



Comprehensive Rezoning & Update 2020-2021 Task Force

MEETING SUMMARY

Hybrid In-Person / Remote Meeting
Wednesday, April 14, 2021, at 6 PM

I. Welcome and Roll Call – Planning Commission Madam Chair Kim Kohl

The Planning Commission Chair opened the meeting at 6 pm, conducting member roll call.

The following Task Force members were in attendance: Chair Kim Kohl, Vice Chair Joe Hickman, Bill Sutton, Paul Ruge, Tom Mason, Al Nickerson, Bill Norris, Buck Nickerson, Bryan Greenwood, Pat Lagenfelder and Sam Shoge.

The following staff also attended: Planning Commission Attorney Cynthia McCann, Esquire; DPHZ Director William Mackey, AICP; Deputy Director Carla Gerber, AICP; and Acting Clerk Sandy Adams.

Members of the public who attended in-person and remotely included County Commissioner Ron Fithian, Mr. Bill Crowding, Ms. Judy Gifford, Ms. Janet Christensen-Lewis, Mr. Frank Lewis, Ms. Elizabeth Watson, and Mr. Olin Davis. The meeting was also livestreamed, and anyone could listen to the meeting, via the County's website.

II. Approval of Summary for the Task Force Meeting on March 31, 2021

Mr. Mackey stated the spelling errors have been corrected. All were in favor and approval of the minutes carried.

III. Purpose and Ground Rules

Chair Kohl read from the group's mission statement and reviewed the ground rules.

- A. Everyone is encouraged to share ideas openly and freely.
- B. There are no right or wrong inputs for discussion purposes.

IV. OLD BUSINESS – There was no Old Business discussed.

Adopted on April 28, 2021

V. NEW BUSINESS

1. Review concept of reducing setbacks for Agricultural Structures

Mr. Mackey stated that Carla Gerber had prepared comments and references in the agenda to explain questions that may come up, and he invited members who proposed changes to speak about them. Mr. Mackey also reviewed setbacks for agricultural structures, and he added that he researched neighboring Counties, which would be emailed later as a follow-up.

Ms. Gerber spoke on Kent County's regulations noting the many different setbacks for animal husbandry-related uses, waste management structures, and the placing of waste structures on farms to take poultry litter. State law regulates poultry litter placed on the ground, requiring a 125-foot setback from roadways, and Kent County requires 600 feet for structures that house the same waste materials. There are other setbacks in place as well, and a simpler format for regulating structures could be in place as an alternative.

Mr. Mackey added that regulatory setbacks for both Cecil and Queen Anne's counties are simpler, and distance requirements are often related to a residential use standard. Mr. Mackey offered to provide summary materials to the Task Force in a follow-up email.

A Task Force member conveyed that the current setbacks are confusing relative to private stables versus commercial accessory farm buildings, which are very different but should be the same. The member opined that the 600-foot requirement is too great of a distance compared to the State's requirement. More reasonable setbacks need to be considered.

Another member agreed it should be simpler; however, with regards to a large farm with animals, the setbacks should not be small.

A third member conveyed that the current setbacks are in consideration of the neighbors, and everyone is entitled to their property rights.

A fourth member agreed that the current setbacks are in consideration of the neighbors, and that the setbacks should remain the same. Farmers can apply for a variance, and neighbors would be alerted to the opportunity to provide feedback.

Another member stressed the importance of being a good and considerate neighbor. Setbacks should remain the same and people can apply for changes as they are needed.

2. Review Elimination of the 10% rule for new agricultural subdivisions

Mr. Mackey referred to the agenda example, stating the topic has come up more than once. Staff conveyed that from experience it appears that this regulation is unique to Kent County.

A Task Force member conveyed that he is in favor of eliminating the 10% rule, as it severely limits the options of the agricultural community to subdivide a farm.

Another member remembered mention of the 10% rule being voted down twice years ago, because it restricts the ability to sell lots from the farm to stay in business, etc.

Madam Chair directed the question to Carla Gerber to explain the rationale of the 10% rule and clarification of the County's preference for large farms.

Ms. Gerber responded that the rationale was to keep large tracts of land intact. Farmettes were considered to be a risk and might have negative impacts on the agricultural community, making it harder to keep agricultural support services. The 10% rule was supported by the Agriculture Advisory Commission 20 years ago. It does not affect larger farms in the same way; subdivisions where all tracts remain over 100 acres would not be affected by the limitations in the 10% rule.

A member stated that small farm owners spend money supporting local businesses, and farmers should have the option to subdivide their land into smaller farms to keep their livelihood going.

Another member agreed, citing that people may not be interested in farming a large number of acres; they would need just enough land to support their industry, such as greenhouses and vineyards. The Kent County 10% rule eliminates the ability of some farmers to do that.

A third member conveyed that the ordinance was designed to reduce the number of farmettes, except in rural character areas. Changing the rule, while eliminating some of the density could be a compromise solution.

A fourth member agreed with modifying but did not agree with allowing farms to be divided due to concerns that the land might not be farmed and could be converted into large estate housing developments, which would destroy agriculture over a period of time. Farmers have moved here because of the strong zoning. Respect the farmers by preserving the land for farming. Allowing infiltration with no controls will cause conflicts in the County.

A member voiced concern that by imposing a limit on the number of acres that can be purchased, it places young farmers at a disadvantage and risks elimination of young farmers. Continue to make agriculture strong by allowing more people to have a sustainable, small-acreage farm.

A fifth member conveyed changing density is more appealing and suggested considering what is best and giving opportunities for everyone, not just a segment of the community.

A member stated not all land is owned by farmers, but investors also. Most farmers would not like changing the dynamics for those who rent or sharecrop land, cutting up their operations. The AZD should be left alone and allow farmettes in other zoning districts.

Another member conveyed that years ago, the County ended up with some 20-acre farmettes, where the owners were unable to maintain their land, and farmers did not want to lease it.

3. Landscaping Review

Mr. Mackey conveyed how landscaping is required in general. Various zoning districts have different standards for landscaping. The concern raised was to the large number of requirements in some cases and the credit system involved, which could require a large number of plantings.

4. Allow nonconforming structures to be granted full legal status

A discussion ensued to clarify and define non-conforming structures vs. legal non-conforming.

Mr. Mackey provided information that in some cases it may be more difficult for mortgages to be approved for properties that are legal, nonconforming.

A Task Force member requested an example and the ramifications involved if structures were to remain nonconforming, but legal.

Ms. Gerber said there are nonconforming residential uses on Marine zoned properties and nonconforming structures that were built before the zoning ordinance which do not meet setback requirements. These are legalized under the code, but they cannot be replaced except by conforming to the code.

Another member offered another example. Houses built on waterfront properties before 1985 could be built 20 to 30 feet from the water and often have structural foundation issues. Now, Critical Area laws require a 100-foot setback, and unless the foundation is strong, the owner cannot build upon it because it is considered nonconforming.

A third member addressed the difference between use and structure. The Code encourages reusing existing buildings, but buildings that sit idle for a couple of years cannot be used; there are examples of this across the County. If they were lawful when they were built, they should still be allowed to continue without violating the zoning code.

A fourth member stressed the unfairness in penalizing a property owner who purchased land for a legal use in the past with added construction and engineering costs just because the rules changed. This member also inquired as to whether there is a grandfathering clause in the code to address this.

Mr. Mackey conveyed there is such a provision. The non-conforming uses and structures would be informally referred to as grandfathering clauses with a two-year limit for most uses, but if the use were no longer permitted and it is not conducted for two years, it cannot be conducted again.

A member inquired whether a nonconforming use extension could be granted if no changes are desired after the two years and if they would be required to conform with the current code so long as the land use has not changed.

Mr. Mackey commented that the structure and what is legal is separate from the use made of the structure. The non-conforming provisions are nuanced with a lot of exceptions and different standards. If a use is no longer permitted in a zoning district and it's not conducted within a period of time, it must be brought up to comply with current code, which also applies to when building uses are changed; however, ownership does not affect the use or the nonconforming status.

The meeting recessed for a 15-minute break.

5. Conceptual review of a reset for density

Mr. Mackey conveyed a proposal to consider restarting the density clock while changing density to be more restrictive, which could be modeled via GIS. Ms. Gerber summarized resetting the density clock. Several members asked that inquiries be made if density is regulated by the State.

6. Definition of Farms

Mr. Mackey offered that Kent County limits the minimum size of farms to 20 acres or more. There has been public feedback regarding resetting the size and allowing smaller farms to operate. Mr. Mackey also noted there may be two code definitions needing change if the standard is changed.

Ms. Gerber conveyed that it may be time to reevaluate, since it appears that the current standard is related to how properties are assessed for tax purposes, based on their size. At the time, this was an easy way to set a standard, but it may not be the best way to set policy moving forward.

A Task Force member conveyed that because of how the current Code regulates farm uses, many agricultural uses in the County are illegal, and flexibility is needed in order to make them legal.

Another member stated that guidance and restrictions are needed to avoid unkept properties.

A member agreed but also stated that Code Enforcement would be able to enforce restrictions.

Ms. Gerber stated farm animals (horses, goats, steer) and acreage are something to consider.

7. Review setbacks along roadways pertaining to County and State maintenance

Mr. Mackey conveyed that consideration could be given to different ways of regulating roadways (for example, complete streets or other new approaches), rather than a nominal standard width.

Ms. Gerber agreed that the issues need to be considered further.

A member stated that the County, State, nor the utility companies should have to maintain hedges.

8. Review allowing data centers on land in AZD

Mr. Mackey conveyed recent legislation addressed data centers. They were not included in AZD.

A Task Force member was adamantly opposed to including them, stating it is not compatible with normal farming operations and opining that data centers were not appropriate in AZD, as there is not enough research on size, scale, noise, and water use, in addition to there being no demand for it. This member also added that neighboring property owners also have property rights to be included in the discussion.

Another member disagreed. Without data centers most farmers would be out of business since everything is run from a data center and is a part of agriculture today. The landowners should be able to decide if they want to include a data center as part of their agricultural operations.

A third member offered that sometimes projects cap out and are limited with overall size, giving future developers additional flexibility, and giving the county the ability to attract future data centers. The 630-acre cap is a good idea. The member further stated preferring to see flexibility built into the overall code.

A fourth member conveyed it was determined in a Planning Commission meeting about a year ago that data centers are noisy, and added that a lot of farmers would love to have 630 to 650 acres of additional farmland to till. The agriculturally zoned land should be left alone.

A member stressed concern in changing the AZD district and would rather see those acres rezoned to an appropriate zoning district.

VI. Public Comments

Mr. Bill Crowding spoke, stating other Counties who have less restrictive setbacks are using Kent County's zoning ordinance as a model for amending their own ordinance. Poultry houses have driven market land value down. Regarding the 10% rule, when farmland is split up, agricultural support industries will be lost as well as agriculture itself. Farming industries will be replaced with developments, like on the Western Shore. Agricultural operations can be handled through special exceptions and conditional uses. Mr. Crowding noted that data centers received an unfavorable recommendation from the Planning Commission, advising to use them in zones that are allowed.

Ms. Judy Guifford spoke expressing that more information is needed in order to understand why there is a need for any change. The Task Force should avoid anecdotal reasons and work to identify data-based reasons.

Ms. Janet Christiansen-Lewis spoke stating zoning regulations are in place to protect the rights of all property owners in the community not just an individual. Community standards are laid out

in the Comprehensive Plan. The Zoning Code of Kent County is bound by Maryland statute to uphold standards expressed in the Comprehensive Plan.

Mr. Olin Davis asked for a brief definition of a data center and stated agriculture uses data for tractors, combines, etc. and thrives on it. It is difficult for farmettes to fit into the agriculture zone and production. A setback for agriculture structures of 300 feet is a good compromise, but 600 feet is not practical.

VII. Task Force Comments

There were no additional comments.

VIII. Readings for next meeting:

Madam Chair Kim Kohl asked Mr. Mackey if he would like for the group to continue with the additional items on the agenda or to adjourn the meeting. Mr. Mackey advised that the remaining items on the agenda could be discussed at a future meeting, since the group had already been meeting for two hours.

XI. Adjournment

There being no further business, Madam Chair made a motion to adjourn the meeting, and the motion was carried with all in favor. The meeting adjourned at 8:07 pm.

All unaddressed items are carried forward to the next meeting agenda, beginning with item #9.