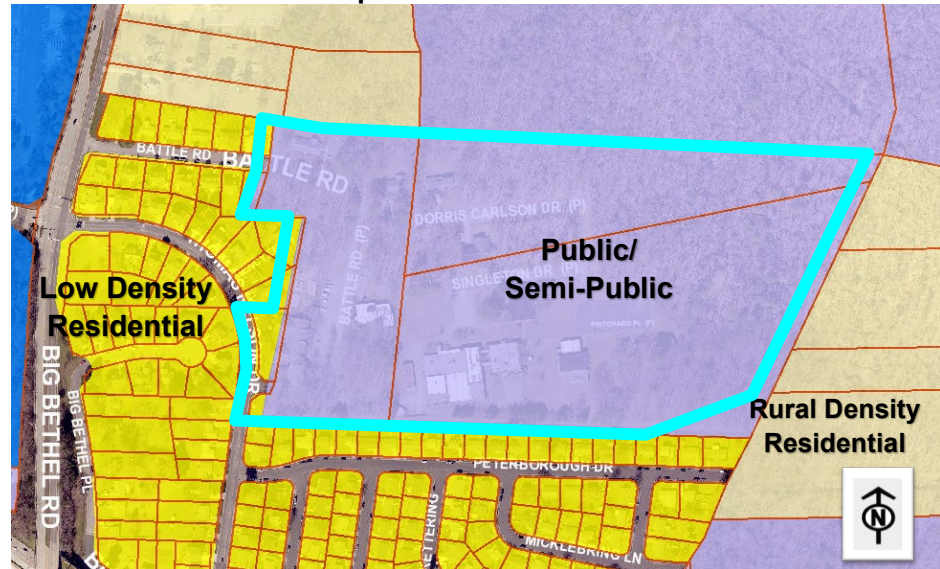
ED Policy 15: Maintain a close liaison with Fort Monroe, Langley Air Force Base, and the NASA Langley Research Center.

ED Policy 16: Monitor trends in defense and space contracting, spending, and organizational change.

Future Land Use:

The Hampton Community Plan (2006, as amended) designates this area as public/semi-public and low density residential. Low density residential development includes areas with a recommended density range from 3.5 to less than 9 units per acre. The public/semi-public category includes areas appropriate for government buildings, public or private institutional uses, and community facilities.

See following page for map.

Future Land Use Plan Map:*Zoning History*

RZ1005 (1992) established the LFA zoning districts

In November 2021, City Council amended the Zoning Ordinance to require a use permit for multifamily dwellings within the MD-3 Zoning District.

Traffic Impacts

Vehicular access to and from the site would be from Battle Road and Thomas Nelson Drive. Both Battle Road and Thomas Nelson Drive are identified as Local Streets in the Community Plan. Local Streets provide the lowest level of service and primarily function to connect properties to higher level streets, such as Collectors and Arterials.

The primary point of entry to the site would be from Thomas Nelson Drive. Thomas Nelson Drive functions as both a neighborhood street, providing access to and from the surrounding single family neighborhoods, and as a connection between Thomas Nelson Community College, Big Bethel Road, and Butler Farm Road. There is a four-way traffic light at the Thomas Nelson Drive and Big Bethel Road intersection.

The secondary point of entry to the site would be from Battle Road. Currently, Battle Road is a neighborhood street that serves 13 single family homes and is used as a secondary access point to the Sarah B. Hudgins Foundation property. The intersection of Battle Road and Big Bethel Road is limited to right-in and right-out turning movements. Left turns onto Big Bethel Road from Battle Road to travel southbound are not permitted by the existing median. Similarly, left turns from southbound Big Bethel to Battle Road are also prevented by the presence of the median.

Traffic studies identify both projected traffic volumes as well as determining the impact of additional traffic volume on each road

"Level of Service." Categories of "Level of Service" range from "A" which is best, highest level of service to "F" which is the worst and lowest level of service. For most urban areas, a Level of Service of C is acceptable. In more dense highly developed areas, Level of Service D may be the realistic standard. Level of Service F is unacceptable and indicates some action is necessary to ensure safe and acceptable service levels are achieved.

A Traffic Impact Analysis (TIA) was conducted by the applicant for this proposal. The TIA predicts that the proposed development will generate an additional 162 trips during the weekday AM peak hour, 203 trips during the PM peak hour, and 2,658 total daily trips. With the addition trips, the summary findings from the report are as follows:

- At the Thomas Nelson Drive/Battle Road south intersection, the level of service (LOS) for the westbound approach changes from A to B and the southbound left turn remains at LOS A.
- At the Big Bethel Road/Thomas Nelson Drive/West Park Lane intersection, there is an overall LOS C in the AM peak hours and overall LOS B in the PM peak hour.
- At the Big Bethel Road/Battle Road north intersection, the LOS remains unchanged.

Relative to the existing operation of the Sarah Bonwell Hudgins Center, the proposed Westview Landing development will have increased traffic with changes in delay measured from 0.1 to 3.3 seconds. Level of Service (LOS) results with the proposal are well within the capacity of the adjacent roadways and all queues for turn lanes are within the designed storage area.

The Public Works Department has reviewed the TIA and finds that the project's impact to surrounding streets and intersections is minimal and will require only minor timing adjustments at the Big Bethel Road/Thomas Nelson Drive/West Park Lane intersection to accommodate the additional traffic volumes.

Environmental

Approximately ± 14.49 acres of the property has been identified as wetlands by the applicant. These wetlands are primarily concentrated in the eastern and northeastern portion of the subject project site. The applicant has submitted plans reflecting the Zoning Administrator's decision that the majority of wetlands on the site are Chesapeake Bay Preservation District (CBPD) features, as they were connected by surface flow prior to the permitted construction of Commander Shepard Boulevard. State guidance makes clear that permitted improvements occurring after 1989, such as the construction of Commander Shepard Boulevard, cannot sever wetland connections to remove the

Chesapeake Bay Preservation designation. Given the presence of the CBPD wetland features, a 100-foot Resource Protection Area (RPA) buffer extends outward from the identified wetlands. The revised concept plan reflects that protected area by proposing development outside of the buffer area as required by the ordinance.

The proposed development does directly impact two smaller, wetland areas (± 0.81 acres) of the identified wetlands. These wetland areas are located in the northwestern portion of the site and are isolated from the main body of wetlands; and thus, are not CBPD protected wetlands.

The applicant has submitted a wetlands delineation to the Army Corps of Engineers. Due to a backlog of cases, the Army Corps of Engineers has not yet confirmed jurisdiction of the wetlands on the subject site which would include those disconnected wetlands and also the CBPD protected wetlands. Because a jurisdictional determination has not been finalized, the applicant has proposed a proffered condition that allows the conceptual plan to be modified if the jurisdictional determination results in changes to the proposed density, layout and other features of the plan (Proffer Condition No.3).

Case History

Since the June 8th meeting, the applicant's environmental consultant, Wetland Studies and Solutions, Inc. (WSSI) had disputed WRA's conclusion about the connection of the CBPD wetlands, stating that the surface flow connection was disrupted because a pipe did not exist that would connect the flow from the southern side to the northern side of Commander Shephard Boulevard. WRA concluded that the surface flow does appear to be disrupted; however, based on the applicable Virginia Department of Conservation and Recreation (DCR) guidance, the presence of a pipe/culvert under Commander Shepard Blvd. would be immaterial to the surface flow connection discussion. That guidance states that connected non-tidal wetlands shall continue to be an RPA feature even when the wetlands are interrupted by permitted man-made obstructions (such as roads, utility lines and crossings, etc.) occurring after October 1, 1989. In other words, the RPA should be determined based on the condition of the RPA feature that existed prior to the permitted construction of Commander Shepard Blvd., and the development activity cannot be used to remove or diminish the RPA. For that reason, the entire wetland should be treated as an RPA feature and subject to the 100-foot RPA buffer as WRA concluded. This segment of Commander Shepard Blvd. was constructed/completed in 2012/2014, well after the 1989 date.

<i>Proffered Conditions</i>	<p>There are thirteen (13) proffered conditions. Proposed proffered conditions include:</p> <ol style="list-style-type: none"> 1. Limiting use to multifamily residences, and accessory uses; 2. Substantial conformance with the concept plan; 3. Modification of the concept plan to comply with Army Corps of Engineers findings; 4. Maximum unit count; 5. Substantial conformance with the building elevations; 6. High quality building materials (brick veneer, fiber cement siding, architectural grade shingles); 7. Inclusion of community amenities (clubhouse, pool, fitness center, etc.); 8. 20 foot wide landscape buffer along the western and southern property boundaries; and 9. Full cut-off exterior lighting fixtures. <p>The proffered conditions can be found in their entirety in the application package.</p>
<i>Community Outreach</i>	<p>A community meeting was held March 9, 2022 at the Sandy Bottom Nature Park. In addition, staff has received approximately 12 written comments from neighboring residents voicing their concerns with the proposal.</p>

Analysis

Rezoning Application No.21-00012 is a request to rezone four (4) parcels, totaling ±37.86 acres, from One Family Residential (R-11) District to Multifamily Residential (MD-3) District with thirteen (13) proffered conditions. Also associated with this request is Use Permit No. 22-00001. A use permit is required to allow the construction of multifamily dwellings within the MD-3 District. The proposed multifamily development would include approximately 368 units.

The proposed multifamily residential land use is in direct conflict with the City's major policy documents for this area: the Hampton Community Plan (2006, as amended) and the Joint Land Use Study ("JLUS") Memorandum of Understanding with Langley Air Force Base.

The future land use recommendation of the Hampton Community Plan (2006 as amended) designates the subject site as public/semi-public use and low density residential. At approximately 20 units per acre, the proposed development is categorized as a high-density residential land use within the Hampton Community Plan (2006 as amended). The future land use recommendation of public/semi-public and low density residential represent viable redevelopment opportunities for this location that would be in compliance with adopted land use policy.

The Hampton Community Plan (2006 as amended) recognizes the need for providing a wide variety and mix of housing types within the City, but notes that low density, high-value housing is appropriate in environmentally sensitive areas (pg. LU-15), such as the

subject site. Additionally, the Hampton Community Plan (2006 as amended) encourages safeguarding existing, surrounding neighborhoods through compatible development (LU-CD Policy 7, 29). By-right, under the existing zoning, the subject site could be developed with approximately 90 single family homes that would be compatible in scale and size to the character of the surrounding neighborhood. The 368 units proposed multifamily development represents a 408% increase in the by-right residential density.

The proposed high density, total unit count, and vehicular access of the development is not appropriate given the sites locational characteristics, which requires access through existing single family neighborhoods. The findings of the traffic impact analysis show that there would be some degradation to the level of service but not to the extent that infrastructure improvements would be needed based on technical traffic flow numbers. However, within the context of this single-family neighborhood the impact is likely to change the character of the residential streets that would be used to access the proposed high-density development. While high density and low-density housing can readily exist harmoniously in an urban context, their proximity is not appropriate within the suburban nature of the northern Big Bethel corridor.

In addition to the land use recommendations from the Hampton Community Plan (2006 as amended), the proposal conflicts with generally accepted planning principles for locating higher density residential developments in a community like Hampton. Ideally, higher density housing is located in close proximity to commercial cores and higher volume roads. It is further preferred that the higher density residential development locate on the edges of single-family neighborhoods along busier street corridors. This juxtaposition of land uses allows the higher density residential development to serve as a buffer between busy roads and the lower density single-family residential neighborhoods and does not require the residents of the denser development to drive through the lower density development.

In addition to the Community Plan, the Hampton-Langley Joint Land Use Study (JLUS), adopted in October 2010 by the Hampton City Council and updated and amended in 2018, formed the basis of the Air Installation Compatible Use Zone Overlay (O-AICUZ) District to protect public health, safety and welfare and prevent encroachment that would degrade or jeopardize military operations. A Memorandum of Understanding between JBLE-Langley and the City of Hampton Virginia implemented the recommendations of the JLUS by providing a systematic procedure for responding to discretionary development applications for land lying within the City's AICUZ Overlay District. City of Hampton Resolution 18-0314 endorsed the Hampton-Langley Air Force Base JLUS Addendum: Resiliency and Adaptation, dated August 2018, as it protects the mission of JBLE-Langley, encourages compatible land use around the base, and helps to sustain economic growth within the city and region. In keeping with these agreements, staff reached out to JBLE-Langley and their staff provided the following comments on the development proposal:

- The JBLE-Langley North Flightline District Area Development Plan (ADP), currently under final draft review, includes the relocation of the 08 runway 1,100 LF to the west onto lands primarily owned by the City and/or JBLE, increasing installation operational resiliency and negating future potential adverse impacts to JBLE's mission from sea level rise and other climate change effects. Permitting the proposed development of Westview Landing could preclude the future relocation of the existing runway northward and westward, impacting the JBLE-Langley flying

mission. The proposed runway shift to the west would result in the JBLE-Langley Runway Clear Zone and APZs shifting further to the west and the current noise levels on and adjacent to the subject property would increase to the 70-75 Day Night Average Level (DNL) decibel (dB) range based on current noise levels. If the proposed development and proposed runway shift were both permitted, then the development site would then be just inside or on the outer boundary of APZ I, increasing the risk to potential occupants of the apartment community.

- The majority of the proposed development currently lies within the 65-70 dB DNL noise contour. Per the JBLE AICUZ Study, Table A-2: Recommended Land Use Compatibility for Noise Zones (Tab 2), there are no housing types recommended for Day-Night Average Sound Level (DNL) 65-69 and DNL 70-74 Noise Zones. If residential uses were approved, noise attenuation measures would have to be incorporated into the design and construction and would require further evaluation to determine compatibility."
- The proposed development would be mainly surrounded by single family and institutional districts which are separated from the existing commercial area at the Big Bethel/Hampton Roads Parkway intersection by Interstate 64. The rezoning of the site would be considered incompatible with the surrounding existing land uses. In addition, the proposed development site is immediately adjacent to the city's Langley Flight Approach District 5 (LFA-5). This district limits the concentration of people living in the area beneath the flight approach to prevent negative impacts on aircraft operations (City of Hampton Zoning Ordinance 2017). This is reflected in the City's land use regulations for LFA-5 as allowing a maximum of one residential structure per acre that may have two units if one is owner-occupied or a group home housing no more than eight residents. All other housing units including apartments, row housing, single units, semi-detached, and non-owner-occupied duplexes both side by side and one above the other are not recommended.

In summary, JBLE-Langley staff has stated the proposed development conflicts with the recommendations of JLUS and would signal a departure from established planning efforts aimed at improving the quality of life for those living near the base, as well as the safety for both Airmen and their neighbors outside the gate. It would potentially harm the base's ability to adapt and respond to potential expanded missions as well as physical impacts to the installation from sea level rise and recurring flooding. Please see the attached letter from JBLE-Langley for full details of the base's objection to the proposed development.

The applicant has proffered 13 conditions with the application. These proffers include limiting use to multifamily residences, and accessory uses, substantial conformance with the concept plan and building elevations, building materials, community amenities, landscape buffer along the western and southern boundaries, and site lighting. However, these proffers do not successfully address the City's fundamental land use policy conflicts presented by this application.

In summary, the proposed application is:

- Not consistent with the City's adopted land use policy as articulated in the Hampton Community Plan (2006 as amended);
- Not consistent with the adopted recommendations contained in the adopted Joint Land Use Study;

- An approximate 408% increase in density over what can be developed under the existing R-11 zoning which is inappropriate given the site location;
- The proposed concept plan significantly increases the amount of impervious area from the existing site development condition. From an environmental and resiliency perspective, it would not be best practice to locate a project of this intensity adjacent to a significant amount of wetlands.

As mentioned, high density residential is permitted within a MD-3 District with an approved use permit. While staff is recommending denial of the proposed applications, should the rezoning and use permit applications be approved, staff recommends five (5) conditions be attached to the use permit, addressing the proffers from RZ21-00012, issuance of permit, on-site management, and compliance with the Zoning Ordinance.

Staff recommends **DENIAL** of Rezoning Application No. 21-00012.

Staff recommends **DENIAL** of Use Permit Application No. 22-00001.