

MINUTES

The Kent County Planning Commission met in regular session on Thursday, November 5, 2015, 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; Bill Crowding; Kim Kohl; 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 October 1, 2015, meeting, were approved as presented.

APPLICATIONS FOR REVIEW:

OneEnergy Blue Star Solar, LLC is requesting preliminary site plan approval on lands that are owned by David A. Bramble, Inc., for a proposed utility scale solar energy system. The applicant is also requesting modification of the stream protection corridor provisions. The system would be sited on 35.33(reduced from 36.64 acres presented during conceptual review) of the 225-acre parcel and consists of 3 separate areas of ground-mounted solar panels with 5 inverter stations to be accessed by 25-foot wide gravel lanes. The solar panels are 12 feet in width and placed in rows approximately 265 feet in length. The overall height is 8 feet. The entire 36.64-acre area will be enclosed by an 8-foot high chain-link fence. Landscaping is proposed to screen portions of the system which are directly visible from Galena Road/Maryland Route 313.

The property is located at 12213 Galena Road in the First Election District and is zoned Industrial (I) and Employment Center (EC). The utility scale solar energy system is proposed to be located on a 35.33-acre portion of the 225-acre parcel. The property is currently comprised of an asphalt plant, a dwelling and accessory buildings, and agricultural land. The parcel is also comprised of areas of nontidal wetlands and affiliated 25-foot buffers, as well as an intermittent stream and the affiliated 100-foot stream protection corridor. The property is located along an existing railroad line.

Present and duly sworn in were Daniel Saunders, Counsel for Applicant; Alex Dolgos, Consultant for the applicant; Robert Collier, Project Development Manager for OneEnergy Blue Star Solar, LLC.; Kevin Shearon of DMS & Associates; and Amy G. Moredock, Director of Planning, Housing, and Zoning.

Ms. Moredock gave an overview of the application and cited all of the applicable laws of the *Kent County Land Use Ordinance* to include Article V, Sections 14.2 and 15.2 that establishes site plan review requirements for all permitted industrial uses in the Employment Center and Industrial Districts; Article V, Sections 14.5 and 15.5 establishes the density, height, width, bulk, and fence requirements for the EC and I Districts; Article V, Section 14.6 and 15.6 which establishes the EC and I performance standards; Article V, Section 14.7 which establishes the EC and I general standards; Article V, Section 14.8 and 15.8 that establishes the EC and I environmental standards; Article V, Section 15.8.B.7 which establishes the standards for stream protection corridors; Article V, Section 14.9 and 15.9 which establishes the EC and I design standards; Article VI, Section 1.3 and 1.4 which establishes the parking, loading, and bicycle parking standards; and Article VI, Section 5 establishes the procedures and standards for site plan review.

Ms. Moredock stated that no correspondence had been received regarding this application.

Mr. Saunders gave an overview of his legal interpretation of the staff comments relative to the stream protection corridor standards. It is his position that a modification to the standards is not required. He outlined his position based on case law governing de minimis impact and based on Maryland Land Use Article 4-210(c) which establishes impervious surface calculation requirements for solar panel installation. Mr. Saunders presented that the proposed structures (solar panels, namely the posts upon which the panels are mounted) within the blue line stream protection corridor are de minimis, as they total approximately 4 square feet of impervious surface. He added that de minimis means “not cognizable under law.” He explained that the test regarding de minimis impact rests on addressing if what is proposed is so tiny and so insignificant that its effect cannot be measured. If this finding is made, then the Commission can conclude that the structure is de minimis and does not need to be considered in the review of the application. If the Commission finds that the proposed structure is not de minimis, then the next step is to consider whether or not the requested modification satisfies the stream protection corridor requirements. Mr. Saunders stated that he and the consultants in attendance believe the Planning Commission can find the proposed structure and mitigation practices will not inhibit the full function of the corridor; therefore, the requirement will not need to be reduced or modified.

Mr. Shearon addressed the Planning Commission’s comments from the September 3, 2015 Concept review. A certified copy of the Engineer’s Report has been submitted. The fee in lieu has been requested with the understanding that those funds will be held by the County and returned upon the issuance of a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission. The landscaping plan was updated and screening added at the request of an adjacent property owner. The Stormwater Management and Sediment Erosion Control Plans are being addressed. The applicant proposes to establish the 100 foot stream protection corridor by planting fescue grass inside the fenced in area. Switch grass will be planted on the outside of the fenced area. The entire 4.1 acres located within the corridor will be stabilized.

Following review of all applicable laws and the Comprehensive Plan, Mr. Hickman made a motion to approve the preliminary site plan based on the following findings:

- Due to evidence and testimony presented by Attorney C. Daniel Saunders and Kevin Shearon of DMS & Associates, LLC, the Commission found that a modification of the stream protection corridor is unnecessary in this specific case. The Commission based its decision upon case law presented by Mr. Saunders relative to the de minimis nature of the project in light of Maryland Land Use Article 4-210(c) which establishes impervious surface calculation requirements for solar panel installation.
- A utility scale solar energy system is proposed consisting of 3 separate areas of ground-mounted solar panels constructed at an overall height of 8 feet to include an 8-foot tall chain-link fence which will enclose the 35.33-acre site.
- Landscaping is proposed along the west side of the property in the areas of use which are visible from Galena Road/MD Route 313. The landscape plan is comprised of a 25-foot screening buffer along Development Areas “A” and “B” consisting of a mixture of coniferous and deciduous varieties and a mix of native and nonnative species. An area of landscaping has been added to the proposal to screen Development Area “C” from adjacent residential properties per requested by an adjacent property owner during Conceptual Site Plan review.
- The applicant has addressed the performance standards and submitted a Sealed Engineer’s Report.
- The proposal is consistent with many strategies and goals of the Comprehensive Plan.
- The proposed structures meet the minimum setback requirements.
- There will be no full-time staff onsite; the site will be monitored from a remote operations center.
- During the peak of construction of the solar system, there will be between 50-75 construction workers accessing the site for approximately 3 to 5 months. Construction is anticipated to begin in Spring 2016.

- The property is served by onsite water and septic systems. Public systems are not available in this area.
- Adequacy of methods for sewerage and refuse disposal have been reviewed and approved by the Kent County Environmental Health Department.
- No signage is proposed.
- No new lighting is proposed.
- There are 2 points of access: 1 approximately 200 feet east of Galena Road which currently serves as the access point for the asphalt plant and 1 indirectly off of Galena Road which currently serves as the access point for the residence.
- SHA has reviewed the proposal for impacts on local roadways and has determined that there will not be a significant increase in traffic as a result of this proposal. SHA staff has deemed that both existing access points are sufficient for the proposed use.
- Several 15-foot wide gravel roads are proposed to provide 3 access points off of the 2 existing lanes within the site for maintenance vehicles. These areas will be accessed by 3 lockable, gated entrances.
- Onsite vehicular circulation appears to promote clearly-defined access to panels and inverter stations while also limiting access by unauthorized vehicles by gating the entrances to the site.
- The applicant conducted a Citizen Participation meeting in Massey on 12 August 2015.
- The applicant is seeking a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission. If a CPCN is granted, then the applicant is requesting an exemption from the Forest Conservation Act (FCA) provisions under the Natural Resource Article. The Planning Attorney will review the request and the statute and advise accordingly.
- Regardless of the potential for FCA exemption under the CPCN standards, final site plan approval may not be granted until the Forest Conservation provisions are addressed in accordance with Article VI, Sections 14.8.B.3 and 15.8. B.3.

The following must be addressed in order to receive final site plan approval:

- Forest Conservation, Landscape, Stormwater Management, Sediment and Erosion Control Plans must be approved and affiliated sureties submitted.

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

Zebulon E. Blyman is requesting special exception and site plan review for an adaptive reuse of historic structures on his property located at 10700 Worton Road. Mr. Blyman proposes to operate a land maintenance business out of 2 existing historic structures and a newly constructed 1,200 square foot pole building onsite. The applicant also proposes to construct a gravel driveway to access the pole building located to the rear of the parcel. Site plan review of the use and all affiliated structures and improvements is also required.

The 2.6-acre property is zoned Village and located in the Third Election District in the Village of Worton. The property is currently improved with a metal garage and a block garage. The surrounding area is characterized by residential development. This property is located within 0.5 miles of the Industrial Zoning District to the south and 0.25 miles from the crossroad in Worton which is characterized by commercial development. Worton Manor Mobile Home Park is located across the street from the property.

Present and duly sworn in were, Zebulon E. Blyman, Applicant, Robert Nickerson of Extreme Measures Surveyors, and Amy G. Moredock, Director of Planning, Housing, and Zoning.

Ms. Moredock gave an overview of the application and cited all of the applicable laws of the *Kent County Land Use Ordinance* to include Article V, Sections 7.3 which identifies the adaptive reuse of historic structures as a

principle use permitted as a special exception in the Village District; Article VII, Sections 7.4 that authorizes the Kent County of Board of Appeals to grant a special exception for the adaptive reuse of historic structures in the Village District; Article VII, Section 2 which requires the Board of Appeals make findings of fact where appropriate; and Article VI, Section 5 that establishes the procedures and requirements for site plan review.

Ms. Moredock read a letter sent to the Planning Commission from Thomas D. Unruh which expressed opposition to the application.

Mr. Nickerson stated there was an inconsistency in the description of the citizen participation meeting. The original intent was to have the meeting at the block building to show the public the architectural design of the buildings and the proposed building. The architectural drawings were not completed in time; therefore, Mr. Blyman went to 25 neighboring houses within a quarter mile radius to discuss his plans. There were 13 property owners with whom he was unable to make contact.

Mr. Blyman described the areas of use indicated on his site plan noting that the containment area for mulch storage is for business use offsite and not for onsite sales to the public. He further clarified staff's questions regarding the heavy equipment stored onsite by noting that the machinery is essential to continue to thrive in his business. When the new building is erected, he added that all the equipment will be stored inside. The rear parking area will be used for storing multiple trailers.

Mr. Blyman addressed the dumpster issue that Mr. Unruh raised in his letter of opposition. He clarified that he has 3 dumpsters on the parcel, and they are used for disposing waste which he brings back from various jobs. He also noted that occasionally a couple of his friends use the dumpsters.

Mr. Nickerson noted that the position of the proposed sign indicated on the site plan will need to be moved closer to the block building to accommodate the stormwater swale.

Mr. Birkmire asked Mr. Blyman to characterize his business. Mr. Blyman stated that his business is called Zeb's Lawn and Land Service and includes mowing, mulching, lane grading, digging footers, regrading and seeding yards, demolition, and other lawn maintenance jobs. There is one full time employee and up to four part-time seasonal employees.

Ms. Kohl asked Mr. Blyman how long has he been in the business, and he stated that he has been operating since 2009.

After considerable discussion of the applicable laws, Comprehensives Plan strategies, and testimony presented, Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals for a special exception to operate a land maintenance business out of existing structures of an historic nature on Mr. Blyman's property. He based his decision on the following findings:

- Based on both narrative evidence and testimony presented at the meeting, the commission finds that the structures and their historic uses embody a distinctive characteristic of a type, period, method of construction, or the work of a master. Specifically, the block garage is a Sears roebucks & Company building and is of historic significance.
- The Commission further finds that structures, namely the block garage, represent the historic significance of the Village of Wornton's entrepreneurial spirit and detail the iconic nature of the materials used in the construction of such buildings.
- The footprint of each building for which this adaptive reuse applicant has been made will not be expanded beyond 25% of the existing footprints, and the improvements are proposed with contextual sensitivity to the existing structures and the character of the Village.

- The block garage will be expanded by a 225 square foot addition on the rear of the building. The openings of the metal garage will be altered in that the front openings will be enclosed and the rear siding will be opened to provide rear yard access.
- The landscape plan enhances the views from offsite and screens the new construction located within the rear yard.
- The site will continue to be accessed by the existing asphalt driveway. A gravel drive will be constructed to provide access to the rear of the property where the pole storage building and parking/storage area will be constructed.
- According to the State Highway Administration, the existing driveway is sufficient for the proposed use. Should the use exceed nominal vehicular traffic, improvements to the entrance and existing road may be required.
- The applicant does not expect customer traffic onsite but will utilize the site to store all of his affiliated equipment and manage daily operations. This use should not result in undue disturbance to the neighborhood.
- The purpose of the Village district is to provide for high quality residential, neighborhood business, and office development. The proposed use is consistent with this statement of intent.
- As these buildings have historically been utilized for commercial purposes, and the Village District outlines a directive to provide for neighborhood businesses and office development, the proposed use is appropriate to both land and structure(s).
- Under-utilized for many years, the development and enhancement of this site should have a positive impact on property values.
- The proposal is consistent with many comprehensive plan strategies relative to both retention of existing local businesses and redevelopment of existing structures.

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

The site plan also was reviewed in great detail by the Planning Commission. The Commission offered the following conceptual comments:

- The proposal is consistent with many Comprehensive Plan strategies.
- The Kent Soil and Water Conservation District has approved the stormwater management and sediment and erosion control plans affiliated with this project. The sureties have been submitted to the County.
- The landscape plan consisting of a mixture of native deciduous and coniferous trees and shrubs has been submitted and appears to adequately screen and enhance views offsite. The sureties have been submitted to the County.
- Areas of vehicular flow are clearly identified. Pedestrian traffic is not anticipated at this site as the use is not intended to generate customer traffic; however driving and loading areas are clearly identified for employees at the property.
- The Kent County Department of Environmental Health has approved this application. Water and sewerage services will remain unchanged onsite.
- The proposed business includes light excavation, land/brush clearing, landscaping, demolition, and mowing. Customer traffic onsite is not expected. The site will be utilized to store all affiliated equipment.
- A 4,900 square foot gravel parking area is indicated in the rear yard behind the proposed 1,200 square foot pole building. There is a load/unloading area indicated within the side yard and adjacent to the entrance of the pole building. A 600 square foot area of mulch storage will be located between the parking area and the pole building. This product will be used offsite (not

for retail sales onsite).

- Areas of existing and proposed loading/unloading are indicated adjacent to the existing buildings located in the front of the property. While there are no parking standards for this particular proposed use, the applicant has indicated a reasonable amount of parking for employees (2) and customers. This area is noted behind the metal garage.
- The Planning Commission would like to see the 4,900 square foot parking area more-clearly labels in terms of what items will be stored there. In addition, the Commission requests that trailer storage, dumpster locations, and other areas of usage be more clearly defined on the site plan, thus indicating that all areas of storage are limited and clearly defined.
- The proposed hours of operation are 7am until 5pm from Monday through Friday and 7am until noon on Saturday (no business operations on Sunday). This use should not result in undue disturbance to the neighborhood. The applicant has addressed the level of engine noise onsite in the attached narrative.
- No tree or vegetation removal is proposed and adequate screening has been provided both in front of the metal garage and along the rear side property lines.
- A proposed sign location is identified; Mr. Blyman will relocate his 8.75 square foot detached sign issued in 2012 and affiliated with his home occupation use permit from that location to this property. The sign is 4 feet in height and comprised of wood and detailed with green and white lettering.

Leonard P. Fletcher is requesting a special exception and conceptual site plan review for a cottage industry in order to continue to operate a mowing and landscaping business from his property located at 7824 Country Club Lane in the Seventh Election District.

The scope of this proposed cottage industry, as presented in the applicant's narrative, is that the current use of the property will remain Mr. Fletcher's primary residence while setting aside a 1,200 square foot area for business use. The narrative further explains that equipment for the mowing and landscaping business includes three lawn mowers and four gas powered weed trimmers, which will be contained within an enclosed utility trailer that will be parked onsite within the 1,200 square foot area as designated on the site plan for the cottage industry. The application does not propose any outdoor storage. The narrative states that Mr. Fletcher runs the business with his son, who resides with him in the existing house on the property, and one other employee who is picked up off-site and transported to job sites. In addition, the application indicates that no customer traffic is normally generated as a result of this business activity. The core hours of operation are between 8:00 a.m. and 2:00 p.m. from Monday to Saturday, and the operational business year is approximately six months. No additional buildings or infrastructure will be constructed.

The 0.735-acre property is zoned Community Residential and located in the Country Club Estates subdivision. The property currently improved with a two-story frame dwelling, a garage, and three sheds, as well as the driveway and a gravel storage area at the rear of the property. The surrounding area is characterized by residential development on lots ranging from a little less than three quarters of an acre to slightly more than one acre in size.

Present and duly sworn in were the applicant, Mr. Leonard Fletcher; Mr. Robert Nickerson, L.S. of Extreme Measures Land Surveyors; and Ms. Tucker, Community Planner.

Ms. Tucker gave an overview of the application and cited all of the applicable laws of the Kent County Land Use Ordinance to include Article XI, Section 2.70 that defines a cottage industry; Article VII, Section 7.15 which authorizes the Kent County Board of Appeals to grant a special exception for a cottage industry in the Community Residential Zoning District provided the application complies with the specified standards;

Article VII, Section 2 which requires that the Board of Appeals make certain findings; and Article VI, Section 5 which outlines the procedures and requirements for site plan review.

Ms. Tucker advised there clearly will be enforcement issues for staff due to the lack of distinction between commercial and business areas shown on the site plan and the potential to commingle areas labeled as personal use and business use. Additionally, the results of the applicant's Citizen Participation Plan had not yet been submitted.

Ms. Tucker stated numerous letters had been received with respect to this application, which have been placed in the application files. She provided an overview of the content from all letters received and summarized individual details from the correspondence.

Mr. Fletcher advised that he has been in business at this location for several years. He advised that he will reduce the size of the wood pile on the property which is not affiliated with his business. In addition to the equipment for the landscaping business, he also has personal lawn care equipment and lawn furniture that is stored in the sheds on the property. His intent is for the business to be in compliance with the Land Use Ordinance. Mr. Nickerson stated that the Planning Commission has acted favorably on other cottage industries.

Testimony from the general public was offered by the following: Paula Tarbutton, Robert C. Barrows, Gordon English, Patricia Barrows, Scott Spurrier, John Stafford, Charles Kneller, and Andrea Ross all of whom are residents of Country Club Estates. The overall testimony was in opposition to the application for the special exception due to the noise, type of traffic, disruption, and other adverse impacts to the character of this residential neighborhood that has been occurring while this business has been in operation and would continue if approved.

After much discussion and a commitment to fulfill the Citizen Participation Plan requirement, the applicant asked to table his request at this time.

Staff Reports

Amy Moredock:

- The Kent County TMDL Committee members continue to meet. This month, members of the committee traveled to Easton to attend a joint meeting hosted by Environmental Protection Agency and Maryland Department of the Environment representatives. The focus of the meeting was to update local TMDL committee members on new best management practices and urban water quality strategies. The Kent TMDL Committee was well-represented at this meeting.
- The first coastal vulnerability training was held October 28th. This training session is a part of the CoastSmart Communities Grant which the County received in order to conduct local vulnerability analysis. The goal will be to share the results of interviews and assessments with the Planning Commission for consideration as the Commission updates the Comprehensive Plan.
- Staff continues to work with the Renewable Energy Task Force which is currently reviewing Utility Scale Solar Energy.
- The Chester River Association will be hosting a program regarding food production and a clean Chesapeake Bay on November 19, 2015 at 6:30 pm at Washington College.
- The Planning Commission Chairman received a brochure announcing the Winter MACO Conference that will be held in Cambridge December 9 – 11.
- Katrina has been doing a really wonderful job pulling together all of the responses to our Comprehensive Plan proposal requests from consultants. Katrina and I met with Ed Birkmire to rank the submittals and sent a top candidate forward to the County Commissioners to approve.

- The third round of interviews for the vacant environmental planner position has been completed, and the position has been offered to a candidate. The Commissioners have approved the hire, and we are still awaiting a start date for the new planner.

Katrina Tucker:

- Ms. Moredock, Ms. Kohl, and I will attend the Eastern Shore Land Conservancy annual conference on November 19, 2015. The topic this year is Renewable Energy.
- The Historic Preservation Commission will meet this month. The Commission will not meet in December and will reconvene in January.

General Discussion:

There being no further business for the good of the organization, the meeting was adjourned at 5:25 p.m.

Elizabeth Morris, Chairman

Tonya L. Thomas, Clerk