

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

ZAAP NUMBER 18-132-00021

LEONARDTOWN 7-ELEVEN APPEAL

THIRD ELECTION DISTRICT

DATE HEARD: JULY 30, NOVEMBER 12, DECEMBER 10, & DECEMBER 17, 2020

ORDERED BY:

**Mr. Hayden, Mr. Brown,
Ms. Delahay, Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: February 11, 2021

Pleadings

7-Eleven, Inc. appealed the February 10, 2020 Planning Commission decision to deny the Concept Plan for a proposed 7-Eleven convenience store.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary's County, on July 17, 2020 and July 24, 2020. 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 July 22, 2020. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

Public hearings were conducted at 6:30 p.m. on July 30, November 12, December 10, and December 17, 2020 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 and Procedural History

The Joseph and Margaret Lorraine Goddard Trustee owns the Subject Property, a 5.4-acre property located at Tax Map 41, Grid 13, Parcel 52 at 24175 Point Lookout Road, Leonardtown, Maryland and is leasing a portion of the property to the Appellant to construct a 3,065 square foot convenience store and 4,402 square foot fuel sales canopy. The Subject Property is located in the Corridor Mixed Use ("CMX") zoning district in the Leonardtown Development District.

The St. Mary's County Comprehensive Zoning Ordinance

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

4. 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 Appellants

The Appellants submitted the following evidence:

- The Leonardtown Development District is intended to be developed intensely, and the proposed commercial uses—a convenience store (Use # 48) with fuel sales (Use # 60)—are permitted in the CMX.
- Concept Site Plan approval does not require that the proposed development “shall” be served by adequate public facilities (“APF”); rather, CZO § 60.6.4 only requires that the proposed development “may” be served by APF.
- Concerning lighting, the light fixtures will use LED bulbs, and light levels at the property lines will not illuminate in excess of 0.5 foot-candle. Ex. 4, Att. 2. Moreover, beyond the site, zero lumens are emitted.
- The Property is approximately 400 feet from Leonardtown Middle School, the surrounding homes are approximately 100 feet from the property line of the proposed site, the property

of the site is approximately 86 feet from the site, and of the Property will remain vacant. The rear open space of the Property will remain open space with respect to this proposed development, but the Applicants are unable to speak to future development.

- Generally, fuel sales account for approximately 20 percent of revenue for 7-Eleven, and the remaining 80 percent derive from sales in the convenience store.
- No electric vehicle charging stations are proposed.
- A 6-foot high fence is proposed for the C-Buffer fence. Rather than fence to the end of the property line; the Applicants propose adding a fence along the lease line to keep patrons and those accessing the site focused towards their proposed area rather than allow foot traffic behind the open area.
- Although grading challenge exists on Medley's Neck Road, the Applicants proposed—in response to Board concerns—a 5-foot sidewalk along Routes and 244 and across both entrances that meets ADA requirements. However, any proposal requires SHA approval.
- The signage will be placed at the corner of Medley's Neck Road and Route 5 near the bioretention area. The sign will be standard to 7-Eleven, displaying fuel prices digitally.
- The property will connect to public sewer at Medley's Neck Road.
- There will be parking spaces along Medley's Neck Road and along the building, frontage of the store, and parallel to Medley's Neck Road.
- There will be a fuel canopy in the middle of the Site with fuel tanks sitting next to the canopy. A dumpster and loading site is on the rear of the building, and landscape buffers will screen the dumpster from view from the back of the Property.
- The maximum footprint is 3,000 square feet.
- The Applicants propose operating 24 hours a day, 7 days per week but may reduce hours

if business during later hours demands such a reduction.

- To combat crime, the Applicants will have enhanced sight-lining, security cameras, push alarm, and a limited amount of cash will be kept in the registers. Moreover, there are enhanced penalties for distributing illegal drugs near a school. Further, as 7-Eleven typically does not hire a security guard at their stores, any decision to hire a security guard at the Property will be evaluated internally.
- There are no registered walkers to either Leonardtown Middle School or Leonardtown High School, including those who live in Hanover Farms. Instead, every student who lives in Hanover farms is offered bus transportation.
- As for the fuel tanks and environmental concerns:
 - 7-Eleven would be installing state-of-the-art tanks that are designed for a quick notification of a leak.
 - These tanks meet all applicable Code of Maryland Regulations (“COMAR”) 26.10 Subtitle 10 Oil Pollution and Tank Management. The fuel tank and lines are made of fiberglass material and do not corrode, are double walled with a primary tank/line inside a secondary tank/line), and will be inspected by a MDE certified inspector. Ex. 4, Att. 3.
 - Regarding spill prevention, the site will be monitored by multiple sensors and alarm systems whereby 7-Eleven will respond within four hours in the event of a spill. Sensors are located between the primary and secondary wall tanks, and the pumps are equipped with under-dispenser containment and an alarm. Moreover, if the fuel line leak detector is activated, pumping fuel is restricted. *Id.*
 - Furthermore, fuel dispensers have a shear valve that shut down the pumps if

damaged. The fuel inventory is continually monitored, and 7-Eleven manually monitors the volumes as an additional safeguard.

- The tanks are designed as part of a closed-loop system such that there will be no venting of vapors unless there is an emergency in the lines. Vapor release is also prevented through onboard refueling vapor recovery technology in vehicles, stage 1 vapor recovery, and vents equipped with pressure caps.
- Drinking water is also protected, as private wells obtain water from a deep aquifer, and the clay and/or fine silt that restricts movements, and St. Mary's County is not considered a high-risk groundwater use area. *Id.* Furthermore, if fuel contamination occurred, the fuel would run down and laterally, laterally more than vertically.
- The Applicants proposed the following fire-prevention systems: fire prevention plans, automatic tank shutoff, extinguishers, and alarms that shut off the fuel to all the dispensers when pushed.
- 7-Eleven has 24/7 contact for fast response, including an environmental consultant, spill contractors, and maintenance contractors. COMAR requires a 4-hour report for surface spills and 2 hour for underground.
- As for traffic:
 - The Applicant's consultant conducted a traffic count using the following data: existing traffic, background traffic condos (regional growth, nearby approved developments), and expected trips resulting from the Site. For existing traffic data, they obtained traffic counts from 6:30 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m., determined the peak hours, and conducted a traffic study based upon the peak

hour data. That study was submitted to the Maryland State Highway Administration and the St. Mary's County Department of Public Works & Transportation, and both agencies reviewed the data and approved the study's findings. The Planning Commission required additional information, including additional and the Applicants supplemented their application with additional traffic counts of the Route 5, 244, and Fairgrounds Road intersection; the traffic counts were within 5 to 6 percent of the original counts. Ex. 2, Att. 9.

- As for traffic resulting from the proposed development, the Applicant generated data based on the 16 fueling stations that are proposed for the Site. Moreover, data from the Institute for Traffic Engineers, which stated that 76 percent of traffic for convenience stores are passerby trips such that only 24% are new vehicles that are brought to the area bc of this use. This amounts to fewer than one new vehicle every minute or minute and a half.
- The traffic study determined that cars entering Leonardtown Middle School begin to queue at 6:45 a.m., as students are prohibited from leaving vehicles until 6:55 when school doors open. Moreover, all queuing is from the southbound side of Medley's neck; there are approximately 6–7 minutes of queuing; and the queuing backs up to 2 to 4 light cycles on Routes 5 and 244. The Applicants contended that this traffic pattern is very common with schools and is not isolated to this location. Additionally, the school bus exit is north of the car exit and is offset from the proposed Medley's Neck Road entrance and exit for 7-Eleven.
- Pursuant to CZO Chapter 70, the intersection must be rated at least a D or better, but the intersection here operates at a C—and nearly a B—in the morning, and a B

in the evening —just shy of an A.

- St. Mary's County Superintendent Smith's office confirmed that they received written notice of the Board of Appeals hearings, and, while Superintendent Smith attended the third night of the Planning Commission, he did not attend the Board of Appeals. Nevertheless, Superintendent Smith wrote a comment letter to the Board of Appeals, but the comment letter did not object to the project; rather, he asked that all development regulations are met and that the safety of students and staff is considered. Ex. 5, Att. 11.
- Additionally, the Applicants evaluated signal timing, approached SHA to examine this issue, but they had not heard back as of the hearing.
- John Deatruck, Director of DPW&T, testified that changing the way the lanes are marked on Medley's Neck Road would not alleviate the traffic problems, as another lane is required. However, adding another lane would involve a Capital Investment Project because a ditch exists where a future lane would be. He also stated that while the Site meets Chapter 70 of the CZO as traffic is concerned, improvements to this intersection must be made regardless of whether the Board approves this project.

Decision

Upon review of the facts and circumstances, the Board denies the concept plan approval for a proposed 7-Eleven convenience store. Several factors support our determination.

Most significantly, the concept plan does not promote the safety and welfare of the general public, thereby failing to satisfy § 60.6.4.d. First, the safety of the Leonardtown Middle School and Leonardtown High School students in relation to the Property remains the foremost concern

for the Board, and this concern was never alleviated by the efforts or statements from the Applicant. Septically, our safety concern derives from the absence of any existing sidewalk or crosswalk, as children will undoubtedly be enticed to venture across Medley's Neck Road to purchase products from the Site. Furthermore, at the time of the hearings, the Applicant was unable to confirm that a sidewalk would be installed, given that such a project would require future SHA approval. Although the Board recognizes the multi-agency approval process involved with such a development project, the Board was and remains unimpressed that the Applicant took no steps to contact SHA to advance this process in the nearly year-long process between the Planning Commission and Board hearings. At best, the Applicant stated that it would install a sidewalk if that were made a condition and only if SHA approved the sidewalk; such an attitude is insufficient to meet the safety and welfare requirements under the CZO that this Board is charged with enforcing. Such lack of efforts, and the failure to demonstrate that sidewalks would be installed so as to protect the safety of St. Mary's County students demands that we deny the concept plan.

Next, while the Board recognizes the significant advances in spill and vapor leak prevention technology that are to accompany the proposed development, the Board remains unconvinced at the long-term environmental and health effects of fuel and other contaminants on the Property. Our concerns are due in part to the fact that 7-Eleven is merely leasing the Site, and the Applicant failed to outline how, if at all, liability is to be determined and cleanup is to occur once 7-Eleven's lease expires and environmental issues remain. Moreover, although COMAR and 7-Eleven both require near immediate response to surface and underground spills—four hours and two hours, respectively—the Applicant's consultant conceded that were an underground spill to occur, oil would drift vertically down through the soil towards the water table, albeit also horizontally. Given the proximity of the Hanover Farms neighborhood, two schools, and Breton

Bay, any potential contamination of the water table is to be viewed with great caution. Furthermore, as the Applicant is only planning to have two attendants at the store, the Board does not believe that the attendants would be able to timely clean up or attend to any surface spill should such a spill occur during one of the store's busier times.

Finally, the concept plan is inconsistent with the Comprehensive Plan and therefore fails to satisfy § 60.6.4.a. First, Comprehensive Plan § 4.5.5.C.i requires that “[i]mprovement of new growth within the development district should complement the town's comprehensive plan. Particular attention should be given to the extent to which new development supports or compliments the town's . . . *educational* . . . functions and potentials.” As stated above, the immediate proximity of 7-Eleven to Leonardtown Middle School and Leonardtown High School represents an unsafe enticement to children to obtain snacks before, during, or after school, and no sidewalk or crosswalk exists across Medley's Neck Road, and the Applicant could not confirm at the date of the final hearing that either would be installed. Such failure does not meet the requirements of the Comprehensive Plan to “support or compliment” Leonardtown's educational functions. *Id.* Next, Comprehensive Plan § 2.2, Vision 1.B states, “An important principle of this land use plan is the need to focus new development in designated growth areas. This can only be accomplished if supported by the necessary infrastructure.” Here, while we recognize that the SHA concurred with the findings of the Applicant's traffic study, we are reminded that DPW&T Director Deatrick testified that serious problems exist at the intersection at issue, problems that he anticipates will return after the COVID-19 pandemic, and which must be resolved through a third northbound lane on Medley's Neck Road. Thus, although the 7-Eleven is proposed in the Leonardtown Development District—and therefore in a designated growth area—the Board finds that the project is not supported by the necessary infrastructure.

ORDER

PURSUANT to the appeal of 7-Eleven, Inc. of the February 10, 2020 Planning Commission decision to deny the Concept Plan for a proposed 7-Eleven convenience store; 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 concept plan for a proposed 7-Eleven convenience store is DENIED.

Date: February 11, 2021


Daniel F. Ichniowski, Chairman

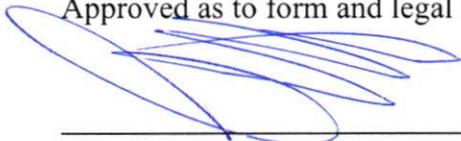
Those voting to approve the concept plan:

Mr. Richardson

Those voting to deny the concept plan:

Mr. Hayden, Mr. Brown, 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.