

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, July 7, 2016, 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; Ed Birkmire; James Saunders; William Crowding; and Joe Hickman. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; Katrina Tucker, Community 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 June 2, 2016, meeting, were approved with corrections to the motion and vote in regard to the Planning Commission's recommendation to the Board of Appeals on the application for a variance submitted by Christian Havemeyer.

## PUBLIC HEARING

**# 16-44 Frederick J. Wick of Bayshore Land Holdings, LLC has submitted an application to amend Article III, Section 1 (Establishment of Districts, Intense Development Area), Article V, Section 2.2.17 (Resource Conservation District, Permitted Uses and Structures), and Article XI, Section 2.46 (Definitions) of the *Kent County Land Use Ordinance* to allow expansion of campgrounds in existence before August 1, 1989 within the Resource Conservation District.**

Ms. Moredock provided a brief overview of the request.

Present and duly sworn in was Jamie Williams, Economic Development.

Ms. Williams stated she has worked with the Wick's family, and this is a good opportunity for economic development within the County. There are very limited campgrounds in Kent County. Camping has become a popular family activity and the Wicks run a very nice campground. The Economic Development Department and Tourism Department are in favor of the text amendment.

There being no further testimony, the Chair closed the public hearing.

## APPLICATIONS FOR REVIEW:

**# 16-44 Frederick J. Wick of Bayshore Land Holdings, LLC has submitted an application to amend Article III, Section 1 (Establishment of Districts, Intense Development Area), Article V, Section 2.2.17 (Resource Conservation District, Permitted Uses and Structures), and Article XI, Section 2.46 (Definitions) of the *Kent County Land Use Ordinance* to allow expansion of campgrounds in existence before August 1, 1989 within the Resource Conservation District.**

Present and duly sworn in were Daniel Saunders, Counsel for applicant; Frederick J. Wick; Applicant; and Ms. Moredock, Planning Director.

Ms. Moredock gave an overview of the application and cited Article XII, Section 6 of the *Kent County Land Use Ordinance* which establishes the standards for the review and approval of a zoning text amendment. The applicant proposes to amend Article III, Section 1 (Establishment of Districts, Intense Development Area), Article V, Section 2.2.17 (Resource Conservation District, Permitted Uses

and Structures); Article XI, Section 2.46 (Definitions) of the *Kent County Land Use Ordinance* to allow expansion of campgrounds in existence before August 1, 1989 within the Resource Conservation District and to add recreational vehicles to the list of accommodations defined as a campground. She noted that the proposed amendment would be a refinement of the County's Critical Area program and that staff is currently coordinating this review with Critical Area Commission staff.

Mr. Saunders offered a brief description of the nature and the history of the campground. He explained the reason to add recreational vehicles was to prevent any misunderstanding whether or not an "RV" Park is a campground. One person's concept of camping can be different than of another's. Campgrounds bring consumers to Kent County.

Mr. Birkmire stated that changing the zoning ordinance cannot be solely beneficial to one person. Mr. Saunders stated that the proposed text amendments would potentially apply to at least one other property in Kent County.

Mr. Hickman asked about the definitions of campground regarding "temporary and not year round occupancy." He expressed concerns regarding staff's ability to enforce this provision. Ms. Moredock explained that staff is already charged with the enforcement of temporary occupancy under the existing definition of campground.

Mr. Wicks stated that there are only seasonal and transit campers on the premises of his existing campground. There are no living quarters on the premises.

After much discussion and consideration of all applicable laws, Mr. Hickman made a motion to send a favorable recommendation for the proposed amendments as presented to the County Commissioners based on the following:

- Adding campgrounds to the list of legally non-conforming uses that can continue to operate and be extended addresses a public need which was anticipated in the Resource Conservation District during the adoption of the initial Critical Area provisions in allowing for the expansion of conference centers, resorts, retreats, hotels, and motels existing and in use as of August 1, 1989.
- The proposed changes are consistent with the Critical Area Law as noted above and the following Comprehensive Plan goals and strategies:
  - Support existing businesses.
  - Enhance and expand locally-based tourism that is rooted in the unique natural, cultural, and historical features and qualities of Kent County.
  - Retain and promote exiting businesses.
  - Promote and expand facilities, services, and activities that support natural resource-based economic development.

Mr. Birkmire seconded the motion, and it was approved unanimously.

**# 16-35 Mr. Lewis and Ms. Lawler request both a 100 foot Critical Area Buffer variance and a variance from the rear yard setback requirements for the construction of their replacement accessory structure, deck, and steps. The existing accessory structure is currently in located within the Buffer and within the rear yard setback.** The structure sustained damage in September of 2003 from Hurricane Isabel. The existing structure has a foot print of 709 square feet is located 11 feet from mean high tide at its closest point to Davis Creek and 20 feet from the rear yard property line. The garage totals 619 square feet and the deck and steps total 90 square feet. The proposed footprint for the accessory structure, deck, and steps will be 660 square feet, creating a net reduction in lot coverage, and

located no closer than 11 feet from mean high tide of Davis Creek and 20 feet from the rear property line. The proposed deck and steps will be constructed so that water can pass through and not count towards lot coverage.

The 1.567-acre property is located on Hidden Acres Lane in the Fifth Election District and zoned "CAR", Critical Area Residential. This parcel is comprised almost entirely of buffer as it is an oddly shaped and narrow peninsula. The surrounding area is zoned CAR and "RCD" Resource Conservation District with a mixture of agricultural and residential use comprised of one and two story homes.

Citing that he conducted business with the applicant, Mr. Crowding recused himself from deliberations on this application. Mr. Crowding left the dais.

Present and duly sworn in were Peter Bourne, Professional Engineer; and Ms. Moredock, Planning Director.

Ms. Moredock gave an overview of the application and cited all the applicable laws of the *Kent County Land Use Ordinance* to include Article V, Section 5.5 which establishes the minimum yard setbacks; Article V, Section 5.7.B.3.a which addresses development in the buffer; and Article IX, Section 2.2 which authorizes the Board of Appeals to grant variances from the yard and buffer requirements.

Mr. Bourne stated the garage is not visible to the neighboring properties. A stormwater management plan will be submitted. The foundation of the existing garage does not meet the building code; therefore, the structure will be completely demolished and rebuilt in essentially the same footprint.

Mr. Birkmire questioned whether the proposed construction will result in residential use as a guest cottage. Mr. Bourne stated there will not be a living quarters in the garage, and it will be strictly for storage.

After much discussion and consideration of all applicable laws, Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals regarding the 10-foot rear yard set-back and 100-foot Critical Area Buffer Variances to construct the accessory structure with the following conditions:

- 1) Mitigation should be required at a rate of 3:1 for disturbance and/or vegetation removal within the Buffer in the form of Native Maryland tree and understory plantings within the Buffer; and
- 2) The applicant be required to follow the time of year restriction as this parcel and surrounding parcels are located within Forest Interior Dwelling Bird Habitat ( nesting birds)

Mr. Hickman based his recommendation on the following findings of fact:

- Granting the variance will neither cause a substantial detriment to neighboring properties, nor change the character of the neighborhood or zoning district.
- The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat as the proposed replacement dwelling is to be sited in the same general footprint as the existing dwelling and will maintain the same setbacks from mean high tide.
- The practical difficulty is caused by the condition of the property and not caused by the applicants' own actions. This parcel is comprised almost entirely of buffer, as it is an oddly-shaped and narrow peninsula. Further, one of the only areas located outside the buffer has been identified by Kent County Health Department as the location of the private sewage disposal system.

- The granting of the variances is in harmony with the general spirit and intent of the Critical Area Law, as substantiated by the letter received from Critical Area Commission staff, and Kent County regulations.
- Strict application of the Ordinance could produce an unwarranted hardship as, due to the location of the sewage disposal system, there is very little onsite located outside the 100-foot buffer in order to construct a replacement accessory structure within the same basic footprint.
- A literal interpretation of the Ordinance could deprive the applicant the rights commonly enjoyed by other properties in similar areas within the Critical Area of Kent County, as residential development of this nature is common to the area and the zoning district.

Mr. Sutton seconded the motion, and it was approved unanimously.

**# 16-38 Creafill Fibers Corporation is requesting Planning Commission approval for a 20% bonus in the area of a sign for their facility located at 10200 Worton Road in the Third Election District.** The applicant proposes to install a 29.6875 square foot detached commercial sign in a landscape planter measuring 10 feet by 7 feet equating to 70 square feet in area, which is more than twice the area of the sign consistent with the bonus area criteria. The sign will be internally illuminated and will have a height of 13.33 feet located at the entrance to the site.

The property is zoned Industrial. In this zoning district a detached sign is limited to 25 square feet in area and a height of 25 feet. The current use of the property is an industrial manufacturing facility. The immediate surrounding area is also zoned Industrial, though some adjacent properties remain in agricultural use.

Citing that she is an adjacent property owner and has conducted business with the applicant, Chairman Morris recused herself from acting as Chair and from deliberations on this application. Ms. Morris left the dais. Vice Chairman Sutton acted as Chair for this application.

Present and duly sworn in were Paolo Fezzi, Applicant; and Katrina Tucker, Community Planner.

Ms. Tucker gave an overview of the application and cited all the applicable laws of the *Kent County Land Use Ordinance* to include Article VI, Section 5 that outlines the procedures and requirements for site plan review; Article VI, Section 2 which outlines the procedures and requirements for signs; Article VI, Section 2.2 that defines certain words and terms pertaining to signs; Article VI, Section 2.7 that outlines the permitted signs for each zoning district; and Article VI, Section 2.7.A which outlines the criteria for bonus sign area; and .

Mr. Sutton asked if anyone in the audience would like to speak regarding the application. Jamie Williams, Economic Development, was sworn in and testified on behalf of the application. She stated the sign is needed for truck traffic whose destination is this site. Trucks frequently drive past the entrance to the facility since they are unable to identify the location, and as a result must turn around further past the site which can pose traffic safety issues. Vehicular conflicts at the entrances to other businesses in the area result when the trucks destined for the Creafill Fibers facility use those entrances as a place to execute U-Turn movements.

Mr. Sutton asked how long the building has been in that location. Mr. Fezzi stated the building has been in existence since 1995, and there was a change in ownership in 2001. Mr. Fezzi also advised that this will be the only internally illuminated sign in the corridor.

After much discussion and consideration of all applicable laws, Mr. Hickman made a motion to grant the bonus sign area based on the following:

- Article, VI, Section 2.7.A of the Kent County Land Use Ordinance outlines the criteria for bonus sign area. To encourage design excellence, the maximum sign area for certain businesses may be increased by the percentages therein provided, which includes a 20% bonus when the sign is installed in a landscaped planter having an area twice the area of the resultant sign and the entire area is approved by the Planning Commission.
- The applicant proposes the installation of a 29.6875 square foot detached commercial sign in a landscape planter measuring 10 feet by 7 feet equating to 70 square feet in area, which is more than twice the area of the sign consistent with the bonus area criteria.
- Evergreen landscaping will consist of 6 Dwarf English Boxwoods planted around the base of the sign and within the remainder of the mulched 70 square foot landscape planter there will be a blend of annuals comprised of petunia (*Petunia atkinsiana* or hybrid), pansies (*Viola tricolor hortensis* or *wittrockiana*), and begonias (*Begonia semperflorens*).
- Within the sign “face” will be a company logo and underneath that logo the sign will advertise the “Creafill: Simple Fiber Solutions.” The material is metal plate that will have a copper tone in color. The logo will be cut out from the metal, as will the lettering, behind which will be plexi-glass.
- The sign will be internally illuminated so light will emanate through the cut out areas.
- The sign will have a height of 13.33 feet located at the entrance to the site.
- The support column will be aluminum which will be gray in color as a result of the natural unpainted aluminum.
- The property is currently developed with an industrial manufacturing facility and is accessed by an existing entrance.
- The provision of a sign to identify the location of this business will improve vehicular safety in the area.
- The property is currently developed with an industrial manufacturing facility and is accessed by an existing entrance.
- The provision of a sign to identify the location of this business will improve vehicular safety in the area.
- The property is served by public water and sewer.
- The proposal is generally consistent with the Comprehensive Plan strategies to support and retain existing businesses, and promote the development of County employed centers.

Mr. Crowding seconded the motion, and it was approved unanimously.

**# 16-33 Mr. Lindstrom is requesting final site plan approval for the continued use and expansion of his sand and gravel pit operation and continued use of his contractor’s yard.** The excavation site comprises approximately 4.9 acres located interior to the 36-acre parcel, (Parcel 9) on which it is located, which is otherwise farmed. The parcel adjoins a 122-acre property (Parcel 12) on which the excavation contractor’s yard is situated. The current depth of mining ranges from 10 to 25 feet across the site, and the applicant intends to excavate up to 62-feet in depth. The applicant seeks to expand the pit by 2.2 acres.

The excavation contractor's yard is also positioned interior to the property on which it is located, and this property is farmed as well. The existing excavation contractor's yard occupies approximately 2.3 acres of the 122-acre tract. The applicant's narrative advised that there are 12 to 18 employees year round at site.

The properties are located at 25820 Still Pond Neck Road, south of Betterton. Although the property has frontage on Clark Road, access to the gravel pit and excavation contractor's yard is by an unimproved lane from Still Pond Neck Road. Historical access to the properties has been from Still Pond Neck Road via a 16.5-foot right-of-way across the adjoining land. This private right-of-way also serves the residential dwelling and agricultural structures on the farm.

The parcel is zoned "AZD", Agricultural Zoning District, and is generally surrounded by farmland and woodland. There is also a residential dwelling on the farm that is subject of a minor subdivision plat for the purpose of an intra-family transfer from father to son and a private road waiver that is pending signature. These approvals were conditionally granted by the Planning Commission at its 7 April 2016 meeting.

Present and duly sworn in were Peter Bourne, Professional Engineer; and Katrina Tucker, Community Planner.

Ms. Tucker gave an overview of the application, the history of prior approvals of special exceptions for the gravel pit and the contractor's yard, and cited all 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. She noted that the Planning Commission granted preliminary site plan approval and sent a favorable recommendation to the Board of Appeals at its 2 June 2016 meeting. The Board of Appeals granted the special exceptions for the renewal of both the gravel pit and the contractor's yard at its 20 June 2016 meeting.

Ms. Morris asked how much longer the gravel pit will be in operation.

Mr. Bourne stated that the site's use is directly connected to location of Mr. Lindstrom's jobs. When projects are in the County, the applicant uses this pit. There is not a projected time period to close the site.

After much discussion and consideration of all applicable laws, Mr. Hickman made a motion to grant final approval of site plan based on the following:

- The Board of Appeals at its meeting on 20 June 2016 granted a five-year renewal of the special exception to continue operation and expand the existing sand and gravel pit by 2.2-acres, as well as to continue running the existing excavation contractor's yard.
- The operation has been in existence since 1989 and the special exception consistently renewed. There is no reason to believe that the surrounding properties will be negatively impacted by the continuation of the operation.
- Approximately 3.3-acres of the existing 4.9-acre pit have been reclaimed. The existing pit and the expansion area is located interior to the property and the 36-acre farm is more than adequate for the existing and expanded use.
- The applicant through testimony asserted that materials will not be brought from off site for mixing or processing.
- Trucks enter and depart the site by an existing unimproved stone lane from Still Neck Pond Road. Renewal of the special exception, even though there is an expansion, should not result

in increased traffic since a portion of the area of the pit has been reclaimed which is greater than the area of expansion.

- There are no known threatened or endangered species, areas of specific value, or rare assemblages of species or other vital habitat are located within the limits of the pit. There are no direct impacts to environmentally sensitive areas.
- The property is zoned AZD and the nature of the area is farmland and woodland.
- The operation will not disturb prime agricultural lands, nor the forested areas or woodlands on the farm.
- With the prior renewals the record has been devoid of any evidence that the use would impact property values, water quality, fish, wildlife, or plant habitat.
- The closest places of public gathering are in the Town of Betterton, less than a mile distance. These include the Betterton Community Park, the Volunteer Fire Company, the Betterton Methodist Church, Town owned properties, and other public facilities such as Betterton Beach.
- During the course of prior renewals the record has been devoid of any evidence that the use would have a negative impact on community facilities and services.
- There are no cultural and historic landmarks or off-site significant natural features in the vicinity that would be adversely impacted by the use. The 2.2-acre expansion will result in clearing forested areas on the property. However, 2.2-acres of existing cropland will be afforested through natural regeneration. The Site Plan reflects the location of where forest fencing and signage will be installed.
- The surface mine permit was last renewed in March of 2016 (Renewal of Surface Mine Permit No. 89-SP-0342) and is valid until 31 January 2021.
- The applicant advised through testimony that there are appropriate measures in place to control deleterious effects from noise, vibration, smoke and particulate matter, toxic matter, odor, fire or explosion hazards, or glare upon surrounding properties.
- The Kent County Health Department has approved this application.
- A note has been included on the site plan that there is no exterior lighting or signs on the site.
- The gravel pit is surrounded by a well-vegetated earth berm. During the preliminary review the applicant demonstrated with exhibits that the contractor's yard is not visible year round from an adjacent parcel of land or public road due to the topography and natural vegetation.
- The 1 March 2016 Field Report from MDE states that the "permittee informed the Department of their intentions to apply for a permit modification...[to] expand the current pit by adding approximately 5 acres to the west of site." The applicant has only requested a 2.2 acre expansion.
- The boundary of the approximate 2.3-acre area of the contractor's yard is delineated on the Site Plan, which complies with the standard that a contractor's yard permit area must be larger than two (2) acres and smaller than twenty (20) acres. In accordance with Article VII, Sec. 7.22 of the Land Use Ordinance it must be separately designated and permitted. None of the contractor's yard activities will occur within the sand and gravel pit area.
- The Citizen Participation Plan report has been submitted.
- The site plan includes a table for "Parcel and Use Statistics" that indicates the acreage of each parcel accompanied by the respective acreage of the gravel pit and the excavation contractor's yard.
- The Erosion and Sediment Control Plan reflecting the 2.2 acres of expansion was approved by the Soil Conservation District on 17 June 2016 and is valid for two years.

- The use is consistent with the Comprehensive Plan, the general intent and the use, design, and environmental standards found in the Land Use Ordinance, as well as existing and planned land use in the area.

Mr. Crowding seconded the motion, and it was approved unanimously.

**(Draft) Zoning Text Amendments – Renewable Energy Systems** As requested by the County Commissioners of Kent, the Renewable Energy Task Force (RETF) was reconvened in September 2015 under a new charge and with an updated roster. In light of the controversy relative to utility scale wind energy systems in the County and an incomplete text amendment process tabled in 2014 relative to utility scale solar energy systems with the petitioner's withdrawal of its application, the Commissioners were interested in reevaluating utility scale energy systems with a focus on solar energy systems. The RETF was asked to reevaluate their 2011 recommendations as articulated in their 2010 White Paper and to study utility scale energy systems.

Citing that he had offered recent testimony in cases relative to renewable energy provisions in the County, Mr. Hickman recused himself from deliberations on this application and left the dais..

Ms. Moredock gave an overview of the draft that was submitted by the RETF. Ms. Moredock went over the areas that needed corrections and clarifications in the staff report and answered questions asked by the members.

Ms. Morris asked if anyone in the audience would like to speak regarding the draft proposal. Janet Lewis, member of the RETF, was sworn in and gave an overview of the Task Force objectives throughout the process. Speaking on her own behalf, she expressed her opposition to the draft proposal.

After a lengthy discussion, Mr. Crowding made the motion to reject the presented draft proposal submitted by the RETF. He based his motion on the following points:

- The terms of the draft are contrary to both the intent of the Kent County Comprehensive Plan and the Land Use Ordinance.
- The proposal could be interpreted as a departure from the underlying tenant that agriculturally zoned farmland, especially that which is included in the Priority Preservation Area, continue as such.

Mr. Birkmire seconded the motion, and the motion passed unanimously. Ms. Morris acknowledged and commended the hard work and dedication evident in the Task Force's efforts.

## **Staff Reports**

Amy Moredock:

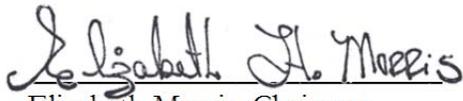
- Attended the MACo session seeking support on the Public Service Commission preemption issue in the Mills Branch Solar case. MACo submitted a letter to the PSC in support of the County's position and its Land Use Ordinance.
- The Mills Branch Solar PSC Public Hearing held in the Kent County Library on 21 June was well-attended. The two (2) days of evidentiary hearings held in the Commissioners Hearing Room on 22 and 23 June were expertly handled by Mr. Mowell.
- There will be a public meeting in mid-August to share the Coastal Vulnerability report.
- Met with the Chestertown River Bridge Task force and gave a presentation about County Zoning and the Comprehensive Plan strategy relative to the Chester River Crossing.

- Approved an administrative special exception to construct a 2,628 square foot accessory building at a height of 22 feet on a parcel less than 5 acres.
- Approved an administrative buffer variance to upgrade a septic system within the 100-foot Critical Area Buffer.
- The first Comprehensive Plan Public Forum will be held on July 27<sup>th</sup> at 6 pm at Kent County High School.

Katrina Tucker:

- The Agricultural Preservation Advisory Board reviewed and ranked 18 applications that were submitted seeking to sell an easement to the Maryland Agricultural Land Preservation Foundation (MALPF). MALPF will accept only eight (8) applications from each jurisdiction for appraisals. It will take approximately 18 months before MALPF will make offers to easement applicants.
- Conducted the annual inspection of farms with MALPF easements. This includes nine (9) farms with easements that included federal funding as well as inspecting another 10% of all farms in the County on which there is a MALFP easement.
- With respect to the Comprehensive Plan update, the Planning Commission's draft Background Document and the Economy section will be posted on the website later this month and prior to the July 27<sup>th</sup> Community Forum.

There being no further business for the good of the organization, the meeting was adjourned at 4:05 p.m.

  
Elizabeth Morris, Chairman

  
Tonya L. Thomas, Clerk