

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

ZAAP # 21-132-003

THREE NOTCH COMMERCIAL

FIFTH ELECTION DISTRICT

DATE HEARD: JULY 21, 2022

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: August 11, 2022

Pleadings

30315 Three Notch Road, LLC and ARLS Properties, LLC (“the Appellants”) appeal the March 21, 2022 Planning Commission decision to deny the Concept Site Plan for a proposed 5,380 square foot convenience store with fuel sales and a 2,365 square foot fast-food restaurant with a drive-through.

Public Notification

The original hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on May 6, 2022, and May 13, 2022. 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 May 18, 2022. 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 July 21, 2022 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

Appellant 30315 Three Notch Road, LLC owns the Subject Property, a 7.87-acre property located at Tax Map 1, Grid 16, Parcels 10, 29, 50 at 37590 Oaks road and 30315 Three Notch Road, Charlotte Hall, Maryland. The Subject Property is located in the Town Center Mixed-Used

District (“TMX”) 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.

Evidence Submitted at the Hearing by the Appellant

The Appellant submitted the following evidence:

- Chris Longmore, of Dugan, McKissick, and Longmore represented Appellant. Further testimony was offered by Nelson Arocho of Bay Engineering, Inc., Justin Rosemore, and Jackie Chandler of Traffic Concepts, Inc..
- The Concept Site Plan was reviewed by the Technical Evaluation Committee (“TEC”) on February 24, 2021, with no objections from any of TEC agencies. A traffic study reviewed by both the State Highway Administration (“SHA”) and Department of Public Works & Transportation (“DPW&T”) showed no outstanding issues.
- The Concept Site Plan was first heard by the Planning Commission on November 29, 2021. That hearing resulted in the Planning Commission making seven requests of Appellants:

1. Prepare a “Synchro” analysis of traffic
 2. Revise architecture/design of the proposed Starbucks
 3. Add a crosswalk on Charlotte Hall Road connecting to Three Notch Trail
 4. Add sidewalks along all three sides of property that front public roads – namely, Route 5, Oaks Road, and Charlotte Hall Road
 5. Provide infrastructure for future electric vehicle charging stations
 6. Redesign turn lanes/thru lane from Oaks Road onto Route 5
 7. Review left turn lanes from Route 235 onto Oaks Road and Mount Wolf
- Appellants subsequently satisfied these seven requests by modifying their Concept Site Plan. With respect to Item #7, Appellants’ review determined only the southbound lane required expansion.
 - On March 21, 2022, the Planning Commission held a second meeting regarding the Concept Site Plan. The Planning Commission voted to deny concept site plan approval.
 - Since then, Appellants have made additional changes to their Concept Site Plan. In addition to the seven items proposed by the Planning Commission, Appellant offers additional traffic control measures at the four-way intersection of Charlotte Hall Road and Oaks Road and will now offer flex fuel/E85 at the proposed gas station, providing more innovative, environmentally friendly fuel options to consumers.
 - Appellants also offered into the record an online petition in favor of the Concept Site Plan. This petition was accepted into the record.
 - During the presentation of the Concept Site Plan, Appellants noted that this location was previously occupied by Wentworth’s Nursery. The total lot coverage of the proposed redevelopment is less than the total lot coverage of the previous use.

- Appellants stated that Royal Farms and Starbucks performed market studies that indicate their businesses would be competitive and financially successful, in spite of the presence of other gas stations and convenience stores in relative close proximity to the proposed location.
- A traffic study was performed for each involved intersection. Per the CZO, all intersections must operate at a “C” level of traffic or better. Improvements have been offered that would, according to the traffic study, ensure all intersections and roads will operate at a “C” level.
- Appellants requested, and the Board of Appeals accepted, that all materials posted to BoardDocs be entered into the record of the proceeding.

Public Testimony

There were six comments received by mail or email, and eight citizens offered testimony at the hearing. All of these comments were entered into and made part of the record. Testimony at the hearing included nearby neighbors’ concerns that traffic, particularly on Oaks Road and Charlotte Hall Road, was already too dangerous and would be exacerbated by the construction of the proposed development; that there were already multiple gas stations in close proximity adequately meeting public needs; and that the presence of a 24/7 convenience store, with bright lights and ongoing activity, would unduly disrupt the existing character of the immediate neighborhood.

Decision

Upon review of the facts and circumstances, the Board overturns the Planning Commission’s denial and approves the Concept Site Plan for a proposed 5,380 square foot convenience store with fuel sales and a 2,365 square foot fast-food restaurant with a drive-through. The following considerations support our finding:

First, the Concept Site Plan is consistent with the Comprehensive Plan and applicable functional plans. The proposed uses are properly zoned and consistent with the intended development and redevelopment for the Town Center Mixed-Use zone. Moreover, the proposed Concept Site Plan finds particular resonance with Vision 1.B.4, Vision 1.B.5, Vision 6.A, and Vision 7.a.

Next, the proposed Concept Plan is served by adequate public facilities. Appellants presented lengthy expert testimony in support of this consideration. Appellants' expert testified, correctly, that a "C" Level of Service will be required of the impacted county roads, and that, with the improvements offered by the Concept Site Plan, this standard will be met. Numerous members of the public testified about their concerns for traffic on Oaks Road and Charlotte Hall Road. Appellant will address safety concerns by addition of crosswalks and relocating signage; the Board also notes that the Department of Public Works & Transportation states it would send a copy of its traffic study to the local Sheriff's Department, and encourage more active policing of that stretch of road. Finally, the Board also notes that review, at this stage, only asks whether Appellants "may" be able to satisfy the CZO's Adequate Public Facilities ("APF") requirements. Final review for APF will be conducted by the Planning Director, who will need to find that APF has been established within the standards of the CZO prior to final approval of a major site plan.

The third factor—whether the proposed developed "is consistent with the County Annual Growth Policy, including any required phasing plans"—is inapplicable. The Annual Growth Policy is inoperative and has not been replaced as of this appeal.

Fourth, the proposed development will promote the health, safety, and welfare of the general public. The majority of the concerns expressed about this project relate to traffic. As stated above, the Board is satisfied that Appellants have met their burden: to demonstrate that APF

“may” be reached. The Board notes Appellants stated they went “above and beyond” the requirements of the CZO to attempt to secure approval from the Planning Commission. With respect to traffic, the Board believes that the improvements Appellants offer will satisfactorily address concerns over safety and congestion raised about this development. Regarding other complaints that the project will be an eyesore or nuisance to its neighbors, the Board notes the relatively large amount of “green space” Appellants will leave on the parcel, and acknowledge that development such as this project fits within the definition of what is allowable in a Town Center Mixed-Use zone. Additionally, it should be noted that Appellants are redeveloping a parcel that had a prior business on it, and not building on previously unclaimed or untouched lands. This type of redevelopment is explicitly encouraged by the Comprehensive Zoning Ordinance and Comprehensive Plan.

Next, the Concept Plan adequately develops recreational and other community amenities. Appellants expended an appreciable amount of time highlighting their offering of E85 fuel, a fuel desired by motorists that is typically unavailable elsewhere in the County. The Concept Site Plan also offers connectors to Three Notch Trail and will be offering electric charging stations for hybrid and electric vehicles.

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 30315 Three Notch Commercial, LLC’s and ARLS, LLC’s appeal of the March 21, 2022 Planning Commission decision to deny the Concept Site Plan for a proposed 5,380 square foot convenience store with fuel sales and a 2,365 square foot fast-food restaurant with a

drive-through; 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 March 21, 2022 Planning Commission decision denying the Concept Site Plan approval is REVERSED, and it is further

ORDERED, by the St. Mary's County Board of Appeals, that the Concept Site Plan for a proposed 5,380 square foot convenience store with fuel sales and a 2,365 square foot fast-food restaurant with a drive-through is APPROVED, subject to the following conditions:

1. Appellants shall perform each of the following improvements and actions, unless already completed:
 - a. Prepare a "Synchro" analysis of traffic
 - b. Revise architecture/design of the proposed Starbucks
 - c. Add a crosswalk on Charlotte Hall Road connecting to Three Notch Trail
 - d. Add sidewalks along all three sides of property that front public roads – namely, Route 5, Oaks Road, and Charlotte Hall Road
 - e. Provide infrastructure for future electric vehicle charging stations
 - f. Redesign turn lanes/thru lane from Oaks Road onto Route 5
 - g. Review left turn lanes from Route 235 onto Oaks Road and Mount Wolf; and,
2. Appellants shall determine, with the County, the feasibility of installing flashing lights to enhance the safety of the entrance to Three Notch Trail.

Date: Aug 11, 2022

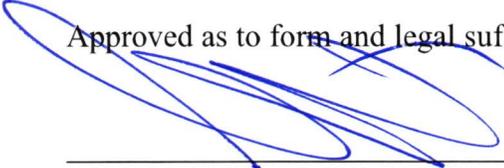

Daniel F. Ichniowski, Chairman

Those voting to approve the concept plan:

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

Those voting to deny the concept plan:

Approved as to form and legal sufficiency



Steve Scott, Board of Appeals Attorney

NOTICE TO APPELLANT

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