

ST. MARY'S COUNTY BOARD OF APPEALS

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

Case VAAP #15-183-006

DECISION AND ORDER**Introduction**

Hollywood Partnership Three Notch LLC (Applicant) filed an application for a variance from Section 75.8.2.b(6) of the Comprehensive Zoning Ordinance to remove 38 specimen trees with a diameter of 30 inches or more measured at 4.5 feet above ground.

After due notice, a public hearing commenced at 6:30 p.m. on March 9, 2017, at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. Having been continued on the record, the public hearing took place on March 23, 2017. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. The proceedings were recorded electronically.

Legal Standard

Chapter 75 of the Ordinance regulates the cutting and clearing of certain forests and requires forest stand delineations and forest conservation plans pursuant to §§5-1601 through 5-1612 of the *Natural Resources Article* of the *Annotated Code of Maryland*. A variance from Forest Conservation Priority Retention Area requirements shall be granted only upon findings that:

1. reasonable efforts have been made to protect trees;
2. the area cannot practically be left in an undisturbed condition;
3. owing to special features of a site or other circumstances, implementation of the provisions of Chapter 75 would result in unwarranted hardship to the applicant; and
4. the granting of a variance will not adversely affect water quality.

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 Property is the site of the proposed Hollywood Commercial Center, which received concept site plan approval from the Board of Appeals on August 11, 2016. 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 with the intent of allowing 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 was included in concept site plan approval.

The Property contains 39 specimen trees with a diameter of 30 inches or more measured at 4.5 feet above ground level. The trees consist of several varieties of oak, red maples, sycamores, sweetgums, and one eastern cottonwood. The Applicant plans to clear 38 of the 39 specimen trees.

At the hearing on this matter, David Ellington was the primary representative from the Applicant that testified. Mr. Ellington is a civil engineer with Kimley Horn and Associates, Inc. Mr. Ellington presented a PowerPoint presentation and testified with regard to its contents. Mr. Ellington testified about the shape of the property and the topography of the property, including the presentation of the Forest Stand Delineation, aerial photographs of the site and the site plan for the proposed development. Mr. Ellington testified about and highlighted the various required environmental buffers, proposed right of way improvements and dedications and other similar restraints on the development of the subject property. This testimony and related evidence demonstrated that the developable footprint of the property is in an area where many of the specimen trees are present. Mr. Ellington also discussed the various required road improvements, entrance locations, public utility improvements and sediment control measures and that these items affected the specimen trees that were more isolated on the site and in some forested areas.

Mr. Ellington also testified about the topography of the site, discussing several exhibits in his presentation that showed cross sections of the elevations. Mr. Ellington also testified that significant changes in elevation throughout the site and that the site requires approximately 8-ft of fill in some areas and 12 feet of cut in some areas to achieve appropriate slopes for vehicular and pedestrian/Americans with Disabilities Act (ADA) accessibility. Mr. Ellington also testified that there are wetlands on the site that restrict those areas to development activities.

This evidence together demonstrated that the site was significantly narrow, has significant changes in elevations, and, as described above, has other environmental features that would result in an unwarranted hardship if all the requirements of Chapter 75 were implemented for this project.

The presentation also included a summary and discussion of the proposed stormwater management facilities that will be installed on the property as part of the development and that said facilities would be installed implementing Environmental Site Design practices to the maximum extent practicable. The project would also include approximately 278 new trees on the site, including the reforestation area as designed on the concept site plan and around the perimeter of the property.

Mr. Ellington also presented evidence about the various changes to the plans that were made over the course of the development and noted that as a result of multiple meetings with staff from the County and its various agencies to address the County's comments, including its concerns about forest conservation. Mr. Ellington testified that the Applicant will be performing forest conservation mitigation by a combination of forest retention on a portion of the property, on-site reforestation, and a payment of a fee-in-lieu for offsite mitigation.

Anna Allie also appeared on behalf of the Applicant. Ms. Allie is a certified arborist with ECS Midatlantic, LLC. Ms. Allie testified on various aspects of the effect of the development on trees and that many of the trees cannot be preserved because of the grade changes on the property because of the amount of cut and fill that must take place. Ms. Allie also testified and commented that the project was designed with water quality treatment systems to provide for any entirely wooded site in good condition which would be an improvement for water quality to the existing conditions because the existing conditions include a sizable portion of the property that is open fields.

The Board found Mr. Ellington's and Ms. Allie's testimonies to be persuasive and supporting by the other documentary and demonstrative evidence that was presented during the hearing.

There was also a staff report that was authored by Yvonne Chaillet, Zoning Administrator with Department of Land Use and which, together with the exhibits to that report, was made part of the record of the hearing.

There were several members of the public testified and voiced their concerns about the project in general and the specific request for a variance. While all members of the public who wished to testify were allowed to do so and the Board gave such testimony full consideration, the testimony of the members of the public did not convince the Board that the application for the variance should be denied.

Conclusions of Law

Upon consideration of the evidence and information that was presented to the Board, including all testimony, information and evidence that was presented both in support of the application before the Board and in opposition to the application before the Board, the Board hereby reaches the following conclusions of law, as set forth below and based also on the Findings of Fact above:

1. The Applicant has taken reasonable efforts to protect the trees in question. The Applicant made multiple revisions to its plans for development of the site in order to address the comments from the County and other agencies regarding forest conservation. The Applicant will perform forest conservation mitigation with a combination of onsite forest retention, onsite reforestation, and a payment of a fee-in-lieu for offsite mitigation.

2. The areas where the specimen trees are located cannot practically be left in an undisturbed condition. The narrowness and topography of the site, coupled with the many other statutory and regulatory requirements for the development of the site leave a development envelope where it is impractical to leave the areas where the specimen trees are located undisturbed. As set forth above, it is also impractical not to disturb the other specimen trees that are more isolated and nearer to the perimeter of the site due to required road improvements, entrance locations, public utility improvements, and sediment control measures.
3. The Board concludes that owing to special features of the site and other circumstances, implementation of the provisions of Chapter 75 would result in unwarranted hardship to the applicant. As set forth above, these features include the narrowness of the property, the significant change in elevations throughout the site, the impact of other statutory and regulatory requirements of the development process, required environmental buffers, landscape buffer requirements, roadway improvements and right of way dedications, the required road improvements, the existence of wetlands on a portion of the property, and the required relocation of public utilities on the site.
4. The Board concludes that the granting of a variance will not adversely affect water quality. The Applicant demonstrated that the various stormwater management devices that will be employed on the site will allow for the water quality to remain the same or improve after the development of the site. Further, the Board finds that the variance will not adversely affect water quality because of the planting of landscape buffers on the site, the provision of onsite reforestation areas, as well as the payment of a fee in lieu to assist with other forest conservation efforts in St. Mary's County, Maryland.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of the St. Mary's County Comprehensive Zoning Ordinance have been met, a variance to remove 38 specimen trees with a diameter of 30 inches or more measured at 4.5 feet above ground is ***granted, subject to the following condition:***

1. Non-native invasive species, such as English Ivy, have been observed within the proposed Forest Retention Area that is located along Old Three Notch Road as shown in the approved concept site plan for the Hollywood Commercial Center project. These invasive species should be removed to preserve the long-term health of the Forest Retention Area. The invasive species removal within the Forest Retention Area should be performed by hand or using hand tools. No mechanized equipment should be used within the Retention Area. Invasive vines, such as English Ivy, should be removed from trees by cutting all vines at ground level. Vines should be cut again several feet up the trunk and the cut sections peeled off, with care taken not to strip the bark of the tree. Ground vines and invasive shrubs should be hand pulled and/or cut and the roots removed with a shovel

or grubbing hoe. Areas where invasive species are removed may be mulched or seeded with an appropriate native seed mix to prevent invasive regrowth.

Date: April 13, 2017



John E. Brown, Vice Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency:



George R. Sparling, County Attorney