

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the Appeal of Woods at
Myrtle Point, Sections 2, 4, 5 & 6
California, Maryland 20619

Case #17-04

DECISION AND ORDER**Introduction**

Myrtle Point Holdings, LLC/Curtis Development Corp. (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 Patuxent Boulevard (tax map 34 grid 06 parcels 587, 726, 752 & 753), California, Maryland 20619 (hereinafter the "Property"). The application seeks a concept site plan approval for Woods at Myrtle Point Sections 2, 4, 5 & 6 to include 164 dwelling units and a 4,855 square foot recreation facility. This application for approval of the concept site plan was heard by the St. Mary's County Planning Commission. After a hearing before the Planning Commission, the Planning Commission denied approval of the application on or about June 26, 2017.

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 September 14, 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 also took place on October 12, 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

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;

- 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 Properties are located on Patuxent Boulevard, California, Maryland, in the Lexington Park Development District. The parcels are zoned RL, RL-T and AE. The proposed uses are permitted uses within the zones, and will be built on vacant pieces of property. The site contains 50.5 acres. The proposal is for 164 dwelling units and a 4,855 square foot recreational facility.

The Board received into the record and considered the June 26, 2017 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 and Transportation Concept Approval Slip, Maryland State Highway Administration Approval, Wetlands, Soils and Flood Maps, Land Use Map and Zoning Map and the Traffic Impact Study for 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 April 17, 2017 Memorandum from John J. Groeger, P.E., Interim Director at the time of the Department of Public Works and Transportation, which stated the following: 1) The technical content of the revised traffic impact study (TIS) appears to be acceptable; 2) The revised development generates 13 additional outbound peak hour trips in the morning peak hour and 4 extra inbound trips in the afternoon peak hour; and 3) The critical lane volume is proposed to increase by 3 in the morning, and stay the same in the afternoon peak hour. The Board also received into the record and considered the powerpoint presentation by Bill Hunt, Director of Land Use and Growth Management; the powerpoint presentation by the applicant, Curtis Homes; and the powerpoint presentation by Julie Delaney and Walt Munnikhuisen.

Additional specific findings are as follows:

1. The proposed Concept Site Plan is consistent with the Comprehensive Plan and with the 2016 Lexington Park Development District Plan. The Project is within the Lexington Park Development District, an area where growth is to occur. The majority of the property is currently zoned R-L (with only Section 6 zoned RL-T but with the approval being conditioned upon Section 6 being re-zoned in accordance with the Lexington Park Development District Plan prior to Final Site Plan approval). The proposed uses are permitted when this condition is

applied, and the County's overall Comprehensive Plan and the Lexington Park Development District Plan call for growth to occur in the Lexington Park Development District. There is a mix of residential housing opportunities within the proposed project, which is supportive of the goals and objectives of the Lexington Park Development District 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. The Applicant further submitted into evidence a copy of the proposed zoning use map included in the Lexington Park Development District Plan, confirming this type of residential project is planned to occur in the area where this project is proposed.

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. Michael Lenhart, a traffic engineer who testified about his considerable education and professional experience, testified that this project meets all requirements relating to the traffic. Mr. Lenhart also submitted a written report and follow-up memorandum, which were made part of the record, that the Board finds persuasive in its findings that the project may meet the adequate public facilities requirements of Section 70.2.2 relating to traffic. John Groeger, Deputy Director of the Department of Public Works and Transportation, likewise testified about the project and did not voice any concerns relating to the traffic and for the most part concurred with the conclusions and testimony of Mr. Lenhart. The Board also found persuasive the exhibits to the prior Planning Commission Staff Report, which is part of the record of this hearing, which included comments of various agencies that did not include any significant or persuasive objections to the project meeting the adequate public facilities requirements of Section 70.2.2. These exhibits included comments from the St. Mary's County Health Department, the Metropolitan Commission, the Soil Conservation District, the Department of Public Works and Transportation, and the Maryland State Highway Administration. There was also testimony that the project will be supported by adequate school capacity. The Board finds that this project may be served by adequate public facilities as required by Section 70.2.2 and acknowledges that the final adequate public facilities determination will take place during the final site plan approval which is performed at a later stage in the development process of this project. The Applicant must still meet all requirements, including those for Adequate Public Facilities, for final site plan approval.

3. This standard is not applicable, as the County Annual Growth Policy is not in effect at this time and/or has been suspended.

4. The Project will promote the health, safety and welfare of the general public. The Board acknowledges that all development will meet and be required to meet all current and applicable codes and ordinances. The Board finds that the design of the project is consistent with the surrounding area and that the project, as being approved, provides for more open space than the prior approvals that were obtained for this property. In addition, this project has increased the amount of property designed as forest conservation areas from the approvals