

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, September 5, 2019, 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; James Saunders; Kim Kohl; William Crowding; Joe Hickman; and Commissioner, P. Thomas Mason. Staff in attendance were: William Mackey, Director of Planning, Housing, and Zoning; Stephanie Jones, Environmental Planner; Robert Tracey, Community Planner; Carla Gerber, GIS Specialist; and Tonya Thomas, Secretary.

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

Ms. Morris introduced Mr. William Mackey, Director of Planning, Housing, and Zoning.

### **AGRICULTURAL PRESERVATION DISTRICT APPLICATIONS FOR REVIEW**

**ALP 19-06 Eric and Constance Zeiset** – Mr. and Mrs. Zeiset wish to create an Agricultural Preservation District on their 101.141-acre farm located on Flatland Road in the Third Election District. The proposed district consists of three parcels, which the Zeisets intend to combine into 1 parcel after an easement is placed on the property. The farm consists of 91.872 acres of crop land, and 9.269 acres of woodland. Approximately 99.5% of the soils are considered Class I, II, or III or Woodland Group 2. There are no dwellings on the property. The farm is zoned "AZD", Agricultural Zoning District.

Present and duly sworn in were Mr. Zeiset; owner, and Robert Tracey, Community Planner.

Mr. Tracey provided background information and applicable laws as outlined in the staff report. He further noted that this farm is located within the Priority Preservation Area (PPA). The farm is located outside the 10-year water and sewer planning service area. Mr. Tracey advised the Agricultural Preservation Advisory Board reviewed and recommended approval of this application.

Ms. Morris stated she is an adjoining property owner; however, she did not believe that would affect her ability to make a decision based on the facts presented.

Mr. Zeiset stated that his son is moving back to Kent County from Texas to help farm the land.

Following discussion by the members of the Planning Commission, Mr. Sutton made a motion to forward a favorable recommendation to the County Commissioners based on the following findings:

- Meets the minimum size requirement of 50 acres.
- At least 50% of the land consists of Soil Capability Classes I, II, or III or Woodland Groups 1 or 2.
- The land is outside of the 10-year water and sewer service area.
- The property consists of land which is either used primarily for production of food or fiber or is of such open space character and productive capability that continued agricultural production is feasible.
- The Agricultural Preservation Board reviewed this application and unanimously submitted a favorable recommendation.
- The property meets or exceeds the criteria for creating an Agricultural Land Preservation District, complies with the goal of the Comprehensive Plan to preserve large blocks of contiguous prime agricultural land, and is located within the County's PPA.
- A Soil and Water Conservation Plan has been implemented.

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

**ALP 19-07 Work Schrodel Family LP** – Mr. Bill Schrodel, representing Work Schrodel Family LP wishes to create an Agricultural Preservation District on their 255.56-acre farm located on 32909 Maryland Line Road in the First Election District. The farm consists of 220 acres of crop land and 20 acres of woodland. Approximately 97% of the soils are considered Class I, II, or III or Woodland Group 2. There are five dwellings on the property, 2 houses and 3 trailers. The farm is zoned “AZD”, Agricultural Zoning District.

Present and duly sworn in was Robert Tracey, Community Planner.

Mr. Tracey provided background information and applicable laws as outlined in the staff report. He further noted that this farm is adjacent to a block of approximately 420 acres of easements and is located within the Priority Preservation Area (PPA). The farm is located outside the 10-year water and sewer planning service area. Mr. Tracey advised the Agricultural Preservation Advisory Board reviewed and recommended approval of this application.

Following discussion by the members of the Planning Commission, Mr. Sutton made a motion to forward a favorable recommendation to the County Commissioners based on the following findings:

- Meets the minimum size requirement of 50 acres.
- At least 50% of the land consists of Soil Capability Classes I, II, or III or Woodland Groups 1 or 2.
- The land is outside of the 10-year water and sewer service area.
- The property consists of land which is either used primarily for production of food or fiber or is of such open space character and productive capability that continued agricultural production is feasible.
- The Agricultural Preservation Board reviewed this application and unanimously submitted a favorable recommendation.
- The property meets or exceeds the criteria for creating an Agricultural Land Preservation District, complies with the goal of the Comprehensive Plan to preserve large blocks of contiguous prime agricultural land, and is located within the County’s PPA. The Nutrient Management Plan as well as the Soil Conservation Plan are current.

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

**APPLICATIONS FOR REVIEW:**

**19-38 Chester River Properties, LLC** proposes to renovate the two existing buildings at 31797 River Road, Millington, in the First Election District, in order to conduct commercial sales and service. The 3.282-acre parcel is zoned Commercial Critical Area, “CCA” and is currently improved with 2 commercial buildings and a large gravel area adjacent to U.S. Route 301.

Present and duly sworn in were; Mr. Byler, applicant; Davis Strouss, McCrone Engineering; and Stephanie Jones, Environmental Planner.

Ms. Jones gave an overview, including a description and history of the application and cited all applicable laws of the *Kent County Land Use Ordinance* as follows: Article V, Section 12.2 establishes a site plan review requirement for all principal uses and structures; Article V, Section 12.2.7 and 8 cites sales and service and rental of machinery and motor vehicles as permitted uses; Article V, Section 12.5 establishes the density,

width, bulk, and fence requirements; Article V, Section 12.6 establishes the Commercial Critical Area General Standards; Article V, Section 12.7 establishes the Commercial Critical Area Environmental Standards which include the Critical Area and stormwater management standards; Article V, Section 12.8 which addresses Commercial Critical Area Design Standards; Article VI, Section 1.3 establishes the parking standards; and Article VI, Section 5 which establishes the procedures and requirements for site plan review.

Ms. Jones further stated this property is designated a Limited Development Area of the Chesapeake Bay Critical Area. The purpose of the renovation is to attract businesses for commercial sales and service. At this time the applicant indicates they are intending to lease the buildings, and they may have more than one tenant.

Mr. Byler stated the existing buildings will need to be renovated and updated to attract businesses to the location. Renovation to the exterior of the building may be proposed prior to having tenants. The applicant explained this would help attract the tenants to the property. The renovation of the interior will not be completed until the type of businesses and amenities needed for their use is known. When the uses are determined the applicant will return to the Planning Commission for preliminary and final review and approval. The building permit applications would follow final site plan review.

Mr. Strouss stated the landscape waiver was requested because the site is surrounded by vegetation apart from 2 gaps along U.S. Route 301, one of which will be used for signage. Mr. Strouss stated the property is serviced by public water and sewer.

The applicant indicated an outdoor sales area would be used for the tenants and complementary to the businesses. The Planning Commission indicated they would need to know what would be within this area before approval could be granted.

General testimony was offered by Ms. Karen Miller, adjacent property owner. Ms. Miller stated there is a gate entrance off River Road in addition to the main entrance at the round-about on MD 291. River Road is a narrow road and there are neighborhood children that ride their bikes along that road. Ms. Miller asks that the property owner and tenants do not use the gate entrance off River Park Road. Ms. Miller also stated approximately 30 years ago the use of that parcel was a truck stop. Trailers were running all hours of the day and night and asked that the hours of operation and the noise generated by potential tenants be taken in consideration.

The conceptual site plan was reviewed by the Planning Commission. The Commission noted the following regarding the application:

- A screening waiver is being requested in the location of the proposed sign and for an area of existing vegetation along U.S. Route 301 right-of-way. This would allow for some visibility from U.S. Route 301.
- The existing buildings will be renovated. The interior design and architectural renderings have not been completed at this time or addressed. The applicants are not proposing any new buildings.
- The applicant stated they have no intention to utilize the existing gate off River Road to access the property and that the existing access off Maryland Route 291 will be sufficient for vehicular flow.
- The type of business has not been clarified at this time due to the fact the applicant plans to lease the buildings to possibly multiple tenants. The applicant hopes to attract tenants with a possible use like automotive repair, heavy equipment, and tow truck operation. The business will most likely not be a consumer-driven store catering to the general public.
- The applicant stated that the outdoor sales/storage area will be complimentary to the business/es. The applicant also discussed the safety of the outdoor storage area, since it is proposed to be located

in the central location of the parking lot.

- The applicants stated that they believe the parking will not produce any issues and the 58 spaces provided will be adequate. The parking standards require a total of 57 spaces.
- The Kent County Soil and Water Conservation District reviewed the file and stated that the project is exempt from stormwater and sediment control since it is under the 5,000 square-foot threshold.
- The applicant stated that the proposal is consistent with the Comprehensive Plan.
- The site plan application has been sent to the Critical Area Commission for review.
- The site is currently served by public water and sewer and Kent County Department of Public Works does not anticipate an increase in usage.

The Planning Commission and applicant discussed the fact that the applicant plans to lease the buildings to tenants. At the time of the meeting, the applicant did not have a tenant or business type specified. The applicant hopes to renovate the exterior of the building to attract tenants. Once the use is determined, the applicant's intention is to proceed with preliminary and final review and approval. The Planning Commission also discussed the outdoor storage area. As a result of the discussion, the following was requested:

- The Planning Commission requested the applicant identify the use of the property for a further review by the Planning Commission after tenants are identified.
- The Planning Commission requested that the outdoor storage area be submitted for approval when the use is known, since it would serve as a display space, and the use of the property would then determine what was to be displayed and visible to members of the public.
- The Planning Commission would like for the Town of Millington to review this proposal.

**19-37 Plain View Farms, LLC** is requesting a variance of the setback requirements to enable construction of a waste management structure on a 353-acre farm located on Worton-Lynch Road in the Third Election District.

Mr. Sutton stated he is an adjoining property owner; however, he did not believe that would affect his ability to make a decision based on the facts presented.

Mr. Hickman stated he has a business relationship with Plain View Farms, LLC but did not believe that would affect his ability to make a decision based on the facts presented.

Present and duly sworn in were; Ronald Wessel, General Manager of Pain View Farms, LLC; Richard Wessel, and Carla Gerber, GIS Specialist.

Ms. Gerber gave an overview, including a description and history of the application and cited all applicable laws of the *Kent County Land Use Ordinance* as follows: Article V, Section 1.4.A.10.5 which establishes yard requirements; and Article IX, Section 2.2 which authorizes the Board of Appeals to grant variances of the yard requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of the Ordinance.

Ms. Gerber stated the owners began construction without a building permit in early April. They installed the entrance/driveway, stormwater catchments, and base material for the concrete pad. Some jersey barriers are on site. The applicant met with staff in late April to discuss the violation and determine a way to move forward.

Ms. Gerber summarized a letter from Dr. Jones regarding several Federal Aviation Administration circulars and other documentation as to how the storage of poultry litter and a waste management structure would be detrimental to Mr. Wayne Wright's aerial ag business.

Mr. Ron Wessel stated the chicken litter has always been stored at the proposed location and that only when the concrete pad was proposed it became an issue with the neighboring property owners and Planning and Zoning. Mr. Wessel stated the proposed staging area including the concrete pad would reduce the residual effects from stock piling on bare ground. By installing the floating concrete pad 2 of the 3 stockpiles previously used would be eliminated. The impermeable area would also ensure that leaks from mixing fertilizers would not leach into the ground. The concrete pad would allow for clean-up. The staging area would also keep the truck traffic off Route 561 and Worton Lynch Road. The height of the stockpile will not exceed the height of the electrical lines.

General testimony was offered by Robert Joiner, David Garey, Gary Miller, Daniel Saunders, representing Wayne Wright, and Wayne Wright.

Mr. Joiner stated that his property is downwind from the proposed location. He opened that a tailings conveyor purchased by the Wessels is approximately 20-50 feet long and can pile litter up to 30 ft high. There was discussion with the Wessel's which stated the concrete pad will allow the stockpiles to be on site all year round. High school students frequently run along the road and the road is part of a bike path that bicyclists use throughout the summer. Mr. Joiner stated the stockpile should be located closer to the existing barns located on the parcel.

Mr. Garey stated he is an aviation safety inspector and is one of two inspectors that oversees the Chesapeake Ag Air operation. Mr. Garey wanted the board to be aware of the risk when there are birds. The aircraft whether taking off or landing is committed and is very hard to maneuver around things. The potential attraction of birds would be a detriment to the safety of Mr. Wright and other pilots that use Mr. Wright's runway.

Mr. Miller stated he is opposed to the proposed structure due to the potential buzzards and other birds that impose hazard conditions for airplane traffic.

Mr. Wright stated it took approximately 10 or 15 years of negotiating and \$20,000.00 paid to Choptank Electric to remove the wires at the end of the runway. Mr. Wright stated the proposed floating concrete pad will be constructed at the exact location the wires were located 10 or 15 years ago. Mr. Wright will not fly over fields if there are people in the fields. Mr. Wright stated the Wessel's have used that location for litter previously and generally the litter is there a day before it is spread on the fields. The concrete pad would allow for a longer period of storage that could potentially be a hazard.

Mr. Saunders, Attorney representing Mr. Wright, presented a letter from Maryland Department of Transportation, Maryland Aviation Administration addressing the regulations that cover this situation. Under federal regulations this is a manure storage facility near the runway that will increase the risk to all aircraft operation at the Wright field. The substantial increase of wildlife birds would be attracted to the storage vicinity. This is a known risk and that is why this type of manure storage is prohibited within 5,000 feet of an active runway.

After much discussion and consideration of the testimony and all applicable laws, Mr. Hickman made a motion to send an unfavorable recommendation to the Board of Appeals for the variances to the required yard setbacks based on the following findings of fact:

- Granting a variance will not cause a substantial detriment to neighboring properties not will it change the character of the neighborhood and district.
- The Comprehensive Plan promotes the use of agricultural best management practices, and the proposal is consistent with the general intent of the Land Use Ordinance.
- There was no practical difficulty identified by the applicant at the meeting, which was caused by some unusual characteristic of the size or shape of the property or other condition of the property.
- The applicant has other areas on the property on which to locate the structure.
- The reasonable use of the entire property was considered.

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

## Staff Reports

Stephanie Jones:

- Code Home Rule Bill No. 3-2019 was adopted with amendments by the County Commissioners on August 20, 2019. This will add “animal shelters as defined by the County Code of Public Laws” to existing permitted principal uses and structures for veterinary hospital or clinic in the Agricultural Zoning District (AZD) and consistent language in the Industrial District (I)
- Code Home Rule Bill No. 5-2019 was adopted with amendments by the County Commissioners at the recent meeting. Currently structures for buying, processing, and sale of farm products related to agriculture are limited to 25,000 square feet and is not defined to be on farms. This amendment will increase the size limit placed on structures to 50,000 square feet. The amendment from the Commissioners included removing ON FARMS from the Planning Commission’s proposed legislation allowing for these structures to be on parcels less than 20 acres.
- All Planning and Zoning services that the County has been completing for the Town of Rock Hall are now to be conducted by the Town of Rock Hall. All permit and project applications are to go to the Town. The County will review stormwater management and sediment control applicants for the Town. The Town has hired Chris Jakubiak as their Town Planner.
- The County will be holding a Kickoff Meeting/training for the Complete Count Committee for the 2020 Census. Be on the look-out for important information regarding the Census. Completing of the form can be done electronically for the 2020 Census and is very important that all are counted. The Planning Commission and all other committees and boards will be asked to be part of this kickoff meeting.
- Ms. Jones attended MACo last month which was very informative. Listened in on sessions regarding upgrades to the current 911 system, agri-tourism, 2020 Census, preemption and many more.
- On August 27<sup>th</sup>, the Maryland Transportation Authority released four preliminary bay crossing alternatives including 3 corridors and a no build. On Tuesday, September 24 from 6 to 8 p.m. at the Kent County High School the MDTA will hold an open house. MDTA will provide information and receive feedback on the range of alternatives and the Preliminary CARA. Attendees also will learn about the purpose and need aspect of the study, traffic, engineering and environmental considerations, comments received to date, next steps and how to stay informed. A Power Point was also released on August 27<sup>th</sup> and has been posted on the Kent County BBMC webpage.
- The property of Benjamin Stafford located in Massey, adjacent to the One Energy Bluestar Solar project has made the Planning Office aware that they plan to move forward with their utility scale

solar project. At this time nothing has been submitted but a concept plan has been reviewed by the Planning Commission.

Robert Tracey:

- Researched what other counties throughout Maryland consider agritourism.
- Researched how other counties handle potential conflicts of interest on their Ag Preservation Boards.
- Attended the August 7th Economic Development Committee meeting.
- With the help of Carla Gerber, Mr. Tracey sent letters to MALPF applicants regarding the status of their applications.

Carla Gerber:

- Kent Sand & Gravel, LLC scheduled a hearing with the Board of Appeals to amend specific conditions the Court of Special Appeals deemed preempted by the State in the decision of *East Star, LLC vs. County Commissioners of Queen Anne's County* (2012). The Board of Appeals removed the 4 conditions that are preempted and the condition to hold an annual meeting. The Board has asked that the adjacent property owners keep the county apprised of any issues.

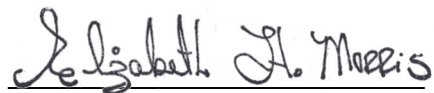
#### **General Discussion:**

Mr. Crowding advised the Maryland Association of Planning Commissioners will hold their annual conference meeting in Aberdeen on November 6th and 7th.

Mr. Crowding thanked Ms. Jones for all her hard work the last few months. Working with Stephanie and the staff was smooth sailing during a trying summer.

Ms. Morris stated Ms. Gerber stepped out of her job description to help out during the transition period.

There being no further business for the good of the organization, the meeting was adjourned at 3:55 p.m.



Elizabeth Morris, Chairman



Tonya L. Thomas, Clerk