

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, October 2, 2014, in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland, with the following members in attendance: Elizabeth Morris, Chairman; William Sutton, Vice Chairman; Bill Crowding; Kim Kohl; and Joe Hickman. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; Katrina Tucker, Community Planner; Bill Kerbin, Housing Planner; G. Mitchell Mowell, Planning Commission Attorney; and Tonya Thomas, Secretary.

Ms. Morris called the meeting to order at 1:30pm.

## MINUTES

The minutes of September 4, 2014, meeting, were approved as corrected by Planning Commission members and presented via today's meeting.

## APPLICATIONS FOR REVIEW:

**2012 Water and Wastewater Plan – Proposed Amendment to Fairlee Water Service Area –** Kent County proposes to amend Chapter 3, Section 2040 (Water/Water Supply Systems/Delta Heights). The County plans to extend a water line from the Fairlee Service District to serve Tolchester Village. The community currently is served by a private water treatment facility owned and operated by Fifth Investments, LLC, and that the system is in poor repair. The capacity of the proposed line is adequate to serve the nearby Tolchester Estates in the future. The private water treatment plant will be taken out of service when the new line from Fairlee is connected to the Tolchester Village water distribution system.

Present and duly sworn in was Mike Wojton of Kent County Department of Water and Waste water and Ernie Crofoot, County Attorney/Administrator and Amy Moredock, Director.

Ms. Moredock gave an overview of the application and cited the applicable laws of the Maryland Annotated Code- §9-506 (Environment/Water, Ice, and Sanitary Facilities/County Water and Sewerage Plans).

Mr. Wojton gave a brief overview of the scope of the proposed project and provided testimony which included a summary of evidence submitted in the form exhibits documenting the deplorable condition of the existing private water treatment facility. Mr. Wojton further stated that while the existing documentation did not outline a public health emergency, Maryland Department of the Environment has documented that a public health concern exists. He added that prolonging the project will only make the situation worse and cost the residents and possibly the County more money in the future.

Mr. Crofoot explained the necessity of providing water to the residents and the effect this could have if the Planning Commission does not recommend favorably to the County Commissioners.

A discussion and debate ensued regarding consistency with the language of the Comprehensive Plan and interpretation of the Code of Maryland Regulations (COMAR) as it relates to health emergencies and their documentation. Further, the Commission discussed Maryland Department of

Planning's position regarding denied access lines upon which Mr. Crofoot and Mr. Mowell disagreed.

Mr. Hickman made a motion to send an unfavorable recommendation to the Kent County Commissioners regarding the proposal's consistency with Kent County Comprehensive Plan. The Commission does not find that the proposed water line extension from the Fairlee Water Plant into the County to serve 24 units in Tolchester Village is consistent with the Comprehensive Plan based on the following findings:

- The Commission acknowledges that corrections are necessary to the existing water treatment system serving the residents of Tolchester Village.
- The Commission further acknowledges that health issues are likely to result from the presence of *E. coli* bacteria confirmed in drinking water samples.
- The Comprehensive Plan specifies that public water and/or sewer systems will not be extended into the Countryside except to correct public health emergencies. The Commission does not find that adequate documentation exists from Maryland Department of the Environment establishing that these criteria have been met.

Mr. Sutton seconded the motion and the motion to send an unfavorable recommendation to the Commissioners regarding the proposal's inconsistency with the Comprehensive Plan passed 3-1.

In addition, the Planning Commission discussed the previous cases in which the Kent County Health Officer had made such determinations in public health emergency cases. The Commission acknowledged that the Comprehensive Plan strategy relative to public health emergencies may need to be revisited during the next Plan update. However, the members felt that, in order to remain consistent in their implementation of this section of the Comprehensive Plan, the Kent County Health Officer should give the County guidance in this case.

#### **Eastern Shore Mushroom, Inc. - Final Site Plan Approval Extension.**

Mr. Needham requests a three year extension of the final site plan approval for Eastern Shore Mushroom Farm, Inc., which would otherwise expire on October 6, 2014. The proposed mushroom farm production facility is on an approximate 314.08 acre farm located on 12206 Galena Road in the First Election District near Massey. The farm is zoned "AZD" Agricultural Zoning District and "I" Industrial.

Present and duly sworn in was Arthur Needham, President of Eastern Shore Mushroom, Inc., Steven Layden of McCrone Engineering, and Ms. Moredock, Director.

Ms. Moredock gave a brief overview of the application and cited Article VI, Section 5.2.6 of the Kent County Land Use Ordinance which authorizes the Planning Commission to grant site plan approval extensions under certain conditions.

Mr. Needham gave a brief overview of the project status and stated they have not been able to increase their business in Maryland due to the economy. He added that he has remained current with all required plan renewals. Mr. Layden gave a brief overview of the site plan and noted that all sediment control and stormwater management plans are current, having been restamped as required. He added that all sureties are in place.

Ms. Morris asked for audience comment, and Ford Hall, Sr. of Galena testified that he was in favor of the requested extension. He further noted that economic times have been tough and he understands the project delay.

Mr. Sutton made motion to grant the 3 year extension as requested citing that the applicant has done an outstanding job with keeping all required permits up to date and current.

Mr. Crowding seconded the motion, and the motion passed unanimously.

### **John and Deborah Lynch – After-the-Fact Buffer Variance**

Mr. Lynch requests an after-the-fact variance to retain a patio within the Critical Area Buffer. The patio is approximately 315 square feet and is located 18.7 feet from mean high tide. The 4.064-acre property is located on Belchester Road along the Sassafras River in the Second Election District. The parcel is zoned “CAR” Critical Area Residential and the neighborhood is characterized by waterfront homes on relatively small and medium size lots.

Present and duly sworn in was John Lynch, owner of the property, Noreen Davis, of Davis and Associates, and Bill Kerbin, Housing Planner.

Mr. Kerbin gave an overview of the application and cited the applicable laws of the Kent County Land Use Ordinance to include Article V, Section 2.5 which cites minimum yard requirements; Article XI.35 which established the definition of the buffer; Article V, Section 2.7.B.3 which addresses development in the buffer; and Article IX Section 2.2 which authorizes the Board of Appeals to grant buffer variances.

Ms. Morris inquired as to correspondence received regarding the application, and Mr. Kerbin noted that correspondence had been received by Critical Area Commission staff who does not support this application for variance.

Mr. Lynch gave a brief overview of his property and how he came to have the patio installed onsite. He noted that the patio is surrounded by mature trees and plantings. In order to remove the patio, the existing habitat would be greatly affected. He hired Noreen Davis to study the environmental impacts of removing the patio from the site.

Mr. Lynch further stated that he was not aware of the buffer restrictions; had he known he would have applied for a building permit. He did not intend or set out to break the law; as he had applied for a tree removal permit in the past.

Ms. Morris asked Mr. Lynch if the realtor had disclosed information about the buffer when he purchased the property. Mr. Lynch stated he did not recall whether or not that was discussed at settlement due to the amount of cumbersome and lengthy paperwork.

Ms. Kohl asked Mr. Lynch if he had a professional install the patio. He stated his friends helped him install the patio.

Ms. Kohl made a motion to send an unfavorable recommendation (and an addendum) to the Board of Appeals for the buffer variance based on the following findings:

- The granting of the variance would confer a special privilege upon the applicant not available to other property owners.
- The granting of the variance is not in harmony with the general spirit and intent of the Critical Area Law and Kent County regulations. The patio is not a water dependent facility.
- The granting of the variance will adversely affect water quality or adversely impact fish, wildlife, or plant habitat.
- The Critical Area Commission has reviewed this application and does not support the variance because of its potential negative environmental effects to the property.
- There are no extraordinary topographical or other conditions of the property.
- Strict application of the Ordinance would not produce an unwarranted hardship as there appears to be alternate locations onsite for the patio.
- If the variance were denied, the applicant would not be denied reasonable use of the parcel in its entirety.
- A literal interpretation of the Ordinance would not deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of Kent County, as alternative locations do exist to construct the patio outside of the 100 foot Critical Area buffer.

Ms. Kohl made addendum her to the motion to include the following condition:

- If the Board is inclined to grant approval, then staff recommends that a water quality improvement plan and buffer mitigation plan at a rate of 7:1 be implemented on site to comply with the critical area violation (4:1) and variance planting requirements (3:1).

Mr. Hickman seconded the motion with the addendum; and the motion passed unanimously.

**Inn at Huntingfield – James and Joanne Rich – Special Exception/Site Plan Review – Expansion of an existing Country Inn to a Retreat**

James and Joanne Rich, owners of the Inn at Huntingfield Creek, request a special exception to expand their existing Country Inn to a Retreat. They propose to build a 3,737 square foot cottage with 3 guest rooms. The existing Inn at Huntingfield Creek consists of 3 cottages, the innkeeper's house, and an events building. The Inn currently has 8 guest rooms, and this cottage will bring the total to 11. The 62.73-acre property is located on Eastern Neck Road in the Fifth Election District. The Property is zoned "RCD" Resource Conservation District and "AZD" Agricultural Zoning District. The surrounding area is characterized by residential development (Huntingfield Estates Subdivisions) and agriculture and is zoned "CAR", "RCD" and "AZD".

Present and duly sworn in was James and Joanne Rich, owners of the property, Buck Nickerson, of Extreme Measures Surveyors, and Mr. Kerbin, Housing Planner.

Mr. Kerbin gave an overview of the application and cited the applicable laws of the Kent County Land Use Ordinance to include Article V, Section 2.3.17 which identifies a retreat as a Special Exception in the Resource Conservation District; Article VII, Section II sets general standard for Special Exceptions; and Article VII, Section 7.49 sets specific standards for a Retreat in RCD.

Ms. Morris inquired as to correspondence received regarding the application, and Mr. Kerbin noted that correspondence had been received by Critical Area Commission staff who supports this application.

Mr. Rich gave a brief overview of the existing business and how the extra rooms will be an asset to their business and the County. Expanding the business will require additional employees. Accommodation of additional clients would generate approximately additional \$125,000.00 revenue paid to Kent County through spending.

Ms. Morris asked the applicants if there is adequate parking for the additional employees. Ms. Rich stated all employees will not be at the site at the same time, and that there is adequate parking for employees around the existing circle drive.

After further discussion of the existing facilities and the expansion of the existing use and facilities, Mr. Hickman made a motion to send a favorable recommendation to the Kent County Board of Appeals for the special exception for an expansion of an existing Country Inn to a Retreat with the following findings:

- The proposed retreat will consist of at least 15 acres.
- The retreat will have at least 10 but not more than 40 guest rooms.
- The proposed retreat will not increase demand on public and governmental services.
- The proposed retreat reflects the historic character of the existing country inn.
- The view corridor onsite and onto the site are preserved, and the proposed retreat will not change the surrounding character of the neighborhood.
- The height of the structure does not exceed 38 feet.
- The proposed retreat reflects and complements the rural character of the area.
- Permitted accessory uses include kitchen and dining facilities for guest only, and other permitted recreational facilities.
- The proposed retreat will include less than 10 buildings.
- All structures will be located out of the 100 foot Critical Area buffer and will meet all other required setbacks.
- At least 60% of the property remains in open space.
- Parking areas are adequately landscaped.
- The existing entrance and adjacent road appears to be able to handle traffic generated by additional guest cottage and emergency equipment.
- Adequate lighting and parking has been provided as noted on the site plan.
- Rare threatened and endangered species may be present onsite. DNR Heritage Review will be required at the time of building permit review and documents have been submitted to DNR to start this review process.

Ms. Kohl seconded the motion; and the motion passed unanimously.

**Inn at Huntingfield – James and Joanne Rich – Preliminary/Final Site Plan Review – Expansion of an existing Country Inn to a Retreat**

James and Joanne Rich, owners of the Inn at Huntingfield Creek, request a preliminary and final site plan review to expand their existing Country Inn to a Retreat. They propose to build a 3,737 square foot cottage with 3 guest rooms. The existing Inn at Huntingfield Creek consists of 3 cottages, the innkeeper's house, and an events building. The Inn currently has 8 guest rooms, and this cottage will bring the total to 11. The 62.73-acre property is located on Eastern Neck Road in the Fifth Election District. The Property is zoned "RCD" Resource Conservation District and "AZD" Agricultural Zoning District. The surrounding area is characterized by residential development (Huntingfield Estates Subdivisions) and agriculture and is zoned "CAR", "RCD" and "AZD".

Present and duly sworn in was James and Joanne Rich, owners of the property, Buck Nickerson, of Extreme Measures Surveyors, and Mr. Kerbin, Planner.

Mr. Kerbin gave an overview of the application and cited the applicable laws of the Kent County Land Use Ordinance to include Article VI, Section 5 which outlines the procedures and requirements for site plan review.

Mr. Nickerson gave a brief overview of the proposed expansion of a 3 unit accessory structure with access to the golf cart path for unloading goods for the operation. Landscaping is proposed to offer screening and the parking lot area is not in the floodplain or 100-foot buffer. A storm water management plan will be addressed at the time of building permit review. The lighting will be dark sky compatible.

Ms. Morris asked if there is lighting along the paths. Ms. Rich stated that the paths are lit by solar lamps. There is a shielded light fixture at the barn.

Ms. Morris asked how many guests will the retreat be able to accommodate with the addition. Ms. Rich stated approximately 26 or 27.

Ms. Kohl asked where staff parked. Ms. Rich stated in the circular driveway by the barn.

Mr. Crowding asked about Health Department requirements. Mr. Rich stated the current system will be upgraded to a Best Available Technology (BAT) system.

Further discussion ensued regarding decks, the laundry room, pathways, and other details of the site. Following that discussion, Mr. Crowding made a motion to approve the preliminary and final site plan to expand the Country Inn to a Retreat based on the following findings:

- The proposal is consistent with the Comprehensive Plan strategies to support small locally owned businesses in the County.
- The proposed cottage is part of an expansion of an existing country inn into a retreat. The Country Inn and retreat are listed as permitted uses as special exceptions in RCD.
- The proposed retreat will add 3 guest units resulting in 11 guest rooms.
- The proposal offers adequate parking, and provides sufficient area for both vehicular and pedestrian movement. The proposal also includes an area for loading and unloading of vehicles.
- The hours of operation are and will remain the same from 8:00 a.m. to 8:00 p.m. subject to an 11:00 p.m. curfew.
- The retreat should not create an unusual amount of traffic or other impacts on infrastructure.
- The Health Department has reviewed the proposed retreat favorably.
- Soil erosion and disturbance should be minimal during and after construction since the proposed cottage and walkway will create 3,737 square feet of new lot coverage.
- The proposed retreat will not result in excessive noise, smoke or odor and will not include hazardous materials.
- Lighting will be dark sky compatible
- Removal of vegetation is not proposed and a buffer enhancement plan will not be required since the buffer is fully vegetated.
- The proposal provides additional landscaping in the side yard to screen the proposed cottage

and maintain the surrounding character of the neighborhood. Additional landscaping will provide screening for the parking area. Landscaping sureties have been submitted.

- o The proposal has been integrated into the existing landscape.
- o The proposal meets all setback requirements for the RCD district. The proposal mirrors the architectural features of the existing country inn.

Mr. Hickman seconded the motion; and the motion passed unanimously.

### **Staff Reports**

Katrina Tucker:

- Ms. Tucker advised Planning Commission members of the possibility that the Willard's Agri-Services, Inc. Site Plan will be on the November agenda. Waiting for lawyers to finalize the documents for the vacation of Right-of-Way and the Ingress-Egress Easement.
- Will be accompanying the Chair of the County's Historical Preservation Commission to the Maryland Association of Historical District Commission's Annual Meeting that will be held in Upper Marlboro on the evening of October 9, 2014.
- On October 17, 2014 will be attending The Maryland Planning Commission Association's Annual Conference in Solomon's, Maryland.

Amy Moredock:

- Ms. Moredock advised the Maryland Planning Commission Association Conference will be on October 16<sup>th</sup> & 17<sup>th</sup>. She advised that if members wish to attend, to contact staff who will assist with registration.
- MDE and FEMA approved the update to the Hazard Mitigation Plan. The Towns and the County must now adopt the plan by resolution.
- MDOT is conducting their "Annual Tour" and visiting local jurisdictions regarding road improvements as well as SHA and MTA projects that will be funded in the Consolidated Transportation Program (CTP).
- She will be attending a TMDL meeting regarding road ditch management.
- She noted that the Governor's Intergovernmental Committee on Agriculture Agritourism subcommittee will hold a meeting on October 10, 2014. Ms. Moredock is an appointed member of GICA and a member of the subcommittee. She is seeking input regarding agritourism in Kent County.
- The Annual Maryland Association of Floodplain and Stormwater Managers Conference will be held on October 23, 2014. Ms. Moredock is the Eastern Shore representative on this committee and is assisting in the organization of the Conference.
- A Zoning Text Amendment will be on November agenda. The ZTA will propose a change to the utility scale solar provisions to expand the limit from 5 acres to 60 acres on farms in the AZD and RCD.
- There have been applications that were reviewed in error in the past regarding solar panels due to a drafting error during the Renewable Energy System Text Amendment process. Staff is correcting these errors and the Ordinance has been updated to correct the drafting errors.

## **GENERAL DISCUSSION**

**January 1, 2015 Planning Commission meeting will be rescheduled for January 8, 2015**

There being no further business for the good of the organization, the meeting was adjourned at 4:08 p.m.

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Elizabeth Morris, Chairman

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Tonya L. Thomas, Clerk