



MEMORANDUM

Date: February 28, 2017
To: Board of Appeals
From: Yvonne Chaillet, Zoning Administrator
Subject: VAAP #15-183-006, Hollywood Commercial Center Forest Stand Delineation
Board of Appeals Hearing of March 9, 2017

SECTION I. Development Data:

Request: The Applicant requests 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.

Owner: The Dean Partnership, LLP; % Frank W. Dean
Applicant: Hollywood Partners Three Notch, LLC
Agent: Nick Leffner, P.E., Kimley-Horn and Associates, Inc.

Location: 24813 Hollywood Road, Hollywood, MD 20636 (northeast corner of MD Route 235 and Sotterley Road)

Tax Map: 26 **Grid:** 11 **Parcel:** 179 **Election District:** 6
Acreage: 22.2 acres
Zoning: Town Center Mixed Use (TMX) District, Airport Environs (AE) Overlay

SECTION II. Notification: The property and variance requests were advertised in *The Enterprise* on February 22, 2017 and March 1, 2017.

SECTION III. Applicable Regulations: St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance")

1. Section 24.10 Variances from Forest Conservation Priority Retention Areas
2. Section 75.8 Afforestation, Retention, and Reforestation.
3. Section 75.8.2 Forest Retention

SECTION IV. Recommended Motion: Staff recommends the following motion (with modifications and additions following discussion):

“In the matter of VAAP #15-183-006, Hollywood Commercial Center Forest Stand Delineation, having made a finding that the standards for granting a variance from Forest Conservation Priority Retention Areas and the objectives of Section 75.8.2.b(6) of the St. Mary’s County Comprehensive Zoning Ordinance (**have / have not**) been met, I move to (**approve / deny**) the variance request to remove 38 specimen trees with a diameter of 30 inches or more measured at 4.5 feet above ground.”

SECTION V. Property and Case Information:

1. The subject property (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. (See attachment 1.)
2. Chapter 75 of the Ordinance regulates the cutting and clearing of certain forests and requires forest stand delineations and forest conservation plans pursuant to *Natural Resources Article*, §§5-1601—5-1612, Maryland Annotated Code. An applicant seeking approval of a subdivision creating new building lots, a site plan, a grading permit, or a sediment control permit on units of land 20,000 square feet or greater is subject to the regulations of this Chapter.
3. According to the Forest Stand Delineation (FSD) prepared for the proposed Hollywood Commercial Center, the Property contains 39 specimen trees with a diameter of 30 inches or more measured at 4.5 feet above ground level. (See Applicant’s Exhibit 1, attachment 3.) The trees consist of several varieties of oak, red maples, sycamores, sweetgums, and one eastern cottonwood. A description of the size and condition of these trees is shown on Sheet 3 of the FSD. The Applicant plans to clear 38 of the 39 specimen trees.
4. Pursuant to Section 75.8.2.b of the Ordinance, paragraphs (6) and (7), any disturbance of a tree having a diameter of 30 inches or more, when measured at 4.5 feet above the ground, shall require an administrative variance, pursuant to Chapter 22 and Chapter 24. Section 22.5.5 of the Ordinance, “Forest Conservation Administrative Variance,” states that the Planning Director shall not grant a variance to the forest conservation standards except upon findings that the general standards for variance set forth in Section 24.10 have been met and that the granting of the variance will not adversely affect water quality.
5. Section 24.10 of the Ordinance, “Variances from Forest Conservation Priority Retention Areas,” stipulates the following:

General. The general standards for granting a variance set forth in Section 24.3 do not apply to Forest Conservation Priority Retention Area variances. Variances to Forest Conservation Priority Retention Areas are limited to trees described in Chapter 75.8.2.b.(4), (5), and (6).

Application. As part of the application for a variance from Forest Conservation Priority Retention Area requirements, the applicant must demonstrate, to the satisfaction of the

County, that reasonable efforts have been made to protect trees described in Chapter 75.8.2.b. (4), (5) and (6) and the plan cannot reasonably be altered.

Standards. A variance from Forest Conservation Priority Retention Area requirements shall only be granted by the Planning Director upon findings that:

- a. 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
 - b. The granting of a variance will not adversely affect water quality.
6. The Applicant applied for an administrative variance in August 2015 from the requirements of Section 75.8.2.b(6) of the Ordinance. At that time, the Director of Land Use and Growth Management was hearing variance requests from the forest retention requirements of the Ordinance, but was not requiring a public hearing: A staff report was written and presented to the Director, but a final decision was not made.
7. If the variance is granted, the Applicant must comply with Section 24.8 of the Ordinance pertaining to lapse of variance. Variances shall lapse one year from the date of the grant of the variance, if the Applicant has not complied with Section 24.8.

Section VII. Attachments:

Attachment 1: Board of Appeals Order for Case #16-01

Attachment 2: Letter dated February 27, 2017 from Peggy L. Joy Parsons

Applicant Exhibits: The following documents were submitted by the Applicant in support of his variance request:

Exhibit 1: Standards letter dated January 27, 2017 from Nick Leffner, P.E. with the following attachments:

1. "Information Pertaining to an Application for a Variance..."
2. Forest Conservation Administrative Variance Exhibit
3. Forest Stand Delineation (3 sheets)
4. Letter dated June 2, 2015 from Anna E. Allie, Certified Arborist, to Brian McNeal, The Rebkee Company

Exhibit 2: Hollywood Commercial Center Concept Site Plan

Exhibit 3: Hollywood Auto Concept Site Plan

Exhibit 4: Forest Stand Delineation

Exhibit 5: Forest Conservation Administrative Variance Request (site plan)

Variance Application Date: February 6, 2017

STAFF EXHIBIT 2

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;

ATTACHMENT 1 *5 pages*

- 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

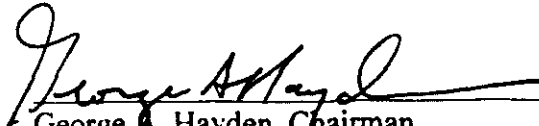
The Applicant's application for approval of its concept site meets all the requirements of Section 60.6.4, subject to the conditions listed in the Order below. Based on the evidence set forth in the Findings of Fact, the proposed concept site plan application meets standards set forth for concept site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

20 Oak Road
Elizabethtown, PA 17022
February 27, 2017

Department of Land Use and Growth Management
23150 Leonard Hall Drive
Leonardtown, MD 20650

Subj: Case Number - Variance Application No. 15-183-006

To the Members of the St. Mary's County Board of Appeals:

As an owner of property located on Briscoe Thompson Way, Hollywood, Maryland, I respectfully request that the Appeals board deny the developers of 24813 Hollywood Road, Hollywood, Maryland request to remove 38 trees from that property.

The trees in question should be allowed to stand. The ecological purpose they serve cannot be replaced in the near future, if ever. The multitudes of wildlife that make use of those trees as their habitat or as their shelter or as a food source must be considered.

Leaving the trees in place, taking care to not disturb their growth or their root systems or the natural ecology of that area, must be the position of the Appeals Board as that body directs and monitors the actions of the developer. Permitting the trees to stand can in no way have any significant impact on the feasibility of the developers' ability to maximize their use of that property.

I appreciate the opportunity to share my views with you regarding the matter of Variance Application No. 15-183-006.

Respectfully,

Peggy L. Joy Parsons
717-201-1334

ATTACHMENT 2

BOA HEARING
3-9-17