



Comprehensive Rezoning & Update 2020-2021 Task Force

PUBLIC FORUM SUMMARY

Hybrid In-Person/Remote Forum
Wednesday, April 28, 2021, at 6:00 p.m.

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

The Planning Commission Chair opened the meeting at 6:05 pm, conducting member roll call.

The following Task Force members were in attendance: Chair Kim Kohl, Vice Chair Joe Hickman, Bill Sutton, Jim Saunders, Tom Mason, Tyler Brown, Albert Nickerson, Bill Norris, Bryan Greenwood, Buck Nickerson, Chikki Shajwani, Cindy Genter, Pat Lagenfelder, and Sam Shoge.

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

Members of the public who attended in-person or remotely included: County Commissioner Ron Fithian; Kyle Kirby, Esq of McLeod Law Group; Jim Constantine of LRK (Looney Ricks Kiss); Jennifer Debnam; David Hill; John Lysinger; Janet Christensen-Lewis; and Frank Lewis. 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 April 14, 2021

Mr. Hickman moved to approve the proposed Summary of the Task Force Meeting Minutes. Mr. Saunders seconded the motion. Mr. Hickman inquired about the format of the minutes, which Mr. Mackey explained as idea focused. All were in favor and approval of the minutes carried.

III. PUBLIC FORUM

A. Overview of Comprehensive Rezoning and Update Process

Chair Kohl asked staff to provide an overview of the rezoning and update process, as well as a summary of the text changes submitted as listed on the January 14 and April 14 agendas. Chair Kohl noted that the floor would then be open to receive public comments. Those participating by phone could speak first, then those participating by Teams, then those attending in person.

Mr. Mackey welcomed all attendees and presented general information on the rezoning process.

Zoning is a regulatory process that divides all land into different districts based on primary uses. Comprehensive Rezoning includes a review of the entire code, including the text and zoning map. The public can request specific text changes, and any property owner can request new zoning districts for their own properties. The County's process is only for properties outside the Towns.

The process includes a national consultant who provides broad zoning expertise. Staff provides for logistics, and the Task Force provides guidance and recommendations on both the product and process. The Task Force consists of the Planning Commission and nine community members who wear many hats and bring many perspectives.

The public forum is held for comments from members of the public on received requests for text changes. The Task Force will make general recommendations on these requests in the future, and another public forum will be held for feedback on the Task Force's future recommendations.

B. Summary of text change requests (from Jan 14 and April 14)

Tonight's public forum will allow public input on proposed text changes that have been received so far. The requests from the public include requests related to when sheds are allowed; consider more utility-scale solar; add a Mixed-Use zone; add more uses to various districts; review lot coverage standards; review setbacks; review density standards; and more. There were 12 in total.

The second set of requests is from the Task Force membership. These include requests to review setbacks related to animal husbandry uses; review farm size and subdivision potential in AZD; review nonconforming uses and structures; review allowed pier length; review buffer standards; review the definition of structures; review waterfront regulations regarding yards and setbacks; and review corner lot regulations, accessory structures, and deadlines for board submittals.

Mr. Mackey closed his presentation by inviting the public to reach out to the Department at compzone@kentgov.org , or www.kentcounty.com/compzone, or 410-778-7423 (voice/relay).

C. Public comments and input in person, by phone, via Teams

Chair Kohl explained that anyone may comment on anything that has been discussed up to this point; comments should be limited to five minutes per person; and to please state your name clearly for the record and speak directly into the microphone.

Chair Kohl opened the forum floor to receive comments via phone calls, via Teams, and in-person.

Phone calls

1. Mr. Kyle Kirby, Esq., of the McLeod Law Group stated that he represents several property owners at Millington Crossing located at the intersection of Routes 301 and 291. Input was given on the growth and rezoning process, as the property owners own approximately 600 acres. Mr. Kirby reported his clients are interested and actively involved in promoting smart

economic growth and recently submitted a proposed text amendment to provide for mixed use zoning at Millington Crossing, the largest cooperative economic development area in the County, and stated the significance of housing diversity and smart growth are important, as the Comp Plan has targeted this area as a location for future growth. The rezoning process is very significant to this area and to the health of the County. Mr. Kirby introduced Jim Constantine of LRK, Architectural Design and Planning's Principal Planner who is working on Millington Crossing to speak to the most appropriate zoning for this area of the County, as suggested by the Comp Plan.

2. Mr. Constantine reported that the land surrounding US 301 and MD 291 is a good opportunity for the County to rezone and introduce mixed use as suggested in the Comp Plan, as it could serve as a gateway to Maryland's Eastern Shore along with the State's proposed Bay Country Welcome Center. With recent improvements to US 301 in Delaware and Maryland, the route is designated as an alternate to I-95 and the Bay Bridge crossing. The Comp Plan identifies the area as a priority growth area, suitable for expanded regulatory flexibility and mixed-use development that would advance the County's economic goals by creating new jobs, services, diverse housing expansion and, in addition, support the initiatives of the mission statement.

Teams

3. Mr. David Hill noted this time is his busiest time. The meetings are confusing and data centers were defeated six months ago. Resetting the lots creates more septic systems and more wells.
4. Ms. Jennifer Debnam communicated strong support of the 2018 Comp Plan, emphasizing protections for the Agriculture Zoning District (AZD). Resetting the density clock would be against the 2018 Comp Plan and would fragment the AZD, putting some lots into the Priority Preservation Area, which is not intended. Ms. Debnam suggested that Rural Character zoning district areas be increased. Ms. Debnam stated that the setbacks in the Land Use Ordinance for agricultural structures, especially for animals, is confusing, and a 200-foot setback is not far enough from property lines. She added setback differences should be based on density.
5. Mr. John Lysinger spoke to the Millington Crossing proposal by Mr. Constantine and Mr. Kirby. He conveyed concern with growth along the US 301 corridor, the lack of definition as to how mixed-use development might look, and how substantial construction on the west side of the highway would affect the limits of the development. He spoke to imposing limitations on any growth immediately eastward of US 301, as well as restrictions on growth westward.
6. Mr. Kirby responded to clarify the mixed-use draft proposed ordinance relative to mixed use zoning on permitted uses, variances, and special exceptions. His clients would like a relatively small portion west of US 301 to be designated for mixed development.

In-person

7. Ms. Janet Christensen-Lewis expressed that zoning must be found consistent with the Comp Plan and that the courts have upheld this, noting the previous discussions have not clarified how the changes would be compatible with the Comp Plan. She expressed skepticism of changes that would change rules in the Agricultural Zoning District, for example, resetting the density clock, allowing data centers, or adjusting the 10% rule. Ms. Christensen-Lewis stated in her opinion that subdivided land would not allow land to be farmed efficiently, adding that data supporting young farmers buying smaller land parcels and turning them into agricultural production is not available. Ms. Christensen-Lewis mentioned instituting a new land share program comparable to Montgomery County, which is very successful. Ms. Lewis expressed further concern for the US 301 corridor, mixed-use proposal, stating that the developer wants to build on agricultural land, which will cause the loss of forest between now and 2040, because of the County's very low forest densities. Ms. Christensen-Lewis stated that all forests should be preserved, land protected, and landowners have the right to farm within those setbacks that respect non-farming neighbors. Agricultural setbacks on large operations should restrict the placement of any associated buildings and manure. Ms. Christensen-Lewis supports granting variances with the written or verbal agreement of the neighbors as the best remedy. Ms. Christensen-Lewis also conveyed her concern that the Task Force process is confusing with too many topics being discussed simultaneously by the Task Force.

The Chair clarified that there are a variety of topics planned for discussion using a published schedule.

IV. Purpose and Ground Rules

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

V. Old Business – Task Force proposed text changes (#1-8) were discussed during April 14 meeting.

9. Review elimination of the County's maximum pier length of 150 feet

A Task Force member conveyed that Kent County has the most restrictive pier regulations. Permit applications are sent to seven different agencies, which follow stringent regulations and marine contractors are no longer doing their own permits, due to the strict regulations. After the Federal and State process, applicants come to Kent County with more regulations. The most onerous one is the 150 feet pier length, in which inconsistencies were noted. Towns in the County have their own regulations. Getting a variance from the 150-foot restriction is a difficult process to navigate in Kent County. One must prove hardship before the Planning Commission and the Board of Appeals, unlike other Counties, such as Queen Anne's and Cecil.

Another member questioned the theory behind the limitation of the 150 feet requirement.

The first member conveyed not being in support of the 150-foot restriction, in that, what was noted during the formation of the previously written Land Use Ordinance, pertaining to kayakers navigating the shoreline was incorrect, based upon personal experience.

10. Review how to better define establishing a Modified Buffer

Mr. Mackey conveyed that staff identified this issue also. Kent could adopt a process similar to other Counties to allow applicants to apply for modified buffers using data on record.

A Task Force member stated the rule is difficult to interpret and should be better defined.

Another member asked Mr. Mackey to provide clarification on what needs to be changed in the definition. Mr. Mackey agreed to supply a copy of the definition to the Task Force.

The Forum recessed for a 15-minute break at 7 pm.

11. Review how to better define an Expanded Buffer

Mr. Mackey briefly explained how Expanded Buffers occur and added design professionals could provide a clearer definition.

A Task Force member clarified the difference between an Expanded Buffer and the Modified Buffer and further conveyed that these should be more clearly defined, with guidance from the Critical Area Commission.

Another member agreed it should be more clearly defined and guidelines set forth to avoid extended wait times during the process would be helpful.

A third member stressed the importance of people who are considering purchasing property or renovating property having knowledge of what is permitted as well as restrictions, before entering the building permit application process.

Ms. Gerber recognized the need to update the Buffer in the new zoning ordinance and is working with the Critical Areas Commission to better interpret and clarify existing regulations.

12. Review how to better define the term Structure

Mr. Mackey read the definition of *structure* directly from the Code.

A Task Force member stressed the term *structure* should be better defined and suggested following Cecil and Queen Anne's County's definitions and regulations for consistency.

13. Review how to better define the Cottage Industry process

Mr. Mackey read the definition of Cottage Industry directly from the Code.

Ms. Gerber added special exceptions are required for Cottage Industries. They go before the Board of Appeals with a recommendation from Planning Commission. It is a longer process.

A Task Force member recounted a personal experience with the Cottage Industry process, citing the long timespan to obtain approvals from the Planning Commission and the Board of Appeals and the limited timeframe to make amendments pertaining to site, landscaping, sediment control, stormwater plans, and posting bond for landscaping and storm water management, resulting in a costly investment that a potential small business owner may be unable to meet. The process should be streamlined to save both time and money.

Another member opined that the lengthy and costly process is ridiculous. The Task Force should make it easier for business owners, so they are not deterred by the process and associated costs. The member further agreed with the first member who spoke on the need to streamline the process, in addition to making it equitable to all community members.

A third member agreed with the first two speakers and further stressed the importance of business growth and facilitating ease in starting up a new business, as many of the larger successful businesses of today started out small at the Cottage Industry scale.

A fourth member agreed with all above, relating to the confusion in the County surrounding covenants and restrictions. This member further conveyed additional thoughts on the need for enforcement of both, and a clearer process that is equitable for all.

Mr. Mackey responded regarding enforcement that all provisions are not created equal. County plat notes and approvals issued by the Planning Commission or the Board of Appeals are enforceable by the County; however, items in Homeowners Association's agreements, deed restrictions, and covenants are considered like private agreements, which is a separate matter under law, and the County does not have purview to enforce them. In those such cases, enforcement usually results from a homeowner association's member who files a suit.

14. Review Waterfront Regulations

Mr. Mackey conveyed the waterfront side of the property is considered the front yard, which results in pools not being allowed in the front yard although they can be located behind the house on the street side. There are a number of applications for special exceptions each year to accommodate those structures that would normally be located in back yards.

A Task Force member shared that Kent County is the only County to consider the waterfront as the front yard. Many people have to apply for a special exception to put a pool in the front yard of their waterfront property, yet some back roads have sheds 5 feet from the road and

are legal. In order to keep the waterfront as the front yard, an exception should stipulate pools are allowed in the front yard and sheds must be more than 5 feet from the road in the other yard.

15. Review size limitations on accessory structures

Ms. Gerber read the current size limitations directly from the Code and added they would require a special exception for structures over 1,200 square feet in area, and there are many applications for these special exceptions. She further stated it was 1,000 square feet in 1989, then raised to 1,200 square feet to address the need for larger sheds. People desire even larger sheds/garages than 20 years ago, and Ms. Gerber stressed the need for special exceptions on smaller properties, so that the placement of a shed or garage on a neighboring property would not negatively impact neighbors. For this reason, increasing the square footage or a change in regulations may be needed.

A member stated there were no stormwater management regulations when the 1,200 square footage was implemented. Now, stormwater management regulations may have to be met for structures over 1,200 feet, as the sitework is usually more than the building area.

VI. Public Comments

Ms. Christiansen-Lewis questioned at what point would accessory sheds be deemed too large, as 2,000 square feet is comparable to a second home, and whether only pools are not allowed in the front yard of a waterfront property.

Ms. Gerber stated any accessory structure in the front yard of a waterfront parcel would require a special exception.

Ms. Christiansen-Lewis expressed concerns on property value of a large shed or pool impeding on the enjoyment of property and adding time for the property owner to meet the variance requirements, which also ensures the neighbors are in acceptance, should be considered.

Ms. Christensen-Lewis also expressed concern over the acceptance of multiple rebuttals during the public forum.

VII. Task Force Comments

Chair Kohl clarified the public forum encourages discussion which includes both comments and rebuttals. A public forum is less formal than a public hearing, and future parameters may be imposed should rebuttals get out of hand.

Mr. Mackey added the public forum can act in a number of ways to encourage open dialogue.

A Task Force member cautioned that the public will likely be passionate on legislative processes and a back-and-forth conversation could escalate quickly, thereby complicating the process.

Chair Kohl agreed on the need to forego back-and-forth discussions on recommendations.

Mr. Mackey proposed to poll the Task Force on topics for upcoming meetings. Mr. Mackey asked the Task Force members to send him topics they would like to have scheduled over the next three meetings regarding the requests for specific text changes to clarify how to proceed.

VIII. Requests for Research

A member stated the process has not yet been defined and requested examples of the work that the consultant has produced to see what the end result would look like before moving on.

Mr. Mackey reported touching base with the consultant before the meeting and will provide a relevant example per the member's request. Mr. Mackey stated the graphics have been looked at, and changes are being made for future feedback by both the Task Force and the public.

IX. Readings for Next Meeting

Note: Materials for readings in the Land Use Ordinance are being included below agenda items.

X. Adjournment

Chair Kohl motioned to adjourn the public forum, and the motion was carried with all in favor. The meeting adjourned at 7:59 pm.

All unaddressed items are carried forward to the next meeting agenda, beginning with item #16.