

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Hollywood Partnership
Three Notch LLC
24813 Hollywood Road
Hollywood, Maryland 20636

Case #16-01

DECISION AND ORDER**Introduction**

Dean Partnership, L.L.P (hereinafter "Applicant") filed an application for a Concept Site Plan approval pursuant to Chapter 60 of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property described as 24813 Hollywood Road, Hollywood, Maryland 20636 (hereinafter the "Property"). The application seeks a concept site plan approval for a 50,200 square foot multiple use commercial center. This application for approval of the concept site plan was heard by the St. Mary's County Planning Commission. After several hearings before the Planning Commission, the Planning Commission denied approval of the application on or about March 28, 2016.

The Applicant timely appealed the decision of the Planning Commission ("Planning Commission") to the Board of Appeals ("Board") pursuant to Chapter 23 of the Ordinance and the Rules and Procedure of the St. Mary's County Board of Appeals. After due notice, a public hearing was held at 6:30 p.m. on June 9, 2016, at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. Having been continued on the record, the public hearing also took place on June 23, 2016 and July 21, 2016. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. The proceedings were recorded electronically.

Legal Standard

The Board conducts its consideration of this appeal *de novo* and with "all the powers of the administrative officer or unit from whom whose action the appeal is taken." Md. Code Ann., Land Use § 4-306.

In considering the Applicant's appeal and application for the concept site plan, the Board, exercising the powers of the Planning Commission from which this appeal was taken, shall make the findings that the proposed development:

- a. Is consistent with the Comprehensive Plan and applicable functional plans;
- b. May be served by adequate public facilities as required by Section 70.2.2 of the Ordinance;
- c. Is consistent with the County Annual Growth Policy, including any required phasing plans;

- d. Will promote the health, safety, and welfare of the general public;
- e. Adequately developed recreational and other community amenities that are provided in accordance with the Comprehensive Plan and the Comprehensive Zoning Ordinance; and
- f. Is consistent with Chapter 62 design objectives.

Based on its findings, the Board may deny the concept site plan, approve the concept site plan, or approve the concept site plan with conditions.

Findings of Fact

The Property is located on the Northeast corner of Three Notch Road (Maryland Route 235) and Sotterley Road (Maryland Route 245), within the Hollywood Town Center. The parcel is zoned Town Center Mixed Use District (TMX). The proposed uses within the Commercial Center, are permitted uses within the zone, and will be built on a vacant piece of property. The site contains 14.22 acres. The proposed structures will be 50,200 square feet. The proposed Concept Site Plan proposes new entrances off of Three Notch Road, Sotterley Road, and Old Three Notch Road. The drive aisles and parking are designed in such a manner as to allow for smooth traffic flow through the site. Inter-parcel connections will be made. Parking requirements for the uses proposed have been met with the proposed parking. The concept landscaping and lighting plan is acceptable for concept site plan approval. The Project is designed in three phases: however, the primary traffic related improvements will be completed during the first phase of the Project.

The Board received into the record and considered the December 14, 2015 Staff Report ("Staff Report"), originally addressed to the St. Mary's County Planning Commission, and the Exhibits thereto, including the St. Mary's County Health Department Approval Slip, the Metropolitan Commission Approval Slip, the St. Mary's County Soil Conservation District Approval Slip, Department of Public Works Concept Approval Slip, and the Maryland State Highway Administration comments on the Project. There were no comments from any of the aforementioned agencies that recommended denial of the Applicant's Concept Site Plan. In addition, the Board considered the July 18, 2016 Memorandum from John J. Groeger, P.E., Deputy Director of the Department of Public Works and Transportation, which stated that the Maryland Route 245 and Old Three Notch Road intersection meets the prescribed adequate public facilities requirements with no improvements. The Staff Report included a recommendation by the Department of Land Use and Growth Management Staff that recommended approval of the Applicant's concept site plan. At the public hearing in this matter, Philip Shire, Director of the Department of Land Use and Growth Management, confirmed that the Department continued to recommend the approval of the concept site plan. Further, at the public hearings in this matter, the Applicant presented testimony of Edward Y. Papazian, P.E., and David Ellington, engineers with Kimley Horn who further provided testimony that the Project meets all the applicable standards for Concept Site Plan approval.

Additional specific findings are as follows:

1. The proposed Concept Site Plan is consistent with the Comprehensive Plan and applicable functional plans. The Project is within the Hollywood Town Center, an area where growth is to occur. The site is zoned TMX. The proposed project develops the site in the Hollywood Town Center which is supported by the Comprehensive Plan. Proposed use, parking, landscaping, and lighting are all in accordance with the Ordinance. The Project is consistent **with** and promotes the goals and objectives of the Comprehensive Plan.

2. The Project may be served by adequate public facilities as required by Section 70.2.2. The Project will be connected to the public water and sewer system. The Board finds that all relevant agencies that reviewed the Concept Site Plan recommended approval of the Concept Site Plan and/or did not have any comments that would warrant denial of the Concept Site Plan application. These agency comments, including the July 18, 2016 Memorandum from Deputy Director Groeger referenced above, support the conclusion that the Project may be served by adequate public facilities. The Applicant must still meet all requirements, including those for Adequate Public Facilities, for final site plan approval.

3. The Project is consistent with the County Annual Growth Policy, including any required phasing plans, because it is a commercial project that is not subject to any of the limitations of the St. Mary's County Annual Growth Policy.

4. The Project will promote the health, safety and welfare of the general public. The commercial uses on the site will provide additional job opportunities in the Hollywood area. Further, with the conditions included in this Order, the Project will provide pedestrian walkways that do not exist on the location at this time.

5. The Project meets the standard for adequately developed recreational and other community amenities to be provided in accordance with the Comprehensive Plan and Comprehensive Zoning Ordinance, as neither requires any particular such amenities for a commercial project of this kind. In addition, with the conditions included in this Order, there will be pedestrian amenities provided by the Project.

6. The Project is consistent with countywide design objectives of Chapter 62 of the Ordinance. The proposed buildings on the site comply with the requirements of the Ordinance for the TMX zone. In addition, the Project is consistent with the interconnectivity and parking requirements of Chapter 62.

Conclusions of Law

The Applicant's application for approval of its concept site meets all the requirements of Section 60.6.4, subject to the conditions listed in the Order below. Based on the evidence set forth in the Findings of Fact, the proposed concept site plan application meets standards set forth for concept site plan approval in Section 60.6.4 of the Ordinance, subject to the conditions set forth below.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards and objectives for the approval of a Concept Site Plan pursuant to Section 60.6 of the St. Mary’s County Comprehensive Zoning Ordinance have been met and noting that the referenced project has met all requirements for concept site plan approval, the concept site plan is ***approved, subject to the following conditions:***

1. The Applicant shall dedicate a ten foot right of way to St. Mary’s County on Old Three Notch Road on that portion of Applicant’s Property that is adjacent to Old Three Notch Road.

2. The Applicant shall provide for a “B” buffer along Old Three Notch Road, which shall not be reduced or altered unless Applicant seeks and obtains a variance from said buffer requirements from the Board of Appeals. The buffer shall be measured from the interior boundary of the ten foot right of way to be dedicated pursuant to Condition No. 1. The tree stand that shall remain on the Property, as described in Condition #3 below, shall be sufficient to serve as this required buffer on portions of the Property where its depth is at least as deep at the depth required for a “B” buffer along Old Three Notch Road.

3. The Applicant shall preserve and not clear the existing tree stand that is shown in Northeast portion of Phase Three of the Project, and as shown on January 13, 2016 Concept Site Plan application submitted by the Applicant and which is part of the record in this matter.

4. The Applicant shall construct sidewalks along Maryland Route 235 and Old Sotterley Road on the Applicant’s Property with a pedestrian crossing across Sotterley Road at its intersection with Maryland Route 235.

5. The Applicant shall install a “No Truck Traffic” sign at the entrance to the site from Old Three Notch Road.

Date: August 11, 2016


George A. Hayden, Chairman

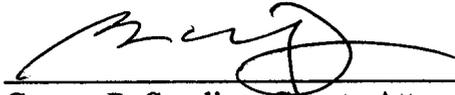
Those voting to approve the Concept Site
Plan with Conditions:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr.
Payne and Mr. Miedzinski

Those voting to deny the conditional use:

N/A

Approved as to form and legal sufficiency:



George R. Sparling, County Attorney