

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**ZAAP NUMBER 23-0266**

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**PARK PLACE UNITS LLC**

**EIGHTH ELECTION DISTRICT**

**DATE HEARD: June 27 & July 25, 2024**

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**ORDERED BY:**

**Mr. Hayden, Mr. Bradley, Mr. Loughran,  
Mr. Payne and Mr. Richardson**

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**DATE SIGNED: September 19, 2024**

### **Pleadings**

Park Place Units LLC (“Applicant”) appeals denial of a concept site plan (ZAAP # 23-0266) by the St. Mary’s County Planning Commission for a 160-unit residential apartments development.

COPT Defense Properties (“COPT”) filed an intervenor notice on April 4, 2024. COPT subsequently filed a motion to withdraw its notice of intervention on June 26, 2024.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on June 7, 2024 and June 14, 2024. The hearing notice was posted on the property on June 10, 2024. The file contains the certification of mailing to all adjoining landowners, even 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 County’s website on June 21, 2024. This satisfies the notice requirements for this matter’s first hearing on June 27, 2024, and the continuation to July 25, 2024 was announced on the record at that hearing. Therefore, the Board finds and concludes that there has been compliance with all applicable notice requirements.

### **Public Hearing**

This matter was heard before the public at 6:30 p.m. on June 27, 2024 and at 6:30 p.m. on July 25, 2024 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 about the proposed variance requested by the Applicants.

### **The Property**

Applicant owns contiguous parcels of real property situate 23160 & 23165 Park Place Way, California, MD 20619 (“the Property”). Among the St. Mary’s County tax maps the Property may be located at Tax Map 34, Grid 23, Parcel 122. The Property is zoned Medium Intensity Mixed-Use (“MXM”) and has a land use designation of Mixed-Use Medium Intensity.

### **Decision Appealed**

The St. Mary’s County Planning Commission, by a vote of 0-7, denied approval of the concept site plan for CSP 23-0266 on March 18, 2024. The Appellant filed a Notice of Appeal on March 27, 2024.

### **The St. Mary’s County Comprehensive Zoning Ordinance**

St. Mary’s County Comprehensive Zoning Ordinance § 60.6 requires that all non-residential and multi-family residential projects requiring a major site plan first receive concept site plan approval by the Planning Commission. Before approving a concept site plan the Planning Commission must find 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; and,
- f. Is consistent with Chapter 62 design objectives.

### Staff Testimony

Stacy Clements, an Environmental Planner and Brandy Glenn, a Development Facilitator for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented a staff report to the Board of Appeals. James Gotsch and Donald Mills, the Director and Deputy Director of the Department at Public Works and Transportation spoke, at times, on the traffic impacts posed by the development. Deputy County Attorney John Sterling Houser spoke, at times, on procedure and on adequate public facilities requirements with respect to school capacity. We highlight the following salient information that was included among their collective testimony:

- The apartments proposed by the project would be categorized as Use Type # 16 within the County's CZO, a use permitted-by-right in the MXM zoning district.
- That all general standards required by Section 51.3.16 of the CZO appear to be satisfied.
- That open space requirements for the project appear to be satisfied. 32,000 s.f. of open space are required and 46,717 s.f. are proposed.
- That parking requirements appear to be satisfied. 373 parking spaces are required for the project and 373 will be provided, including 8 ADA spaces, 21 garage spaces, and 19 compact spaces. 60 visitor parking spaces will be provided off-site in shared spaces across the adjacent, pursuant to a previously established condominium agreement.
- That traffic improvements offered by the Applicant are projected to bring the intersection at Maryland Route 235 / Shady Mile Drive to a "D" level of service, which is an acceptable level of service per CZO Schedule 70.7.3.
- Stormwater management is being provided as required by the applicable ordinances and regulations.

- There appear to be adequate school seats countywide to satisfy adequate public facilities requirements with respects to school capacity.

- The following Attachments to the Staff Report were introduced:

#1: Location Map

#2: Land Use Map

#3: Zoning Map

#4: Concept Site Plan

#5: Color Renderings

#6: LUGM Site Plan Redline Comments

#7: Department of Public Works & Transportation (“DPW&T”) Redline  
Comments

#8: Declaration of Park Place California Condominium

#9: SHA Concept Approval

#10: Metropolitan Commission Comments

#11: St. Mary’s Soil Conservation District Comments

#12: BOE Comments

#13: Traffic Impact Study

#14: APF Report

#15: SHA Response to Traffic Impact Study

#16: Trip Generation Comparison

#17: Ordinance 2019-32 SMC Comprehensive Zoning

#18: Staff PowerPoint Presentation

#19: SHA 6/20/24 Email Concept Approval of Improvement

#20: Health Department 6/20/2024 Concept Approval

#21: METCOM Concept Approval 6/25/2024

#22: LUGM Concept Approval 6/25/2024

#23: REVISED CONCEPT SITE PLAN 6/25/2024

#24: St. Mary's SCD Concept Approval 6/27/2024

#25: SHA-23APSM012XX 7-8-2024 Revised Traffic Impact Study Comments

**Applicant Testimony and Exhibits**

Applicant was represented before the Board by Christopher Longmore, Esq., of Dugan, McKissick & Longmore, LLC. Mr. Longmore was at times joined by Jay Hopson, a professional engineer, of J. Hopson Consulting, LLC, Jackie Chandler, of Traffic Concepts, Inc., a traffic consultant, and Haris Javaid, a principal of Park Place Units LLC. Together they presented the site plans, a slide show, and answered questions posed by the Board. Testimony from the Applicant we choose to highlight includes:

- Applicant contended the concept site plan presented to the Planning Commission satisfied the requirements of all applicable ordinances. Even so, the Applicant has supplemented and revised the concept site plan since then.
- The apartments proposed by the project will be built on undeveloped units of the Park Place condominium regime, near an existing office building and hotel.
- The project is consistent with the comprehensive plan and the revised zoning provisions of the Lexington Park Development District master plan, passed by the Commissioners of St. Mary's County between the original Park Place condominium subdivision and the present.
- There will be four apartment buildings in total, two 9,925 s.f., 32-unit buildings and two 14,925 s.f. 48-unit buildings. There will also be a clubhouse and three small garages on-

site.

- The development will be built in two phases.
- That the stormwater management being proposed is sufficient to meet the requirements of all applicable local and state regulations and that runoff shall not become a nuisance to adjacent properties. Some stormwater management will be provided off-site but will be done pursuant to an existing stormwater management easement that was previously established.
- Traffic will operate at minimum levels of service at the applicable intersections and roads upon completion of the traffic improvements proffered by the Applicant. The Applicant proposes removing all right turn only markings and signage on the existing westbound Route 235 right turn plane, removing the bicycle pocket lane, and restriping a shoulder for bicycle compatibility. Ms. Chandler explained at length that these improvements will allow vehicles wishing to turn right onto Route 4 further down Route 235 to separate from the mainline earlier, and thereby increase capacity in the existing three through lanes of westbound Route 235. Ms. Chandler projects that this will increase the level of service at Route 235 / Shady Mile Drive at evening peak hours from a Level of Service “F” to a Level of Service “D.” On the whole the improvements will reduce the number of critical trips at the intersection by 301, while this project is only projected to create an additional 21 critical trips.

#### **Public Testimony**

The following members of the public appeared to offer testimony related to the project on

June 27:

- *Karen Garner, California*

- Ms. Garner owns property on Shady Mile Drive. Ms. Garner said that the National Fire Protection Association details requirements for construction and questioned how close a fire truck will be able to get to the buildings being proposed. She questioned what the impact will be on local schools. She said safety should be paramount on Shady Mile Drive and that the entrance/exit to Shady Mile Drive causes confusion on a daily basis, and that drivers looking to enter Abell House Lane are often confused as to what lane they should be in to effect that turn from Shady Mile Drive. She stated her belief that the school bus stop originally proposed would be an “accident waiting to happen” and that pedestrians or residents of Shady Mile will be put at risk by increased traffic on Shady Mile Drive. She believed that converting the right turn lane on Route 235 into a through lane will block residents of Shady Mile Drive from getting into that lane. While acknowledging that the Property is in the Lexington Park Development District, she asked the Board of Appeals to consider whether the residents of that area would want this project or not.

In addition to the in-person testimony, letters were received from the following persons: Brittany Gill, Lanny J. Lean, Sr., Laura Moore, and April Tarlton. All identified themselves as residents who live in the general vicinity of the project, and all voiced their opposition to the proposal.

### **Decision**

#### **Standard of Review**

St. Mary’s County being a Commissioner county, the Board of Appeals is governed by



Title 4, Subtitle 3 of the Land use Article. Land Use § 4-306(f)(2) states that, on appeal, the Board of Appeals shall have “all the powers of the administrative officer or unit from whose action the appeal is taken.” In other words, the Board’s review of an appealed decision is *de novo*. *Board of County Commissioners for St. Mary’s County v. Southern Resource Management*, 154 Md. App. 10, 30-31 (2003).

Findings Necessary for Concept Site Plan Approval

CZO § 60.6.4 requires that all non-residential and multi-family residential projects requiring a major site plan first receive concept site plan approval by the Planning Commission. Before approving a concept site plan the Planning Commission must find 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; and,
- f. Is consistent with Chapter 62 design objectives.

A burden of production rests with the Applicant to produce a sufficient factual record to establish these findings, but our read of Maryland’s case law suggests the Applicant, in this case, need go little further than establishing a prima facie case of conformity with applicable regulations to meet its burden. *Angelini v. Harford County*, 144 Md. App 369 (2002). A majority of the Board, for reasons detailed below, finds that Applicant has met its burden in this case. We will

discuss these findings point-by-point.

*Consistency with the Comprehensive Plan and Applicable Functional Plans*

A use carries with it a strong presumption of conformity with a County's Comprehensive Plan when proposed in a zoning district where it is "permitted" or "permitted by right." See, e.g., *Sheetz, Inc. v. Frederick City Planning Commission*, 106 Md. App. 531, 543 (1995) (referencing *Friel v. Triangle Oil Co.*, 76 Md. App. 96 (1988)). Here the Board agrees that the proposed use – four apartment buildings – most closely aligns with Use Type # 16 – Dwelling Unit, Multi-Family Residence. The CZO's definition for Use Type #16 is "a single structure that contains three or more dwelling units that share common entrances and exits. Classification includes structures commonly called apartments or condominiums." CZO Schedule 50.4.16. The CZO makes no apparent distinction for a grouping of apartment buildings as opposed to a single apartment building, and the general standards make obvious that CZO's contemplation that more than one apartment building may be proposed within this use type. CZO § 53.16.a(5)(b).

The Board further agrees that this use type is "permitted by right" in the MXM zoning district, as shown on Schedule 50.4.16. This is tantamount to a prior and binding legislative finding that the proposed use, so long as it aligns with the Comprehensive Zoning Ordinance's other applicable regulations, is compatible with other uses in the MXM zoning district and in conformity with the Comprehensive Plan. One can look to the purpose of the MXM Zoning District for vindication of this principle:

*"The uses allowed in and development regulations for development in the Medium Intensity Mixed-Use zoning district are intended to create large-scale and clustered commercial and residential uses adjacent to existing or planned principal transportation corridors. Mixed-use non-*

*residential developments and mixed-use developments of residential and non-residential uses are possible. The range of residential density is between 1 and 25 dwelling units per acre...*”

CZO § 31.14 (as amended by Zoning Text Amendment # 2019-32).

A comprehensive plan that intends the creation of “large-scale and clustered commercial and residential uses adjacent to existing or planned principal transportation corridors” contemplates the development of projects such as the Applicant’s. Were the drafters of the CZO more apprehensive of such projects, more restrictive zoning mechanisms than a use “permitted by right” could have been implemented that would vest more discretionary power in the hands of the administrative units that review such development proposals. Rather than permit the use, it could have been prohibited altogether. Rather than permit the use “by right,” the use could have been designated a conditional use – a tool much more stringent than “permitted by right,” but still one that carries with it a general presumption of conformity. *People’s Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008). Facing us, however, is a use permitted by right – one that carries a strong presumption of consistency with the comprehensive plan provided it conforms to any other applicable requirements of the Comprehensive Zoning Ordinance.

#### *Adequate Public Facilities*

One such general standard a use must satisfy is the apparent availability of adequate public facilities (“APF”) necessary to serve the proposed development project. CZO § 60.6.4 requires a finding that APF “may” exist in time for final major site plan approval. The specific APF categories are delineated in Chapter 70 of the CZO: Roads, Sewerage, Water, Storm Drainage, Schools, Fire Prevention and Suppression. Sewerage, water, and roads were not much discussed before the Board of Appeals in this matter. We note the Metropolitan Commission’s finding that

the project “satisfactorily addresses the TEC requirements for concept only and is ready for approval for the Planning Commission” may be found in Attachment 10 and that a breakdown of school availability is provided on the Applicant’s site plan. Given these, we believe there is ample demonstration these requirements “may” be met in the future.

A great deal of energy was expended discussing the adequacy and safety of roads before the Board of Appeals. The minimum level of service required of an intersection impacted by the proposal is a “D.” Ms. Chandler, an expert in these matters, explained at length and with thoroughness the reasons why she believes this level of service will be established once the proposed improvements are made to the existing right hand turn land of Route 235. Acknowledging the concerns expressed by some members of the community, we are, however, persuaded by Ms. Chandler’s testimony that the improvements will make conditions better at the affected intersection and bring operations to a Level of Service “D.” This is the minimum standard for an intersection in a development district that is established by the CZO. Even were a Level of Service “D” not established we note the existence of CZO § 70.7.2.d, allowing even a Level of Service “F” within a development district so long as improvements made by a development project leave traffic conditions better than they would be had the development and the corresponding improvements not been constructed. Accordingly, we believe adequacy for traffic and roads has been demonstrated by the Applicant.

Stormwater management was explained in great detail by Mr. Hopson. The stormwater management devices were shown on the site plan and the Applicant explained to the Board’s satisfaction that these are sufficient to meet regulatory requirements and that there are provisions in place to ensure they will be maintained. The site plan shows the stormwater management will have capacity to treat a sufficient amount of runoff. We also note the staff findings from the

Department of Public Works and the Soil Conservation District that this concept site plan is, in their opinion, approvable. Accordingly, we believe the Applicant has demonstrated conformity with the applicable stormwater management requirements.

One letter from the public and a citizen who appeared to offer testimony questioned whether there would be adequate fire suppression for the proposed developments. As mentioned at the hearing, Mr. Guyther, who reviews whether a fire truck would have adequate access to a building, concluded that it would. The CZO itself states that APF fire prevention and suppression requirements will be met if, at the time the first occupancy permit is issued, an approved public water supply system capable of providing fire flow required by MetCom and building code standards is present and that fire protection measures shall be installed in conformity with NFPA 1141. CZO § 70.12.2.a(1); § 70.12.3. Demonstrating conformity with the building code requirements will be required at inspection prior to approval of an occupancy permit. Accordingly, the Board is satisfied these APF requirements, too, “may” be met.

*Consistency with the Annual Growth Policy*

The Commissioners repealed the annual growth policy by Ordinance 2016-22; accordingly, this finding has been moot since August 2, 2016.

*Promotion of Health, Safety, and General Welfare*

Along substantially similar lines as our earlier discussion of conformity with the comprehensive plan, a use permitted “by right” that conforms to applicable zoning regulations is, presumptively, in promotion of a community’s general health, safety and welfare. See *Schultz v. Pritts*, 291 Md. 1 (1981). The heart of a local governing body’s duty when establishing zoning regulations – and the font from which the state ultimately derives its traditional police powers to do so – is to “guide and accomplish the ‘coordinated, adjusted, and harmonious development of

[a] jurisdiction ... which will... promote [the] general welfare.” *Id.* This necessarily involves the local legislature balance competing factors when it prescribes its zoning regulations. It is a given that the outcome of that balancing test will not result in universal acclaim from a community. Some will undoubtedly feel a given regulation not to be to their particular, individual benefit. But properly enacted zoning regulations carry with them a presumption that development performed in conformity therewith shall be for the benefit of the *general* welfare of a community. See *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 190 (1970) (“The legislative body of the City of Gaithersburg has in effect said that if certain standards and requirements enumerated in the ordinance are met in a particular case, the various special exceptions specifically authorized are a part of the comprehensive zoning plan and therefore promote the health, safety and general welfare, to the same extent as do the uses permitted as of right in the zone involved.”) (emphasis added).

As noted before, the proposed use is permitted by right in the MXM zoning district. Applicants and staff have amply demonstrated the classification of the development as Use Type # 16 is correct and proper. The power to undo a local governing body’s work by redefining the purpose of a given zoning district by concluding that a conforming use permitted “by right” is not, in fact, compatible with other uses in that zoning district or in furtherance of the general welfare is not a power vested in an administrative unit. See *Friel* at 109 (“An expressly permitted use by zoning designation is ‘tantamount to a legislative finding that the use [is] in harmony with the general zoning plan.’ Thus, in reviewing a site plan, the Planning Commission may consider only those factors specifically enumerated in the statute.”) (internal citations omitted).

#### *Adequately Developed Recreational and Community Amenities*

Applicant highlighted on its site plan the provision of various recreational amenities that

will be offered on-site: a clubhouse and other outdoor recreational opportunities will be provided. We also note the presence of the development within the Lexington Park Development District, where outside amenities and offerings are at their highest density in the County. Finally, we note that the project abides – and in fact exceeds – its open space requirements. We believe these to be sufficient to conclude the Applicant has adequately developed amenities in conformity with this section.

Consistency With Chapter 62 Design Standards

Finally, we note the color renderings and layout provided by the Applicant and included among the staff report. We are satisfied from these projects that the project, once built, shall be visually appealing and in aesthetic conformity with its neighbors.

For the reasons noted above, we find that the Applicant, before the Board of Appeals, has sufficiently met its burden of production. Accordingly, we shall grant the Applicant's appeal and approve the concept plan presented to us.

**ORDER**

**PURSUANT** to Applicant's appeal from the Planning Commission's denial of Concept Site Plan CSP 23-0266 on March 18, 2024; 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 Applicant's appeal in ZAAP 23-0266 is **GRANTED**; and it is further,

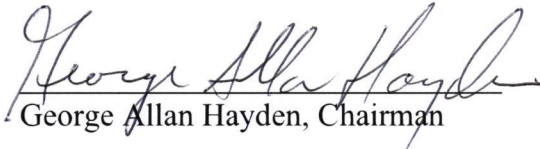
**ORDERED**, that Concept Site Plan CSP 23-0266 is **APPROVED**.

The foregoing variances are subject to the condition that the Applicant shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management,

the Health Department, the Department of Public Works & Transportation, the State Highway Administration, and any other applicable reviewing agency.

This Order does not constitute a building permit. In order for the Applicant to construct the structures permitted in this decision, it must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: September 19, 2024

  
George Allan Hayden, Chairman

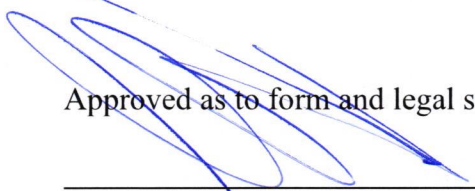
Those voting to grant the appeal:

Mr. Hayden, Mr. Bradley, Mr. Loughran, and Mr. Richardson

Those voting to deny the appeal:

Mr. Payne

Approved as to form and legal sufficiency

  
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Steve Scott, Board of Appeals Attorney



### **NOTICE TO APPLICANT**

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 Petition for Judicial Review with the Circuit Court for St. Mary's County within thirty (30) days of the date this order is signed. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

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