

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

ZAAP # 20-13200012

DOLLAR GENERAL MECHANICSVILLE

SIXTH ELECTION DISTRICT

DATE HEARD: DECEMBER 9, 2021

ORDERED BY:

**Mr. Ichniowski, Mr. Bradley,
Ms. Delahay, Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: January 31, 2022

Pleadings

PTV 1155, LLC and Penntex Ventures, LLC (“the Appellant”) appealed the August 9, 2021 Planning Commission decision to deny the Concept Site Plan for a proposed 9,100 square foot retail sales building.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on November 19, 2021, and November 26, 2021. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the Subject Property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the St. Mary’s County website on December 1, 2021. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on December 9, 2021 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented.

The Property

The Appellant owns the Subject Property, a 2.56-acre property located at Tax Map 19, Grid 4, Parcel 369 at 22606 Three Notch Road, Lexington Park, Maryland. The Subject Property is located in the Rural Commercial Limited (“RCL”) zoning district.

The St. Mary's County Comprehensive Zoning Ordinance

Pursuant to § 60.6.4 of the St. Mary's County Comprehensive Zoning Ordinance ("CZO"):

In order to approve the concept plan, the Planning commission shall make 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;
- 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 are provided in accordance with the Comprehensive Plan and the Comprehensive Zoning Ordinance;
- f. Is consistent with Chapter 62 design objectives.

The Evidence Submitted at the Hearing by the Appellant

The Appellant submitted the following evidence:

- Ben Syput of PennTex Ventures, Jackie Chandler of Traffic Concepts, Inc., and Tim Lessner of Lorenzi, Dodds, & Hunnill, Inc. testified for the Appellant.
- The site is zoned RCL, and vision 2.B of the Comprehensive Plan calls for commercial use in the RCL. Moreover, Use # 76, Retail Sails, General is permitted within the RCL and is consistent with the Comprehensive Plan.
- It may be served by adequate public facilities as required by § 70.2.2. All TEC agencies that reviewed this Project approved it, including the adequate public facilities ("APF") requirements. Specifically, the following agencies issued letters of no objection to concept approval: Soil Conservation District, LUGM, DWP&T, the St. Mary's County Metropolitan Commission, SHA, and the Health Department.

- It will promote the health, safety, and welfare of the general public. Specifically, there will be a 10,000 gallon fire suppression tank, and the site will provide shopping options to local residents, preventing them from having to travel further into more congested areas and will include appropriate and modern Stormwater Management (ESD) practices. Lastly, it includes all appropriate required buffer yards per the County Ordinances.
- It has adequately developed recreational and other amenities in accordance with the Comprehensive Plan and CZO, as it will have a bike rack for use by customers and provides a local option for citizens to purchase necessities and basic food items without the need to travel to more congested areas.
- Next, the site is consistent with Chapter 62 design objectives, as it has an appropriate height of building for the area, and the roofing meets the required standards of Chapter 62.
- Notwithstanding the narrow shape of the property, there are no variances required, and the staff report stated that there were no outstanding issues.
- As for the site design and proposed landscaping,
 - The store hours are 8:00 a.m. to 10:00 p.m., 7 days per week.
 - The frontage on Sandgates Road will be upgraded to SHA standards.
 - The site is at the corner of MD Route 235 and North Sandgates Road next to Oakville Elementary School and across the street from Faith Bible Church. There will be a buffer on the back side of the site preventing view of the site from Oakville Elementary School.
 - The main entrance is approximately 30 feet away from MD 235.
 - There is a preference not to have new entrances on MD 235—the higher trafficked road—so the entrance will be on North Sandgates Road.

- The current use is vacant, there are no wetlands, the sewer is S-NPS, with a 1+1 Septic System, and the water is W-NPS with an individual well.
 - There will be two front setbacks: 50 feet on MD Route 235 and 25 feet on North Sandgates Road. There will be a side setback of 15 feet, and a 20 foot rear setback.
 - The maximum building height will be 40 feet, and the total building size will be 9,100 square feet. There will be one loading berth. The floor area ratio will be 0.08, and 0.25 is permitted.
 - The site is located in a scenic corridor, and parking will be obscured with a Type A buffer yard with a berm along Route 235.
 - The minimum required landscaping in the RCL is 15 percent.
 - A 15 foot Type A buffer yard is provided along the property line adjacent to the Posey property.
 - As for landscaping in the parking area, there will be 1 tree for every 10 spaces, and thus 5 trees will be provided for the 46 spaces. Ten percent of the net parking facility will be planted.
 - The entrance to the site is off North Sandgates Road and located as far from Route 235 as possible.
 - The Applicant proposes an in and out turnaround parking lot.
 - They will have a 10,000-gallon fire suppression tank, which can be used by the site and the neighbor. The closest tank is a half mile to the south.
 - There will be faux windows that face Route 235, and the Dollar General side will face North Sandgates Road.
- As for environmental impacts to the proposed development,

- There are no wetlands.
- The septic in the far-right corner.
- Any drainage will flow into a small stormwater facility on the right or the large site behind the building. The drainage from the farm behind will be collected in a swale.
- There will be a well located in the parking lot protected by bollards.
- As for traffic,
 - The customer base is analyzed in-house by Dollar General. Customers will come from the north and south, and most of the customer base is pass-through traffic, not new trips specifically to Dollar General itself.
 - A traffic impact study was not prepared, and the Maryland State Highway Administration does not require a traffic impact study until 50 peak hour trips or more are generated. The site will generate fewer than 50 peak hour trips, so a full traffic impact study was not prepared.
 - Notwithstanding, the County requires that the Applicant provide proof of an acceptable level of service. As the site is outside of the development districts, it is required to operate at a “C” level of service.
 - The 2015 SHA traffic count described the an “A” level of service. There was a decrease in volume along MD 235 from 27,062 in 2015 to 23,460 in 2019, and thus the level of service is still likely an “A”. Traffic is likely lower now due to Covid-19.
 - Average daily trips along North Sandgates Road was 2,333 from 2019.

- According to the *Institute of Transportation Engineers' Trip Generation Manual* (10 ed.), the proposed 9,100 gross square foot variety store will generate the following trips, whereby:
 - Pass by trips are vehicles that are traveling the road system today, but, in the future, will stop at the new store and then continue;
 - AM Peak Hour represents peak hour of the adjacent roadway, not necessarily of the store itself, and is estimated to be 1 hour between 7:00 a.m. and 9:00 a.m,
 - PM Peak Hour represents peak hour of the adjacent roadway, not necessarily of the store itself, and is estimated to be 1 hour between 4:00 p.m. and 6:00 p.m,
 - The peak hours for St. Mary's County may be slightly different due to the base.
 - A daily trip is one vehicle in, one vehicle out.

	AM PEAK HOUR ENTER	AM PEAK HOUR EXIT	AM PEAK HOUR ENTER	AM PEAK HOUR EXIT	AVERAGE DAILY TRIPS
	17	12	32	30	578
Less Pass-by Trips (34% PM)	Pass by study not available	Pass by study not available	-11	-10	Pass by study not available
New Trips to the Roadway	17	12	21	20	578

- The adequate public facilities report was prepared in October 2020 and approved by DPW&T. SHA had no objections to the Concept Site Plan.
- Most customers will be local except for the pass-by customers. In other words, the business model is for neighboring residences except for those that are pass-by customers.

- It is assumed that a 50/50 split for north and south traffic.
- There is another Dollar Generation at MD 5 and MD 235 and in Hollywood.

Decision

Upon review of the facts and circumstances, the Board denies the Concept Site Plan approval for a proposed 9,100 square foot retail sales store. Several factors support our determination.

First, the Concept Site Plan is consistent with the Comprehensive Plan and applicable functional plans. Specifically, vision 2.B of the Comprehensive Plan calls for commercial use in the RCL, the zoning district for the Site.

Next, the proposed Concept Plan is not served by adequate public facilities. Specifically, As the Applicant failed to take advantage of the opportunity granted by their appeal to obtain a full traffic study, they resigned to using 2015 data concerning the intersection. While the subject intersection was a level of service “A” six years ago, the Applicant’s task was not to obtain historical data, but rather information that would aid in a finding of whether the Concept Site Plan “may” be served by adequate public facilities. At best they provided average daily trips along North Sandgates Road from 2019, but again, this does not satisfy the requirements of the CZO. Significantly, J. Scott Smith, Ed.D., SMCPS Superintendent, wrote the Board of Appeals, highlighting the traffic concerns of the nearby Oakville Elementary School and echoing the public comments about the dangers of increased commercial development at that intersection, “Each morning and afternoon 7 buses transport approximately 270 students to Oakville Elementary School. . . . Additionally, depending on the impact, please note that SMCPS may be required to alter procedures related to student supervision and/or student safety based on the results of any additional commercial development near schools.” Ex. 5, Att. 3. Although we recognize that SHA

does not mandate a traffic study unless 50 or more peak trips are generated by a site, the fears from the school district compound the failure to provide current traffic data to allow us to best assess whether adequate public facilities for traffic “may” be provided. Lastly, given the narrow width of North Sandgates Road that serves as the only entrance and exit to the site, we suspect that traffic will be impeded during deliveries to the site—suspicions which could have been allayed had the Applicant completed a more detailed traffic study.

The third factor—whether the proposed developed “is consistent with the County Annual Growth Policy, including any required phasing plans”—is inapplicable.

Fourth, the proposed development will not promote the health, safety, and welfare of the general public. We reiterate each of our concerns over traffic from our earlier discussion concerning adequate public facilities, as well as the concerns raised by St. Mary’s County Public Schools on the effect of this project for Oakville Elementary School. Sandgates Road is the source of numerous accidents, which this Board estimates will be compounded by the increased number of trips that must use Sandgates Road to access the entrance.

Next, the Concept Plan adequately develops recreational and other community amenities by providing bike racks and a more local option for residents of the Sandgates Road to obtain necessities.

Finally, the proposed development is consistent with Chapter 62 design objectives, as it has an appropriate height of building for the area, and the roofing meets the required standards of Chapter 62.

ORDER

PURSUANT to the appeal of PTV 1155, LLC and Penntex Ventures, LLC of the August 9, 2021 Planning Commission decision to deny the Concept Site Plan for a proposed 9,100 square

foot retail sales building; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the August 9, 2021 Planning Commission decision denying the Concept Site Plan approval is AFFIRMED, and it is further

ORDERED, by the St. Mary's County Board of Appeals, that the Concept Site Plan for a proposed 9,100 square foot retail sales building is DENIED.

Date: January 31, 2022


Daniel F. Ichniowski, Chairman

Those voting to approve the concept plan:

Mr. Ichniowski and Mr. Richardson

Those voting to deny the concept plan:

Mr. Bradley, Ms. Delahay, and Mr. Miedzinski

Approved as to form and legal sufficiency



Steve Scott, Board of Appeals Attorney

NOTICE TO APPELLANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.