

RESOLUTION NO. 3033

A RESOLUTION of the City of Salisbury proposing the annexation to the City of Salisbury of a certain area of land contiguous to and binding upon the southerly corporate limit of the City of Salisbury to be known as the "South Division Street – S. Div. St. Condo Annexation" beginning for the same at a point on the existing corporate limit, said point lying on the easterly right of way line of South Division Street and also being the northwesterly corner of the lands of South Division Street Condominium continuing around the perimeter of the affected property to the point of beginning, containing all of Map 048 -Parcel 0217 and consisting of approximately 3.03 acres of land.

WHEREAS the City of Salisbury has received a petition to annex dated March 28, 2019, attached hereto **(Exhibit 1)**, signed by at least twenty-five percent (25%) of the persons who are resident registered voters and of the persons who are owners of at least twenty-five percent (25%) of the assessed valuation of the real property in the area sought to be annexed binding upon the southerly corporate limit of the City of Salisbury to be known as "South Division Street – S. Div. St. Condo Annexation" beginning for the same at a point on the existing corporate limit, said point lying on the easterly right of way line of South Division Street and also being the northwesterly corner of the lands of South Division Street Condominium continuing around the perimeter of the affected property to the point of beginning, containing all of Map 048 -Parcel 0217, and consisting of approximately 3.03 acres of land;; and

WHEREAS the City of Salisbury has caused to be made a certification of the signatures on said petition for annexation and has verified that the persons signing the petition represent at least twenty-five percent (25%) of the persons who are eligible voters and property owners owning twenty-five percent (25%) of the assessed valuation of real property in the area to be annexed, all as of April 12, 2019, and, as will more particularly appear by the certification of Leslie C. Sherrill, Surveyor, of the City of Salisbury, attached hereto **(Exhibit 2)**; and

WHEREAS it appears that the petition dated March 28, 2019, meets all the requirements of the law; and

WHEREAS the public hearing is scheduled for July 13, 2020 at 6:00 p.m.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SALISBURY THAT it is hereby proposed and recommended that the boundaries of the City of Salisbury be changed so as to annex and include within said City all that parcel of land together with the persons residing therein and their property, contiguous to and binding upon the southerly corporate limit, said point lying on the easterly right of way line of South Division Street and also being the northwesterly corner of the lands of South Division Street Condominium continuing around the perimeter of the affected property to the point of beginning, containing all of Map 048 -Parcel 0217, and consisting of approximately 3.03 acres of land, being more particularly described on **Exhibit A** attached hereto and made a part hereof.

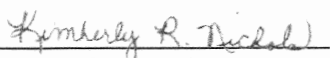
AND BE IT FURTHER RESOLVED BY THE CITY OF SALISBURY, THAT the annexation of the said area be made subject to the terms, conditions and agreements in **Exhibits A-C** attached hereto and made a part hereof.

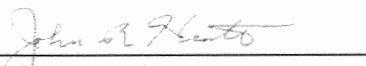
AND BE IT FURTHER RESOLVED BY THE CITY OF SALISBURY, that the Zoning Map of the City of Salisbury shall be amended to include this newly annexed property in the General Commercial district. Said property is presently classified as Light Business and Institutional under the zoning laws of Wicomico County.

AND BE IT FURTHER RESOLVED BY THE CITY OF SALISBURY, that the Council shall hold a public hearing on the annexation hereby proposed on July 13, 2020, at 6:00 p.m. in the Council Chambers at the City-County Office Building and the City Administrator shall cause a public notice of time and place of said hearing to be published not fewer than two (2) times at not less than weekly intervals, in at least one newspaper of general circulation in the City of Salisbury, which said notice shall specify a time and place at which the Council of the City of Salisbury will hold a public hearing on the Resolution, which date shall be no sooner than 15 days after the final required date of publication specified above.

AND BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF SALISBURY, THAT this resolution shall take effect upon the expiration of forty-five (45) days following its final passage, subject, however, to the right of referendum as contained in the Local Government Article of the Maryland Annotated Code.

The above Resolution was introduced, read and passed at the regular meeting of the Council of the City of Salisbury held on June 8, 2020, having been duly published as required by law in the meantime a public hearing was held on the 13th day of July, 2020, and was finally passed by the Council at its regular meeting held on the 13th day of July, 2020.


Kimberly R. Nichols,
City Clerk


John R. Heath,
Council President

APPROVED BY ME this 20 day of July, 2020.

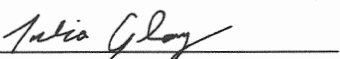

Julia Glanz, City Administrator
for and with the authority of
Jacob R. Day, Mayor

EXHIBIT 1

CITY OF SALISBURY

PETITION FOR ANNEXATION

To the Mayor and Council of the City of Salisbury:

I/We request annexation of my/our land to the City of Salisbury.

Parcel(s) # 0217

Map # 0048

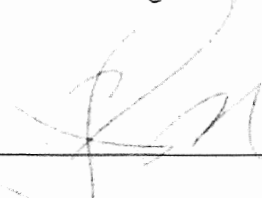
SIGNATURE (S)





Date

3/28/19



Date



Date

Date

EXHIBIT 2



CERTIFICATION

SOUTH DIVISION STREET – SOUTH DIVISION STREET CONDO ANNEXATION

This is to certify that I have verified the petitions for the annexation and that to the best of my knowledge the persons having signed the petition represent at least 25% of the registered voters residing in the area to be annexed and are the owners of at least 25% of the assessed valuation of real property located in the area to be annexed.

Leslie C. Sherrill
Surveyor

Date: 4/12/2019

South Division Street – South Division Street Condo – Certification – 4-12-19.doc

EXHIBIT A

SOUTH DIVISION STREET – S. DIV. ST. CONDO

Beginning for the same at a point at a corner of the existing Corporate Limits Line of the City of Salisbury, MD, being on the easterly right of way line of South Division Street and also being the northwesterly corner of the lands of South Division Street Condominium. X 1,201,684.02 Y 187,177.01 (1) Thence by and with the said line of South Division Street South five degrees eleven minutes thirty-three seconds West (S 5° 11' 33" W) four hundred decimal zero, six (400.06) feet to a point at the southwesterly corner of the said Condominium land. X 1,201,647.81 Y 186,778.59 (2) Thence by and with the southerly line of the said Condominium land South eighty-nine degrees forty-six minutes thirty-five seconds East (S 89° 46' 35" E) three hundred thirty-four decimal two, zero (334.20) feet to a point on the aforementioned line of the Corporate Limits of Salisbury, MD, at the southeasterly corner of the said Condominium land. X 1,201,981.83 Y 186,777.29 (3) Thence by and with the easterly line of the said Condominium land North four degrees twenty-two minutes fifty-seven seconds East (N 4° 22' 57" E) three hundred ninety-nine decimal six, one (399.61) feet to a point at the northeasterly corner of the said Condominium land. X 1,202,012.36 Y 187,175.73 (4) Thence by and with the northerly line of the said Condominium land North eighty-nine degrees forty-six minutes thirty-five seconds West (N 89° 46' 35" W) three hundred twenty-eight decimal three, five (328.35) feet to the point of beginning.

Annexation containing 3.03 acres, more or less.

1305 SOUTH DIVISION STREET ANNEXATION

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is made this 3rd day of September, 2020, by and between the *City of Salisbury, Maryland*, a municipal corporation of the State of Maryland (the "**City**"), and *Kenpo333, LLC*, a Maryland limited liability company ("**Kenpo333**"), *BDMK, LLC* ("**BDMK**") and *South Division Street Condominium Association, Inc.*, a Maryland non-stock corporation (the "**SDS Condo Assoc.**") (Kenpo333, BDMK and the SDS Condo Assoc. are hereinafter referred to collectively as the "**Petitioner**") (the City and Petitioner are hereinafter referred to collectively as the "**Parties**").

RECITALS

WHEREAS, for purposes of this Agreement, the term "Petitioner" shall be deemed to include each and every subsidiary, successor-in-interest and assign of Kenpo333 or BDMK, as the case may be, such that this Agreement, and all of the terms and conditions set forth herein, shall apply to, be binding in all respects upon and inure to the benefit of each and every subsidiary, successor-in-interest and assign of Kenpo333 or BDMK, as the case may be;

WHEREAS, Kenpo333 is the fee simple owner of all that certain real property situate and lying in the Camden Election District of Wicomico County, Maryland, more particularly known and designated as Condominium Units 2, 3, 4, and 5, and Storage Units G, F and E, as more fully described on that certain condominium plat made and prepared by Parker & Associates, Inc., entitled "Condominium Plat South Division Street Condominium", dated May 25, 2016, and record and among the Land Records of Wicomico County, State of Maryland, in Plat CAB. 16, 794 (said real property is hereinafter referred to as the "**Kenpo333 Property**");

WHEREAS, BDMK is the fee simple owner of all that certain real property situate and lying in the Camden Election District of Wicomico County, Maryland, more particularly known and designated as Condominium Units 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 and Storage Units A, B, C, and D, as more fully described on that certain condominium plat made and prepared by Parker & Associates, Inc., entitled "Condominium Plat South Division Street Condominium", dated May 25, 2016, and record and among the Land Records of Wicomico County, State of Maryland, in Plat CAB. 16, 794 (said real property is hereinafter referred to as the "**BDMK Property**");

WHEREAS, SDS Condo Assoc. is the fee simple owner of all that certain real property situate and lying in the Camden Election District of Wicomico County, Maryland, more particularly designated as the "Common area of the South Division Street Condominium", on that certain condominium plat made and prepared by Parker & Associates, Inc., entitled "Condominium Plat South Division Street Condominium", dated May 25, 2016, and record and among the Land Records of Wicomico County, State of Maryland, in Plat CAB. 16, 794 (said real property is hereinafter referred to as the "**SDS Condo Assoc. Property**") (the Kenpo333 Property, the BDMK Property and the SDS Condo Assoc. Property are hereinafter referred to collectively as the "**Annexed Property**")¹;

WHEREAS, the Kenpo333 Property, the BDMK Property and the SDS Condo Assoc. Property constitute all of the property described in the Declaration for South Division Street Condominium recorded among the Land Records of Wicomico County in Liber 4127 folio 415 ("**SDS Declaration**");

¹ The Annexed Property consists of all that certain real property identified by the Maryland State Department of Assessments and Taxation as follow: Tax Account No. 13-129740; Tax Account No. 13-129748; Tax Account No. 13-129756; Tax Account No. 13-129741; Tax Account No. 13-129749; Tax Account No. 13-129757; Tax Account No. 13-129739; Tax Account No. 13-129747; Tax Account No. 13-129755; Tax Account No. 13-129738; Tax Account No. 13-129746; Tax Account No. 13-129754; Tax Account No. 13-129743; Tax Account No. 13-129751; Tax Account No. 13-129759; Tax Account No. 13-129742; Tax Account No. 13-129750; Tax Account No. 13-129758; Tax Account No. 13-129745; Tax Account No. 13-1297453; Tax Account No. 13-129744; Tax Account No. 13-129752; Tax Account No. 13-129760; Tax Account No. 13-129735; Tax Account No. 13-129734; Tax Account No. 13-129761; Tax Account No. 13-129737; Tax Account No. 13-129736; Tax Account No. 13-129763; and, Tax Account No. 13-129762.

WHEREAS, Kenpo333 and BDMK constitute the sole Unit Owners as described in the SDS Declaration and as such, constitute 100% of the members of SDS Condo Assoc.;

WHEREAS, the Annexed Property is contiguous and adjacent to the present corporate boundaries of the City, which said Annexed Property is more particularly described and depicted by a plat entitled "Annexation Plat, of the Condominium Plat South Division Street Condominium", dated June 27, 2019 (the "Annexation Plat") (the Annexation Plat is incorporated herein and a reduced scale copy of said Annexation Plat is attached hereto as *Exhibit A*), prepared by Parker & Associates, Inc. and intended to be recorded among the Plat Records of Wicomico County, Maryland upon the City's annexation of the Annexed Property, depicting all that same real property more particularly described by metes, bounds, courses and distances in that certain legal description attached hereto and incorporated herein as *Exhibit B* (the "Annexed Property Description");

WHEREAS, to effectuate the annexation of the Annexed Property, Kenpo333 and BDMK, on behalf of themselves and on behalf of the SDS Condo Assoc., submitted to the City a Petition for Annexation requesting the City's annexation of the Annexed Property (the "Petition") (a copy of the Petition is attached hereto and incorporated herein as *Exhibit C*);

WHEREAS, as of the date and year of this Agreement, Petitioners constitute the owners of one hundred percent (100%) of the assessed value of the Annexed Property, being all that real property intended to be annexed by the City in accordance with the terms and conditions of this Agreement;

WHEREAS, the Annexed Property is comprised of all of that property located at 1305 South Division Street and more particularly described on a Plat entitled South Division Street Condominium and recorded among the Plat Records of Wicomico County, Maryland in Plat Book 16 folio 794;

WHEREAS, the 2010 City of Salisbury Comprehensive Plan (the "Comprehensive Plan") sets forth the land use policies for all lands located within the City's municipal limits and includes a Municipal Growth Element addressing growth areas outside the municipal limits of the City;

WHEREAS, the Municipal Growth Element section of the City's Comprehensive Plan provides in pertinent part: "the City has defined a Municipal Growth [A]rea that is sufficient to accommodate residential, commercial, and industrial land uses as illustrated on Map 11-3" attached to and incorporated within the Comprehensive Plan, and the land uses shown within the City's Municipal Growth Area "reflect[] a policy decision by the City, and by Wicomico County, that the City will remain the center for employment and commercial development in Wicomico County";

WHEREAS, the Annexed Property is included within the City's Municipal Growth Area, which designates the Annexed Property as "Commercial";

WHEREAS, upon the submission of the Petition on behalf of the Petitioners, the City, through its Department of Infrastructure and Development (the "I&D Department"), referred the Petition to the Salisbury-Wicomico County Planning Commission (the "Planning Commission") for the Planning Commission's consideration and approval of the proposed zoning for the Annexed Property upon its annexation by the City;

WHEREAS, at its May 16, 2019 meeting, the Planning Commission unanimously approved zoning the Annexed Property as "General Commercial" upon its annexation by the City, on the basis that zoning the Annexed Property as "General Commercial" is consistent with Petitioners' existing use of the Annexed Property, as well as the land use policies set forth in the City's Comprehensive Plan;

WHEREAS, without annexation, the Annexed Property is ineligible to receive City services, including municipal water and sanitary sewer utility service;

WHEREAS, the City agrees to annex the Annexed Property, provided each of Petitioners agree to adhere to all laws, ordinances and regulations of the City and all of the terms and conditions of this Agreement, including, expressly, such terms and conditions governing each of Kenpo333's, BDMK's and the SDS Condo Assoc.'s use of their respective property, or any portion thereof, constituting the Annexed Property or any portion thereof;

WHEREAS, the City has held all public hearings regarding the proposed annexation of the Annexed Property as required by applicable state and local law and as otherwise deemed appropriate by the City; and,

WHEREAS, in accordance with the Petition and pursuant to the authority granted unto the City by the provisions of MD Code, Local Government, § 4-101, *et seq.*, the Parties hereby enter into this Agreement for the purpose of establishing the terms and conditions governing the City's annexation of the Annexed Property and all annexation proceedings relating thereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties expressly acknowledge, the Parties agree as follows:

1. **Effective Date.** The effective date of this Agreement shall be the date upon which the Resolution authorizing the City's annexation of the Annexed Property, passed by majority vote of the City Council of the City of Salisbury (the "City Council"), becomes effective (the Resolution passed by the City Council authorizing the City's annexation of the Annexed Property is hereinafter referred to as the "Annexation Resolution"). The City's annexation of the Annexed Property shall not become effective until all appeal and referendum periods for the Annexation Resolution have expired, and, if applicable, all appeals and referenda have been resolved in favor of the City's annexation of the Annexed Property.

2. **Warranties & Representations of the City.**

(a) When reviewing any development plan submitted for or relating to the Annexed Property, or any portion thereof, the Planning Commission, and its associated staff, and the City, and all of its officials, employees, representatives, agents and consultants, shall be guided by all terms of this Agreement, to ensure all matters addressed by this Agreement are implemented in accordance with the terms and conditions set forth herein. Any and all approvals relating to the development and/or use of the Annexed Property granted by any commission, board, body or agent of the City or any other government agency having jurisdiction over the Annexed Property and/or the development thereof, shall, to the fullest extent possible, comply with all terms and conditions of this Agreement.

(b) The Parties expressly acknowledge the City's annexation of the Annexed Property is not intended, nor shall it be construed, in any way whatsoever, to prohibit the City from enacting or otherwise adopting any future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, the City may deem necessary or appropriate to protect the health, safety and welfare of City residents or the public at large, or from applying the provisions of any such future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, to any matter relating to any development or use of any portion of the Annexed Property; provided, however, any such application by the City shall not result in the divestment or termination of any prior approval(s) for any development and/or use of any portion of the Annexed Property or interfere with any vested rights Kenpo333, BDMK and/or the SDS Condo Assoc. has, respectively, in and to any portion of the Annexed Property to an extent greater than the impact such future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, have upon other similarly-situated properties located within the municipal limits of the City.

3. **Warranties & Representations of Petitioners.**

(a) The execution of this Agreement shall constitute the express written consent of each of Petitioners to the City's annexation of Annexed Property as required by MD Code, Local Government, § 4-403(b)(1)-(2).

(b) Petitioners, jointly and severally, represent and warrant to the City as follows: (i) each of Petitioners has the full power and authority to execute this Agreement; (ii) Kenpo333 is the sole, fee simple owner of the Kenpo333 Property, BDMK is the sole, fee simple owner of the BDMK Property, and the SDS Condo Assoc. is the sole, fee simple owner of the SDS Condo Assoc. Property, and, accordingly, Petitioners are collectively the fee simple owners of all that certain real property constituting one hundred percent (100%) of the assessed value of the Annexed Property, as of the date and year first above written; and, (iii) to the best of each of Petitioners' knowledge and belief there is no action pending against or otherwise involving any of Petitioners and/or any portion of the Annexed Property which could affect, in any way whatsoever, any of Petitioners' right and authority to execute this Agreement.

(c) The Parties expressly acknowledge and agree each of Petitioners will receive a benefit from the City's annexation of the Annexed Property; accordingly, by their execution of this Agreement, each of Petitioners expressly waive and relinquish any and all rights or claims any of Petitioners has, or may have, to withdraw its respective consent to the City's annexation of the Annexed Property or any portion thereof; and, furthermore, none of Petitioners nor any of their respective agents or representatives shall petition the Annexation Resolution to referendum. The Parties expressly agree the waiver and relinquishment made by Petitioners under this Section 3(b) represents material consideration received by the City for its annexation of the Annexed Property, without which the City would not enter into this Agreement.

4. Application of City Code and Charter: City Taxes. From and after the effective date of the Annexation Resolution, all provisions of the City of Salisbury Charter and the City Code shall have full force and effect as to all matters applicable or otherwise relating to the Annexed Property including the development and/or use of any portion thereof by any of Petitioners, except as otherwise expressly set forth herein. The Parties expressly acknowledge and agree that, upon the City's annexation of the Annexed Property, the Annexed Property shall be subject to any and all applicable taxes, fees and/or other charges levied, assessed or imposed by the City from time to time.

5. Municipal Zoning. Upon the effective date of the Annexation Resolution, the Annexed Property shall be zoned "General Commercial".

6. Municipal Services.

(a) Subject to the obligations of Kenpo333 and BDMK under Sections 9(c)(i)-(iii), the City agrees to provide all necessary municipal services required for the development and/or use of the Annexed Property, including, but not limited to, adequate water and sewer services, fire and police protection, and other municipal services generally available to residents of the City.

(b) With respect to the allocation of public water and/or wastewater capacity and/or services for the Annexed Property or any portion thereof, any such allocation shall be determined by the City pursuant to the City's allocation plans in effect at the time a request for public water and/or wastewater capacity and/or services is submitted by Kenpo333, BDMK and/or the SDS Condo Assoc., respectively, in accordance with the City's applicable policies and procedures. Notwithstanding any term to the contrary set forth herein, Petitioners, jointly and severally, expressly acknowledge and agree that no public water or wastewater capacity for any existing use(s) or any future development of any portion of the Annexed Property shall be allocated or otherwise reserved by the City unless and until Kenpo333, BDMK and/or the SDS Condo Assoc., as applicable, has made payment to the City for all capacity fee(s) charged for any such allocation of water and/or wastewater capacity and/or services provided to the Annexed Property, or such portion thereof, in accordance with the applicable policies of the City existing at such time. None of Petitioners shall be obligated to pay any capacity fee(s) or to connect any portion of the Annexed Property to the City's water and/or wastewater systems until the earlier occurrence of: (i) the election by any of Kenpo333, BDMK and/or the SDS Condo Assoc. to connect such party's respective portion of the Annexed Property to the City's water and/or wastewater systems; or (ii) the issuance, by the Wicomico County Health Department or the Maryland

Department of the Environment (as the case may be), of a final non-appealable order requiring the connection of any portion of the Annexed Property to the City's water and/or wastewater systems.

7. **Standards & Criteria.** Should any environmental, engineering or other similar standard or criteria expressly provided in this Agreement be exceeded by any local, state or federal law, regulation, rule, standard or authorized criteria enacted, promulgated, ordered or adopted following the date and year of this Agreement, the newer stricter law, regulation, rule, standard or authorized criteria shall govern the rights and obligations of the Parties hereunder.

8. **City Boundary Markers.**

(a) At their sole cost and expense, Kenpo333 and BDMK, on behalf of Petitioners, shall install City Boundary Markers at the boundary lines of the Annexed Property to identify the new, enlarged municipal boundaries of the City resulting from the annexation of the Annexed Property. Within sixty (60) days from the date the forty-five (45) day referendum period for the Annexation Resolution expires, Kenpo333 and/or BDMK, on behalf of Petitioners, shall provide the City with receipt(s), or other written documentation acceptable to the City, evidencing the installation of the aforesaid City Boundary Markers.

(b) The terms contained in Section 8(a) are the joint and several obligations of Kenpo333 and BDMK. In the event Kenpo333 and BDMK fail to perform their obligations under Section 8(a), then, after the expiration of the sixty (60) day period provided in Section 8(a), Kenpo333 and BDMK shall make payment to the City in the amount of Ten Thousand Dollars and 00/100 (\$10,000.00) or in the amount of the total costs incurred by the City to perform the obligations of Kenpo333 and BDMK under Section 8(a), whichever amount is greater.

9. **Development Considerations.**

(a) **Fees & Costs.** Kenpo333 and BDMK each, jointly and severally, acknowledge and agree to pay the City for any and all fees, costs and/or expenses, including, but not limited to, any legal fees, planning fees and/or consulting fees, incurred by the City in connection with the preparation of this Agreement, the preparation of the Annexation Resolution, the preparation of any other document(s) pertaining to the annexation of the Annexed Property, the publication of any public notice(s) for or in connection with the City's annexation of the Annexed Property, and/or any other matter relating to or arising from the City's annexation of the Annexed Property, as determined by the City in its sole discretion. The City shall invoice Kenpo333 and BDMK, jointly, for all costs to be paid by Kenpo333 and BDMK under this Section 9(a); and, Kenpo333 and BDMK shall be, jointly and severally, responsible for making payment of all amounts due and owing the City under this Section 9(a) within fifteen (15) days from Kenpo333's or BDMK's receipt of any invoice from the City.

(b) **Development of the Annexed Property.** Each of Petitioners shall develop and use their respective portion of the Annexed Property in a manner that complies with all laws and regulations governing the development of property located within the City's Commercial zoning district.

(c) **Contribution to Area Improvement; Road Improvements; Stormwater Management; Sewer Service.** Kenpo333 and BDMK, jointly and severally, agree to install sidewalks along the full public road frontage of the Annexed Property and to install pedestrian walkways along and within the Annexed Property in such a manner and to such an extent as determined by the City's I&D Department.

(d) Contribution to the Re-Investment in Existing Neighborhoods.

- (i)** Kenpo333 and BDMK, jointly and severally, expressly acknowledge and agree as follows: upon the expiration of three hundred sixty-five (365) days from the effective date of the Annexation Resolution, shall pay a non-refundable development assessment to the City in the amount of Twenty-Seven Thousand Three Hundred Four Dollars and 25/100 (\$27,304.25) (the "Development Assessment"). It is expressly acknowledged by the Parties that the payment of the Development Assessment as aforesaid represents a material part of the consideration to be received by the City hereunder, without which the City would not enter into this Agreement.
- (ii)** In the event the Development Assessment is not paid to the City in accordance with the terms of Section 9(d)(i), the Development Assessment shall bear interest from the due date thereof to the date of payment at the rate of ten percent (10%) per annum. Notwithstanding any term to the contrary set forth herein, the Development Assessment, including all late charges incurred thereon (if any), shall be paid to the City prior to the issuance of any permit for or in connection with any use or development of the Annexed Property following the expiration of the time period set forth in Section 9(d)(i).
- (iii)** The Development Assessment is intended for use by the City, in its sole discretion, for purposes of beautification, restoration and revitalization improvements to existing neighborhoods in the City, or for any other purpose deemed necessary and appropriate by the City. The Development Assessment is in addition to and independent of: (A) any water and/or wastewater comprehensive connection charge(s), capacity fee(s) or any other assessment(s) charged, levied or otherwise imposed by the City in connection with the development of the Annexed Property; (B) any impact fee(s) levied or imposed by Wicomico County or the City; (C) and/or, any other charge(s) or fee(s) the City may assess against Petitioners and/or the Annexed Property in accordance with this Agreement and/or any applicable law(s) or regulation(s) governing the development or use of the Annexed Property or any portion thereof.

(e) Public Utility Improvements & Extensions; Wastewater Service.

- (i)** The Parties expressly acknowledge and agree the extension of public water and wastewater utilities will be necessary to meet the requirements for utility service provided to the Annexed Property. Accordingly, at their sole cost and expense, Kenpo333 and BDMK shall design and construct, or cause to be designed and constructed, such public water and wastewater utility extension(s), including, but not limited to, water main(s), sewer main(s), trunk line(s), fire hydrant(s) and any appurtenant facilities, necessary to serve the Annexed Property, including any future development thereof, subject to all applicable City standards and specifications. Each of Kenpo333 and BDMK, jointly and severally, further acknowledge and agree the water and wastewater sewer utility facilities designed and constructed in accordance with this Section 9(e)(i) shall be oversized in the manner and to the extent determined by the Director of the City's I&D Department.
- (ii)** The design and construction of the facilities required for the extension and service of public water and wastewater utilities to the Annexed Property shall be governed by the terms and conditions of a Public Works Agreement by and between Kenpo333, BDMK, the SDS Condo Assoc. and the City (the "PWA"), which shall be executed by the Parties as soon as practicable after the Annexation Resolution becomes effective. Notwithstanding any term to the contrary set forth herein, no

permit may be issued to Petitioners, or any party acting for or on behalf of any of Petitioners, for any work associated with the development of the Annexed Property until the PWA is executed by the Parties.

10. RECORD PLAT. Petitioners shall provide the City with a copy of the Annexation Plat recorded with the Land Records of Wicomico County, Maryland.

11. NOTICES. All notices and other communication in connection with this Agreement shall be made in writing and shall be deemed delivered to the addressee thereof as follows: (a) when delivered in person on a business day at the address set forth below; (b) on the third (3rd) business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid certified or registered mail, return receipt requested, at the address set forth below; or, (c) when delivered by a nationally-recognized delivery service company at the address set forth below, with written proof of delivery.

All notices and other communications to Kenpo333 shall be addressed to, and delivered at, the following addresses:

Kenpo333, LLC
c/o Richard S. Mitchell
305 Union Avenue
Salisbury, Maryland 21801

All notices and other communications to BDMK shall be addressed to, and delivered at, the following addresses:

BDMK, LLC
c/o Bret C. Davis
100 North Division Street, Apt. 301
Salisbury, Maryland 21801

All notices and other communications to the SDS Condo Assoc. shall be addressed to, and delivered at, the following addresses:

South Division Street Condominium Association
c/o Bret C. Davis
100 North Division Street, Apt. 301
Salisbury, Maryland 21801

All notices and other communications to the City shall be addressed to, and delivered at, the following addresses:

City of Salisbury
c/o Amanda H. Pollack, P.E., Director
Department of Infrastructure and Development
125 N. Division Street, Room 202
Salisbury, Maryland 21801

With a copy to:
Michael P. Sullivan, Esquire
Cockey, Brennan & Maloney, P.C.
313 Lemmon Hill Lane
Salisbury, Maryland 21801

With a copy to:
S. Mark Tilghman, Esquire
Seidel, Baker & Tilghman, P.A.
110 N. Division Street
Salisbury, Maryland 21801
City Solicitor

12. **Future Uses of the Annexed Property.** Petitioners, jointly and severally, expressly acknowledge and agree that, upon the effective date of the Annexation Resolution, any development or use of Annexed Property or any portion thereof must comply with all applicable laws, rules and regulations of the City, as may be amended from time to time, including, but not limited to, all applicable zoning laws of the City and all applicable permitting and/or approval procedures established by the City governing the development and/or use of property located within the City's "General Commercial" zoning district. Any development and/or use of the Annexed Property shall be subject to, and must comply with, all applicable capacity fees and/or impact fees as established by the City and/or Wicomico County existing on the effective date of the Annexation Resolution, subject to any amendments thereto as may be adopted or promulgated, from time to time, by the City and/or Wicomico County, as the case may be. The Parties expressly acknowledge and agree that neither this Agreement nor any of the terms set forth herein shall, in any way whatsoever, constitute or otherwise be construed as an approval by the City of any specific development or use at, upon or within any portion of the Annexed Property subsequent to the date and year first above written. The Parties further expressly acknowledge and agree that neither this Agreement nor any of its terms shall constitute or otherwise be construed as a waiver by the City of: any tax(es) levied or assessed by the City upon the Annexed Property; or, any fee(s), assessment(s) or charge(s) that may be imposed by the City, from time to time, arising from or in connection with any development or use of any portion of the Annexed Property.

13. **Miscellaneous Provisions.**

(a) **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles. The Parties, acting for themselves and for their respective successors and assigns, without regard to domicile, citizenship or residence, hereby expressly and irrevocably consent to and subject themselves to the jurisdiction of the Maryland courts and to venue in Wicomico County, Maryland with respect to any matter arising from or in connection with this Agreement.

(b) **Scope of Agreement.** This Agreement is not intended to limit the exercise of any police power(s) of the City, nor is this Agreement intended to limit the operations of the City government or guarantee the outcome of any administrative process. Unless otherwise expressly set forth herein, this Agreement shall be subject to all properly enacted laws and properly adopted governmental regulations, now or hereafter existing and applicable. This Agreement shall not be rendered invalid by reason of the enactment or amendment of any law or the adoption or amendment of any regulation, which is: (i) enacted or adopted by the City in the exercise of a governmental power for a valid governmental purpose; (ii) enacted or adopted by the City as a result of a state or federal mandate; or, (iii) applicable to the Annexed Property and to similarly situated property located outside of the City in Wicomico County.

(c) **Entire Agreement.** This Agreement and all exhibits attached hereto constitutes the entire agreement and understanding of the Parties with respect to the transactions contemplated herein, and all prior negotiations, writings and understandings of the Parties relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement.

(d) **Waiver.** None of the terms or conditions of this Agreement may be waived, except if set forth in a writing signed by the party entitled to the benefit of the term(s) or condition(s) so waived; and, such waiver shall be effective only in the specific instance and for the specific purpose for which the waiver is given.

(e) **Development of Annexed Property as a Private Undertaking.** The Parties expressly acknowledge and agree: (i) any development or use of the Annexed Property, or any portion thereof, is a private undertaking by the respective Petitioner; (ii) neither the City nor any of Petitioners is acting as the agent of any other party hereto in any respect hereunder; and, (iii) that each party hereto is an independent contracting entity with respect to the provisions of this Agreement. No partnership, joint venture or other association between the Parties, of any kind whatsoever, is formed by the terms of this Agreement.

(f) **Modification.** Neither this Agreement nor any term contained herein may be waived, modified, amended, discharged or terminated except in a writing signed by the Parties.

(g) **Binding Effect.** The terms of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any successor municipal authority of the City and any successor owner(s) of record of any portion of the Annexed Property.

(h) **Assignment of Agreement.** The Parties expressly acknowledge and agree this Agreement shall be assignable, in whole or in part, by Kenpo333 and/or BDMK to any purchaser of the Kenpo333 Property and/or the BDMK Property or any portion thereof, respectively, without the consent of the City or any of its elected officials, employees or agents; provided, however, any sale, transfer, assignment, gift or conveyance of the Annexed Property, or any portion thereof, shall be subject to the terms of this Agreement. Notwithstanding any term to the contrary set forth in this Section 13(h), Petitioners shall not transfer, or pledge as security for any debt or obligation, any of their respective interest in or to any portion of the Annexed Property without first obtaining the acknowledgment of the transferee or pledgee to be bound by all of the terms and conditions contained in this Agreement, as if such transferee or pledgee was a party to this Agreement. Kenpo333 and/or BDMK, as the case may be, shall provide the City with a copy of all documents, including all exhibits attached thereto (if any), evidencing any transfer or assignment by Kenpo333 and/or BDMK of any of their respective interests in and to the Annexed Property or any portion thereof.

(i) **Express Condition.** The respective obligations of Petitioners, as set forth herein, shall be contingent upon the annexation of the Annexed Property becoming effective (as set forth in Section 1 hereof) and shall not constitute the obligations of any of Petitioners independent of their respective ownership of any portion of the Annexed Property. Notwithstanding any term to the contrary set forth herein, Kenpo333 and BDMK, jointly and severally, expressly acknowledge and agree their obligations under Section 9(a) are not contingent or otherwise conditioned upon the City's annexation of the Annexed Property, and such obligations shall be binding upon each of Kenpo333 and BDMK, jointly and severally, and shall be enforceable by the City against each of Kenpo333 and/or BDMK, and/or any of their respective successor(s), representative(s), transferee(s) and/or assign(s), to the fullest extent permitted by Maryland law.

(j) **No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and/or assigns.

(k) **Recording of Agreement.** This Agreement, including all exhibits attached hereto (each of which is incorporated in this Agreement by this reference), shall be recorded among the Land Records of Wicomico County, the costs of which shall be the joint and several obligation of Kenpo333 and BDMK. This Agreement and all terms and conditions contained herein shall run with the Annexed Property, and all portions thereof (regardless of ownership), and shall be binding upon and inure to the benefit of the Parties and each of their respective heirs, personal representatives, successors, transferees and/or assigns.

(l) **No Reliance.** Each of the Parties, for itself, expressly acknowledges and agrees that, in entering into this Agreement, such party has not been induced by or relied upon any representation(s) or statement(s), whether express or implied, written or unwritten, made by any agent, representative or employee of the other party to this Agreement, which is not expressly set forth herein.

(m) **Further Assurances.** The Parties covenant and agree to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to give full effect to this Agreement.

(n) **Severability.** In the event any term, provision, covenant, agreement or portion of this Agreement, or his application to any person, entity or property, is adjudged invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application thereof to any person, entity or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

(o) **Waiver of Jury Trial.** The Parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counter-claim brought by a party hereto against the other party on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties to one another, and/or any claim, injury or damage arising from or consequent upon this Agreement.

(p) **Remedies.** In addition to each and every remedy now or hereafter existing at law or in equity, the Parties expressly agree that, provided the Annexation Resolution becomes effective, each party shall have the right to enforce this Agreement by an action for specific performance against the other.

(q) **Survival.** The terms and conditions of this Agreement shall survive the effective date of the Annexation Resolution and shall not be merged or expunged by the City's annexation of the Annexed Property or any portion thereof.

(r) **Construction.** This Agreement and all of the terms and conditions set forth herein shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's agent or attorney drafted all or any part of this Agreement. Section headings are for convenience of reference only and shall not limit or otherwise affect any of the provisions of this Agreement. As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural.

(s) **Time.** Time is of the essence with respect to this Agreement and each and every provision hereof.

(t) **Recitals.** The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON THE PAGE THAT FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Annexation Agreement as of the day and year first above written.

ATTEST/WITNESS:

"Petitioners":

Kenpo333, LLC

Melody Mitchell

By: [Signature] (Seal)
R.S. Mitchell, Authorized Representative

BDMK, LLC

Shel Hays

By: [Signature] (Seal)
Bret C. Davis, Authorized Representative

South Division Street Condominium Association, Inc.

Shel Hays

By: [Signature] (Seal)
Bret C. Davis, President

THE "CITY":

City of Salisbury, Maryland

Julia Glanz

By: [Signature] (Seal)
Julia Glanz, City Administrator
for and with the authority of Jacob R. Day, Mayor

[Signature Page to Annexation Agreement by and between Kenpo333, LLC, BDMK LLC,
South Division Street Condominium Association, Inc. and the City of Salisbury, Maryland]

MEMO

To: Amanda Pollack, Director Infrastructure & Development
From: William T Holland
Date: 6/2/2020
Re: South Division Street – S. Div. St. Condo Annexation

Attached is the annexation package for the 1305 S Division St. annexation, including Resolutions 3033 and 3034. Please have this scheduled for the June 8th City Council Meeting to introduction the Resolutions and set the public hearing date.

KENPO333, LLC

KENPO333, LLC
305A Union Avenue
Salisbury, MD 21801

March 25, 2019
William Holland
125 North Division Street
Salisbury, MD 21801

Dear Mr. Holland,

As the owner of Wicomico County Tax Map 0048, Grid 0008, Parcel 217, which property on the Southeastern quadrant of the Business 13/ South Division Street, we are providing this letter indicating our intent to move forward with the annexation of the aforementioned property due to the need of municipal water and sewer. Currently, the property is served by a septic system which has outlived its useful life and has been determined by the Wicomico Health Department public water and sewer is needed at the site.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Mitchell', with a stylized flourish at the end.

Richard Mitchell
Owner

1305 S. Division Street
Salisbury, MD 21801
Phone: 410-844-4160

BDMK LLC

February 20, 2019

William Holland, Building Official

City of Salisbury

125 North Division Street

Salisbury, Maryland 21801

As the owner of Wicomico County Tax Map 0048, Grid 0008, Parcel 0217, which property is located on the southeast quadrant of Business 13/South Division Street, we are providing this letter indicating our intent to move forward with the annexation of the aforementioned property due to the need of municipal water and sewer. Currently, the property is served by a septic system which has outlived its useful life and has been determined by Wicomico Health Department that public water and sewer is needed at the site.

Sincerely,

A handwritten signature in black ink, appearing to read "Bret Davis", with a long horizontal stroke extending to the right.

Bret Davis

Owner

CITY OF SALISBURY

PETITION FOR ANNEXATION

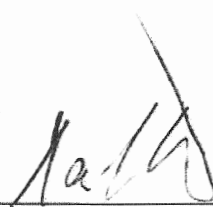
To the Mayor and Council of the City of Salisbury:

I/We request annexation of my/our land to the City of Salisbury.

Parcel(s) # 0217

Map # 0048

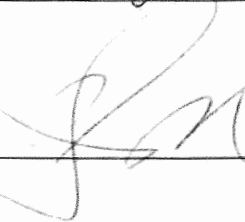
SIGNATURE (S)



Date

3/28/19

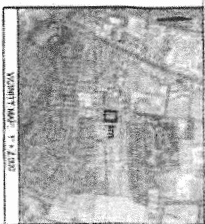
Date

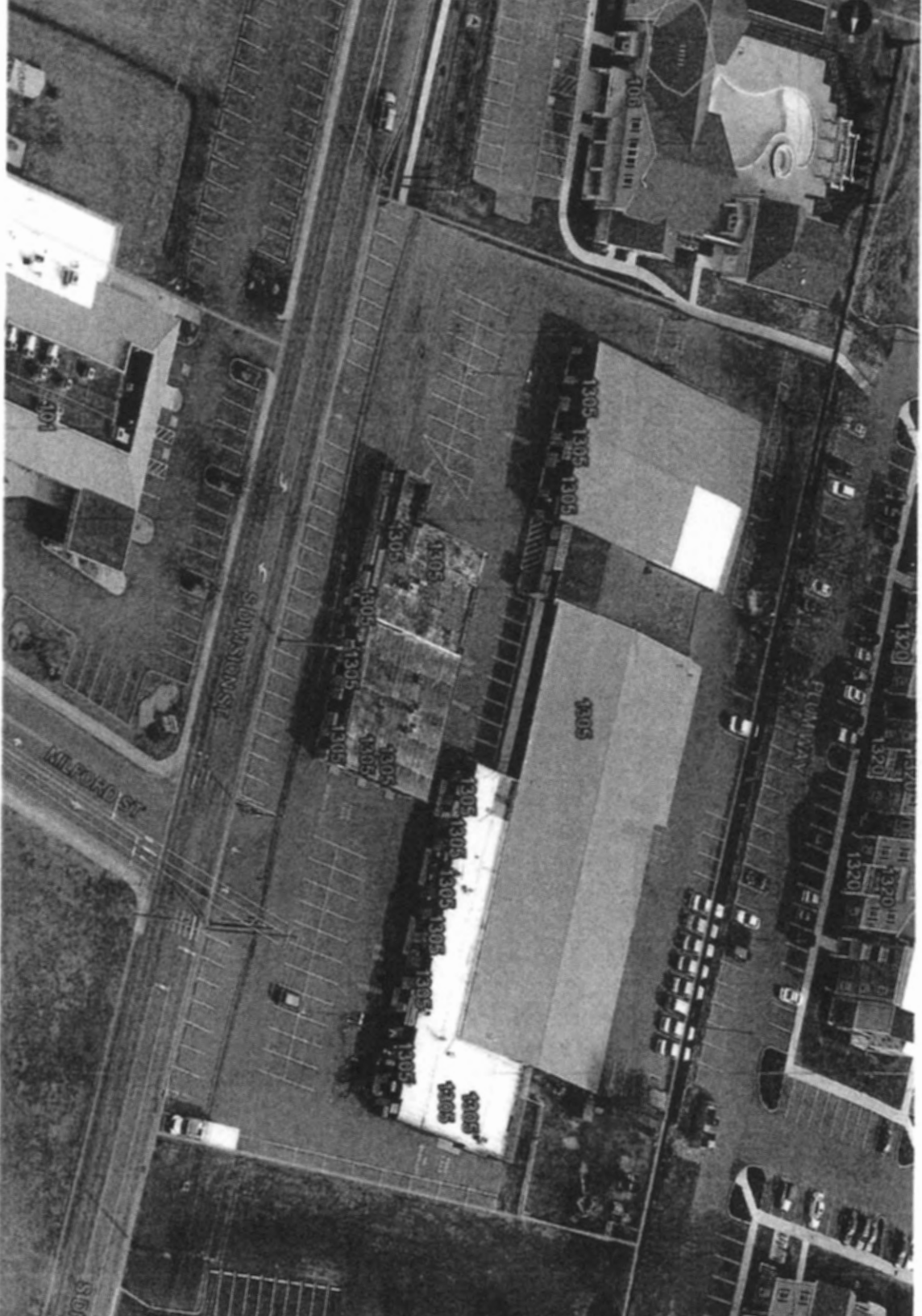


Date

Thelma X Mitchell

Date







September 30, 2019

1305 S. Division Street
Salisbury, Maryland

RE: Annexation Zoning-1305 S. Division Street
Project #19-022
Map 048-Parcel 0217
City of Salisbury, Wicomico County, Maryland

Dear Mr. Davis,

The Salisbury-Wicomico Planning Commission at its May 16, 2019 meeting forwarded a **FAVORABLE** recommendation to the Mayor and City Council for this property to be zoned **General Commercial** upon annexation. The Commission also found that the proposed zoning is consistent with the Wicomico County Zoning and the Salisbury Comprehensive Plan.

If you have any questions, please don't hesitate to contact me.

Sincerely,

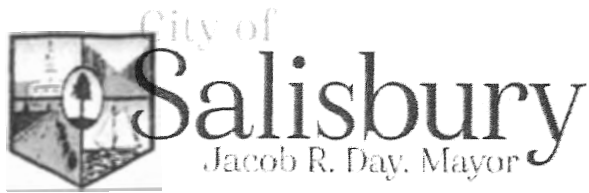
Henry Eure
Project Manager
Department of Infrastructure & Development
City of Salisbury
125 North Division St., Room 202
Salisbury, MD 21801

410-548-3130



www.salisbury.md

Department of Infrastructure & Development
125 N. Division St., Room 202 Salisbury, MD 21801
410-548-3130 (Fax) 410-548-3107
www.salisbury.md



**Infrastructure and Development
Staff Report
Planning and Zoning Commission
Meeting of May 16, 2019**

I. BACKGROUND INFORMATION:

Project Name: 1305 S. Division Street

Applicant/Owner (s): KENPO333, LLC-Mr. Richard Mitchell
BDMK, LLC-Mr. Bret Davis

Infrastructure and Development Project No.: 19-022

Nature of Request: Zoning Recommendation for Annexation Request-3.03 Acres

Location of Property: Easterly quadrant of South Division Street and its northerly side and rear property line is contiguous to the Orchards student housing development.
Tax Map: 048 Parcel: 0217

A. Introduction.

The City Administration has referred KENPO333, LLC-Mr. Richard Mitchell and BDMK, LLC-Mr. Bret Davis, the owners of 1305 S. Division St, request for the annexation located on the south-east side of Salisbury to the Planning Commission for review and recommendation of an appropriate zoning designation. The property is located on the Easterly quadrant of South Division Street and its northerly side and rear property line is contiguous to the Orchards student housing development and consists of 2.68 acres. (See Attachments #1 and 2.)

Under the procedures established by the Mayor and City Council in 1987, the zoning classification of the area will be included in the resolution that annexes the property to the City. Prior to this policy, annexations were conducted by resolution and the zoning category established by a separate ordinance on a separate time schedule. This policy now puts the zoning classification and annexation on the same schedule.



B. Area Description.

This annexation area consists of two buildings on one parcel 3.03 acres in size and that is an occupied mixed retail development

ZONING ANALYSIS:

A. Existing Zoning

The annexation area zoned LB-1 Light Business and Institutional. (See Attachment #3.)

B. Proposed Zoning:

The City of Salisbury Planning staff recommends that the property be zoned Commercial, which is consistent with the zoning and land use recommended in the Salisbury Comprehensive Plan adopted in 2010. (See Attachment #4)

C. County Plan.

Wicomico County's Comprehensive Plan was adopted on February 3, 1998. This site is located within the area designated as "Commercial". (See Attachment #5)

D. Zoning for Annexed Areas.

1. Introduction.

Current City policy requires that all areas to be annexed shall be submitted to the Salisbury-Wicomico Planning Commission for review and recommendation of an appropriate zoning district. The Zoning Code does not establish specific procedures for zoning lands to be annexed to the City of Salisbury. The classification of future City areas, therefore, is conducted consistent with local adopted plan recommendations and Maryland Annexation Law.

2. Adopted Plans.



The Planning Commission is a jointly established agency for both the City of Salisbury and Wicomico County. One of its basic charges is to prepare and recommend various plans guiding the long-range development of both jurisdictions.

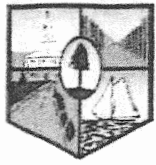
The information below summarizes the legal status of the plans currently in effect for Wicomico County and the City of Salisbury.

- a. The Salisbury Comprehensive Plan - The Salisbury City Council adopted the current Comprehensive Plan on July 12, 2010. That document includes land use policies for all lands within the Corporate Limits as well as a Municipal Growth Element addressing growth areas outside the Corporate Limits. The Land Use Map of the City Plan designates this area as a "Commercial".
- b. The Wicomico County Comprehensive Plan - The Wicomico County Council adopted its Plan in 2017. The Land Use Map of the County Comprehensive Plan designates this area as "Commercial."

3. Maryland Law.

House Bill 1141 made two changes to Annexation Procedures that became effective October 1, 2006. They are:

1. **The Five-Year Rule.** First, the rule is applied solely on zoning. In the past, the five-year rule could be applied whenever a proposed new zoning classification was substantially different from the use envisioned "in the current and duly adopted master plan." The reference to the master plan is now gone and the issue becomes the degree of change from the current county zoning classification to the proposed municipal classification following the annexation. When the zoning change is from one residential zone to another, "substantially different" is now defined as a density change. The five-year rule will not kick in for a density change unless the proposed zoning is more dense by 50 percent. For example, if the current



City of
Salisbury
Jacob R. Day, Mayor

zoning permits 1 unit per acre, the new zoning can be subject to the five-year rule if it permits anything more than 1.5 units per acre. As before, a municipality may obtain a waiver from the county to avoid the five-year wait until the new zoning classification applies.

2. **Annexation Plans Required.** An annexation plan is required that replaces the "outline" for the extension of services and public facilities prior to the public hearing for an annexation proposal. This section contains no additional language for the content of the annexation plan to be adopted, but does require it to be consistent with the municipal growth element for any annexations that begin after October 1, 2009 (unless extended for up to two six-month periods). The Plan must be provided to the county and the State (the Maryland Department of Planning) at least 30 days prior to the hearing.

III. **DEVELOPMENT SCENARIO.**

- A. These are two existing occupied structures with failing septic systems.

Memorandum

To: Amanda Pollack, Director, City of Salisbury Department of Infrastructure & Development

From: Michael P. Sullivan, Esq.

Date: 5/19/2020

Re: *Fiscal Impact* – Annexation of 1305 S. Division Street, Salisbury, MD 21804

Petition Requesting the City's Annexation of the Annexed Property:

On behalf of all owners of the Annexed Property, BDMK, LLC, a Maryland limited liability company ("BDMK") filed a Petition for Annexation (the "Petition") with the City of Salisbury (the "City"), requesting the City annex the following parcel of land: Map 0048, Grid 0008, Parcel 0217, having a premises address of 1305 S. Division Street (the "Annexed Property").¹

If approved by the City Council, the City's annexation of the Annexed Property will add 3.03+/- acres of land to the municipal boundaries of the City, all of which will be zoned as "General Commercial" and subject to the standards set forth in Section 17.36 *et seq.* of the City of Salisbury City Code (the "City Code"). The City's annexation of the Annexed Property is estimated to have an immediate, annual net-positive fiscal impact on the City in an amount not less than \$4,500. This Memorandum is intended to summarize estimated costs the City will incur, and estimated revenues the City will generate, if the Annexed Property is annexed by the City as requested by the Petition.

Costs Incurred by the City from the Annexation of the Annexed Property:

Cost projections are based on a snapshot marginal cost approach. The current level of service (derived from the approved FY2020 Budget) is used to project new costs, using demand unit multipliers, which reflect how responsive a cost is to demand – i.e. how much the costs incurred by the City for providing a service are likely to vary with each additional household or job. With respect to the City's annexation of the Annexed Property, cost projections are limited solely to jobs added by the subject annexation, because the Annexed Property is fully

¹ The Annexed Property consists of real property owned by BDMK, Kenpo333, a Maryland limited liability company, and South Division Street Condominium Association, Inc., a Maryland non-stock corporation.

Furthermore, the Annexed Property consists of all that certain real property identified by the Maryland State Department of Assessments and Taxation as follow: Tax Account No. 13-129740; Tax Account No. 13-129748; Tax Account No. 13-129756; Tax Account No. 13-129741; Tax Account No. 13-129749; Tax Account No. 13-129757; Tax Account No. 13-129739; Tax Account No. 13-129747; Tax Account No. 13-129755; Tax Account No. 13-129738; Tax Account No. 13-129746; Tax Account No. 13-129754; Tax Account No. 13-129743; Tax Account No. 13-129751; Tax Account No. 13-129759; Tax Account No. 13-129742; Tax Account No. 13-129750; Tax Account No. 13-129758; Tax Account No. 13-129745; Tax Account No. 13-1297453; Tax Account No. 13-129744; Tax Account No. 13-129752; Tax Account No. 13-129760; Tax Account No. 13-129735; Tax Account No. 13-129734; Tax Account No. 13-129761; Tax Account No. 13-129737; Tax Account No. 13-129736; Tax Account No. 13-129763; and, Tax Account No. 13-129762.

May 19, 2020

developed, improved by two (2) free-standing buildings consisting of twenty-four (24) rental units leased to various commercial tenants.

Regardless of the nature or extent of the ongoing use of the Annexed Property, some portion of all public services provided by the City is fixed; therefore, the cost to the City for providing such public services will remain constant no matter how the Annexed Property is used following its annexation by the City. In light of such considerations, the annual, total costs to the City arising from the annexation of the Annexed Property is estimated to be approximately \$12,000+/-.

Revenues to City from the Annexation of the Annexed Property:

When land is annexed into the City it is immediately subject to the municipal real property tax levied by the City. The municipal real property tax is applied to the value of land and improvements located thereon. Under the City's FY2020 Budget (and the Mayor's proposed FY2021 Budget), the municipal real property tax rate is set at \$0.9832 per \$100 of assessed value. The total assessed value of the Annexed Property as determined by the Maryland State Department of Assessment and Taxation is currently \$1,665,000.00.² Accordingly, using the real property tax rate set by the City for the FY2020 Budget, the City's expected annual revenue from municipal real property taxes levied on the Annexed Property is estimated to be: \$16,650. Because the Annexed Property is fully developed to its highest and best use (subject to any complete redevelopment of the site, which is not planned), the amount of revenue generated by the City from municipal real property taxes assessed against the property is unlikely to experience any material variance beyond that caused by any change to the City's real property tax rate.³

The City also imposes certain user fees, capacity fees and impact fees, which the City charges to applicants for permits and/or users of certain public services provided by the City. The capacity fees the City will charge to the owners of units located at the Annexed Property (i.e. BDMK and Kenpo333, respectively) to the City's public water and sewer utilities will be based on the number of equivalent dwelling units ("EDUs") allocated to the Annexed Property. It is estimated that thirty-one (31) EDUs will be required to serve all users of City water and sewer utilities at the Annexed Property. Currently, under the FY2020 Budget (and as set forth in the Mayor's proposed FY2021 Budget), the City charges a Capacity Fee in the amount of \$3,533.00 per EDU. Accordingly, if thirty-one (31) EDUs must be allocated for use of City water and sewer utilities at the Annexed Property, the City can expect to receive a one-time Connection Fee payment in the amount of \$109,523.00 prior to connecting the Annexed Property to City water and sewer utilities.

² The assessed value of each property tax account that comprises the Annexed Property is as follows: Tax Account No. 13-129740 (\$17,100); Tax Account No. 13-129748 (\$47,500); Tax Account No. 13-129756 (\$30,100); Tax Account No. 13-129741 (\$19,200); Tax Account No. 13-129749 (\$48,300); Tax Account No. 13-129757 (\$5,200); Tax Account No. 13-129739 (\$21,300); Tax Account No. 13-129747 (\$47,500); Tax Account No. 13-129755 (\$27,500); Tax Account No. 13-129738 (\$19,300); Tax Account No. 13-129746 (\$19,200); Tax Account No. 13-129754 (\$26,100); Tax Account No. 13-129743 (\$19,200); Tax Account No. 13-129751 (\$27,700); Tax Account No. 13-129759 (\$3,000); Tax Account No. 13-129742 (\$43,300); Tax Account No. 13-129750 (\$46,500); Tax Account No. 13-129758 (\$3,000); Tax Account No. 13-129745 (\$19,200); Tax Account No. 13-1297453 (\$27,800); Tax Account No. 13-129744 (\$19,200); Tax Account No. 13-129752 (\$59,900); Tax Account No. 13-129760 (\$3,500); Tax Account No. 13-129735 (\$73,800); Tax Account No. 13-129734 (\$72,100); Tax Account No. 13-129761 (\$4,300); Tax Account No. 13-129737 (\$774,800); Tax Account No. 13-129736 (\$131,100); Tax Account No. 13-129763 (\$5,600); and, Tax Account No. 13-129762 (\$2,700).

³ Because it is difficult to estimate the activities of businesses that currently occupy (or may occupy in the future) rental spaces located at the Annexed Property, personal property tax receipts likely to accrue from the businesses currently operating (or business which may, in the future, operate) at the Annexed Property are not included as part of the analysis contained in this Memorandum.

May 19, 2020

In addition to the Capacity Fee, once connected to the City's public water and sewer utilities system, all users/rental units at the Annexed Property of such utility services will be billed quarterly by the City for service charges arising from the usage of water and sewer utilities at such rental units. The actual quarterly water and sewer utility charges that will be billed by the City for use of water and sewer utilities at the Annexed Property is unknown and cannot be estimated; however, for purposes of this Memorandum, it is assumed all users of water and sewer utilities at the Annexed Property would fall within the definition of "Commercial Customers" and thus would be charged: a Metered Water Rate of \$420.08/quarter, \$1.95/thousand gallons; and Sewer Charge Rate of \$1,047.42/quarter, \$4.84/thousand gallons (which would imply an allocation of EDUs greater than one (1)).

Conclusion:

The City's annexation of the Annexed Property is estimated to have a net-positive fiscal impact to the City (on an annual basis) in an amount not less \$4,500 (but, very likely, more).