

MINUTES

The Kent County Planning Commission met in regular session on Thursday, November 6, 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; 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; 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 October 2, 2014, meeting, were approved as corrected by the Planning Commission Members and presented via today's meeting.

PUBLIC HEARING:

Emily Massey & Community Energy Solar, LLC- Zoning and Text Amendment-Agricultural and Resource Conservation District- Emily L. Massey and Community Energy Solar, LLC, have submitted an application to amend Article VII, Section 6, Special Exceptions, procedures and Article XI, Section 2, Definitions of the Kent County Land Use Ordinance by adding the following to the solar energy system, utility scale provisions.

This is an application that is sent directly to County Commissioners of Kent County.

Testimony of General Public made by the following:

Thomas Tuffey, Vice President of Community Solar Energy, LLC, Radnor, Pennsylvania;
Emily Massey of Chestertown, Maryland;
Robert Clark, past Chairman of County Agricultural Preservation Board, of Betterton, MD;
John and Debbie Coleman of Worton-Lynch, Maryland;
Phillip W. Hoon of Chestertown, Maryland;
Ray Stoltzfus of Still Pond, Maryland; and
John Massey of Massey, Maryland.

APPLICATIONS FOR REVIEW:

Emily Massey & Community Energy Solar, LLC- Zoning and Text Amendment-Agricultural and Resource Conservation District- Emily L. Massey and Community Energy Solar, LLC, have submitted an application to amend Article VII, Section 6, Special Exceptions, procedures and Article XI, Section 2, Definitions of the Kent County Land Use Ordinance by adding the following to the solar energy system, utility scale provisions.

Present and duly sworn in was Emily L. Massey, applicant; Thomas Tuffey and John Forgash, co-applicant representing Community Solar Energy, LLC.; and Amy G. Moredock, Director. Also present was Phillip W. Hoon, counsel to the applicants.

Ms. Moredock gave an overview of the application and cited the applicable law of the *Kent County Land Use Ordinance* to include Article XII, Section 6 which establishes the standard for the review and approval of a zoning text amendment.

Mr. Tuffey submitted an exhibit to all the members for their review. Mr. Tuffey described his company and how it sizes projects in accordance with both the economics and the legislation relative to solar energy incentives. Mr. Tuffey noted that there is a public need for the County to increase its designation of utility scale solar systems. He further noted that Kent County farmers were in the audience in support of the zoning text amendment.

Ms. Massey spoke of the hardship she is experiencing due to the economy and stated the installation of a utility scale solar system would help to offset the economic downfalls due to farming a parcel of 200 acres.

Mr. Crowding asked whether or not the solar panels will be included in the percentage of production of farm land. Mr. Hoon stated that the proposed use is temporary and, therefore, would not be included in the percentage of land developed.

Mr. Birkmire raised concerns regarding agricultural land being utilized for uses other than agricultural, noting that the proposed use was industrial in nature.

After much deliberation, the project was tabled and the general discussion will continue at the Planning Commission meeting scheduled for December 4, 2014. In its discussion of the proposed changes and additions to the current utility scale solar energy system standards, the Planning Commission noted, among other opinions, the following key points for consideration:

- The language relative to incidental use should be retained.
- The requirement that the area developed by the solar energy system should be considered development to be counted toward development rights of the parcel.
- The stormwater management devices affiliated with the solar energy system should be included within the project area (definition).

2012 Water and Wastewater Plan - Proposed Amendment to Fairlee Water Service Area- Kent County propose to amend Chapter 3, Section 3.5.9 (Water/Water Supply Systems/Delta Heights) of the Comprehensive Water and Sewerage Plan.

Present and duly sworn in were Ryan Rangel of McCrone and Ms. Moredock, Director. Also present were Christopher F. Drummond, counsel to Fifth Investments, LLC, and Ernie Crofoot, County Attorney/Administrator.

Ms. Moredock gave an overview of the application and cited the applicable laws of the Maryland Annotated Code to include §9-506 (Environment/Water, Ice, and Sanitary Facilities/County Water and Sewerage Plans) and Kent County Comprehensive Water and Sewerage Plan Chapter 1.6.2.

Mr. Crofoot stated the proposed extension of the water service is consistent with the Comprehensive Plan strategy which directs the County to investigate means to ensure that new development pays its share of the cost of providing water and sewer facilities. He further pointed out that, in this case, a water line is proposed to be extended into the countryside to correct a public

health concern. This situation involves a community water system which is regulated by the Maryland Department of the Environment (MDE) who has identified public health and drinking water safety concerns. Mr. Crofoot pointed out that MDE does not define or use “public health emergency” language, and, therefore, has documented matters of public health using terminology consistent with their regulations.

Mr. Drummond and Mr. Crofoot concurred that Fifth Investment is proposing a solution to its water supply issues in a manner which not only pays its share of the cost of providing water but also places the County in a desirable position to address a potential public health emergency situation in nearby Tolchester Estates which is already served by the County sewerage system.

Following much consideration of the testimony presented, Mr. Birkmire made a motion to send a favorable recommendation to the County Commissioners’ of Kent County for approval based on the following findings:

- The proposed extension of water service is consistent with the Comprehensive Plan goal to protect drinking water quality.
- 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 finds that adequate documentation exists from the Maryland Department of the Environment establishing that health concerns exist.
- A precedent has been established as the site is currently served by public sewer.
- No additional growth is proposed.
- The installation of the proposed water line places the County in a desirable position to address a potential public health emergency situation in nearby Tolchester Estates which is already served by the County sewerage system.

Mr. Hickman seconded the motion, and the motion passed with a 5:1 vote with Mr. Crowding voting against the motion.

ISE America, Inc. – Setback Variance – 10782 Big Stone Road – ISE America, Inc., is requesting a variance from the 600 foot setback requirements established from all property lines for poultry houses on existing foundations as well as the proposed construction of a new manure storage building. One poultry house was demolished in accordance with a demolition permit issued to the applicant in January of 2014 and subsequently reconstructed without a building permit. According to the applicant, the other poultry house was damaged in a heavy snow storm and reconstructed in approximately 2010 by former owners of the property. The variance request for the poultry houses are “after the fact” since the construction has been completed. The variance also seeks relief of the 600-foot setback for construction of a new manure storage building to be constructed between the two existing poultry houses.

Present and duly sworn in were Robert Dvorak, Barry Griffin and Larry Beck representing ISE America, Inc., applicant, and Katrina Tucker, Community Planner. Also present was Megan Owings, counsel to ISE America, Inc.

Ms. Tucker gave an overview of the application and cited the applicable laws of the *Kent County Land Use Ordinance* to include Article V, Section 1.2.12 of the Agricultural Zoning District which requires that poultry houses and the associated waste management facilities be located a minimum of 600

feet from all property lines; and Article IX, Section 2.2 of the Land Use Ordinance which authorizes the Board of Appeals to grant variances of the yard requirements.

Ms. Morris inquired as to correspondence received regarding the application, and Ms. Tucker noted that correspondence had been received from Mr. Joseph Druga, and adjoining property owner of Norton, Ohio. Ms. Tucker read Mr. Druga's written response for the record, in which he advised that he was opposed to allowing the variance.

Ms. Owings gave a brief overview of the property and the history of the existing structures.

After much discussion, Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals for approval of the setback variance with the following findings relative to the 600-foot setback variance standards:

- The granting of this variance would not cause a substantial detriment to adjacent or neighboring properties;
- The variance will not change the character of the neighborhood or district;
- The variance is consistent with the Comprehensive Plan and the general intent of the Land Use Ordinance;
- There is a practical difficulty due to the unusual shape of the property and presence of environmental features that include streams, wetlands, and woodlands; and that this was not caused by the applicants own actions.

The motion further included that, in considering this request, the reasonable use of the entire parcel is appropriately agriculture and more specifically this is a reasonable location for the poultry houses in light of the environmental resources and sensitive areas on the western side of the property. Moreover, the prior use of the property has been poultry houses in the exact locations as presented. Therefore, as specifically shown on the location drawing prepared by McCrone, Inc., and dated October 2014, the Planning Commission recommends the following to the Board of Appeals:

- Granting of a variance of 527 feet from the eastern boundary and a variance of four (4) feet from the southwestern boundary for the eastern most poultry house; and
- Granting of a variance of 181 feet from the southwestern boundary accompanied by variances from the east boundary of 286 feet and 307 feet for the western poultry house; and
- Granting of a variance of 420-feet from the eastern property line for the manure storage facility which will bring the poultry operation into compliance with CAFO (Concentrated Animal Feeding Operations) and nutrient management requirements.

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

Erin Gillespie – Pier Length Variance – 7637 Quaker Neck Road – Erin Gillespie is requesting a variance of 35 feet for a pier with a platform, 2 boat lifts and a jet ski lift with an overall length of 185 feet.

Present and duly sworn in were Erin and Jim Gillespie, applicants; Michael A. Scott, surveyor representing the applicant; 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 [sic]which establishes minimum yard requirements;

Article V, Section 2.3.B.7. [sic] which as authorizes a pier as an accessory use; Article VI, Section 3.7 which addresses pier requirements; and Article IX Section 2.2 of which authorizes the Board of Appeals to grant variances for pier length.

Mr. Scott stated that the water depth is not deep enough for recreational use. He testified to the depth based on soundings that he had taken onsite and in the general vicinity as indicated on the plat on file.

Mr. Gillespie stated that there is silting taking place that has been an issue onsite and for the neighbors as well.

After further discussion, Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals for approval of the 35 foot pier length variance in order to construct the pier with an overall length of 185 feet with the following findings:

- The granting of the variance will not cause a substantial detriment to adjacent or neighboring properties nor change the character of the neighborhood or district.
- The pier will not exceed 25% of the width of the waterway. The proposed 185 foot pier comprises 8% of the width of the waterway in this location and does not encroach on the channel.
- The pier will not have a negative impact on a waterfowl staging area nor anadromous fish spawning area.
- The granting of the variance is consistent with the Comprehensive Plan and the general intent of this Ordinance.
- A practical difficulty is caused by an extraordinary topographical condition of the property. Siltation has occurred in this location due to the property's proximity to the bend in the Chester River combined with erosion of the river banks. These conditions prevent the applicant from achieving reasonable access to viable water depths by locating the pier at 150 feet.
- The 185 foot pier will not disturb subaquatic vegetation. If the pier were constructed at 150 feet, then the riverbed could be disturbed due to the water depths at 150 feet.
- If the variance were denied, then the applicant would be denied reasonable use of the parcel in its entirety.
- The variance request is not caused by the applicant's own actions.

Mr. Hickman noted that the favorable recommendation is contingent upon the applicant receiving joint approval from the Army Corps of Engineers and Maryland Department of the Environment prior to the issuance of a County building permit.

Mr. Birkmire seconded the motion, and the motion passed with a 5:1 vote with Ms. Kohl voting against the motion.

Town of Galena (Upgrade to Wastewater Treatment Plant) – Special Exception – 13265 Augustine Herman Highway– The Town of Galena is requesting special exception review in order to construct improvements to its Waste Water Treatment Plant. The Town proposes the installation of a new waste water treatment facility to replace the existing 3- celled lagoon system which has serviced the Town since 1963. The project includes the following improvements: an

operation building, administration electric building, influent screen and grit classifier, and a parking area.

Present and duly sworn in was Perry Otwell, and Ryan Rangel of McCrone Engineering, representing the applicant; Sharon Weygand, Galena Town Manager, 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 establishes the minimum yard requirements; Article VII, Section 7.41, which allows Public Utilities and structures as defined in Article X of the Ordinance in the AZD, RCD, RC, RR, CAR, and CR zoning districts; and Article CII, Section 2 of the Kent County Land Use Ordinance which establishes requirements for the Board Of Appeals , or where applicable the Planning Director, to authorize buildings, structures, and uses as special exceptions.

Mr. Otwell addressed the standards outlined by Mr. Kerbin and stated that all the special exceptions requirements have been met, and the facility has been operating since the early 1960's.

After further discussion, Ms. Kohl made a motion to send a favorable recommendation to the Board of Appeals for approval of the special exception with the following findings:

- The nature of the surrounding area is a combination of farmland and residential and commercial development.
- Traffic patterns will not be affected by the proposed project.
- The proposed upgrade will not affect dwellings, houses of worship, schools or other public structures.
- The proposed upgrade will not increase demand on community facilities and services.
- The proposed upgrade will not affect cultural and historic landmarks.
- Removal of vegetation will be minimal. The applicant proposes to pay into the fee-in-lieu fund for the total square footage of vegetation removed due to limited availability for replanting onsite.
- The treatment plant will be screened by an existing wooded area and proposed landscaping.
- The proposed upgrade will not increase noise, vibration, smoke or toxic matters.
- The project meets the environmental and other standards of the Ordinance.
- The project is the most appropriate use of the land. The wastewater treatment plant is existing and will be surrounded by existing forest.
- Property values will not be affected by the wastewater treatment plant upgrade.
- The project is consistent with the Comprehensive Plan strategy to improve drinking water quality and ensure proper wastewater treatment.
- Water quality will be improved by the replacement of an aging sewage lagoon with the installation of an Enhance Nutrient Removal technology and providing public sewer to many failing septic systems.
- The project will not negatively impact fish, wildlife, and plant habitat.
- The project is consistent with the Critical Area Program. Critical Area Commission staff has reviewed the application favorably.

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

Town of Galena (Upgrade to Wastewater Treatment Plant) – Preliminary /Final Site Plan – 13265 Augustine Herman Highway– The Town of Galena is requesting site plan approval in order to construct improvements to its Waste Water Treatment Plant. The Town proposes the installation of a new waste water treatment facility to replace the existing 3- celled lagoon system which has serviced the Town since 1963. The project included the following improvements: an operation building, administration electric building, influent screen and grit classifier, and a parking area.

Present and duly sworn in was Perry Otwell, and Ryan Rangel of McCrone Engineering, representing the applicant; Sharon Weygand, Galena Town Manager, 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 VII, Section 5.3.B.16 of the Kent County Land Use Ordinance, which establishes major site plan review procedures, and Article VII, Section 7.41, which allows Public Utilities and structures as defined in Article X of the Ordinance in the AZD, RCD, RC, RR, CAR, and CR zoning districts.

Mr. Otwell stated that all stormwater management and sediment control will meet environmental site design standards. The lot is a wooded lot and, as such, tree removal will be required; however there is not sufficient available area to allow for onsite replanting. Mr. Otwell also noted that the Town of Galena applied to Maryland Department of Environment for a discharge permit due to discharge proposed into non-tidal wetlands.

Ms. Kohl asked if there will be an increase to the noise. Mr. Rangel stated that there will be an increase to the noise but will not be heard from the road, and the lot is buffered by the woods.

After much discussion, Ms. Kohl made a motion to approve the preliminary site plan based on the following facts:

- Conformance The granting of the variance conforms with the Comprehensive Plan strategies to ensure proper wastewater treatment within the county
- Vehicular and pedestrian movement onsite should not be impacted by the proposed improvements.
- Provisions for loading and unloading of vehicles, adequate lighting, and internal traffic control have been addressed.
- The probable effect of noise vibration, smoke particulate matter, toxic matter, odor, fire or explosion hazards should be minimal.
- A minimal amount of vegetation will be removed and the applicant has requested to pay into the fee-in-lieu fund due to the limited availability of planting area onsite.
- The project is buffered on 3 sides by forest and is adjacent to agricultural land. The project will be surrounded by densely wooded area and the treatment plant will not be visible from the road.
- The project meets all setback requirements.
- Parking spaces must be addressed.
- Building plans complete with front, side and rear elevations of all new buildings must be submitted.

Ms. Kohl noted that the following items would be required in order to receive final site plan approval:

- Payment into the fee-in lieu fund must be received.
- Building plans complete with front, side and rear elevations of all new buildings must be submitted.
- Parking spaces should be formally identified.
- The “Special Exception Exhibit” Plat should be relabeled “Final Site Plan” and a signature line for the Planning Commission chair added to the signature block.
- Sediment and erosion control and stormwater management plans must be approved prior to receiving final site plan approval.

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

Staff Reports

Amy Moredock:

- Staff will be attending the Eastern Shore Land Conservancy Annual Conference on November 17, 2014. Members are welcome to attend.
- Attended and staffed the Maryland Association of Floodplain and Stormwater Managers Annual Conference on October 23rd, which was a huge success.
- On November 18, 2014, Kent County will be hosting a FEMA session regarding coastal resiliency. She and Rick Myers will staff the meeting.
- Update of administrative hearings include the following:
 - An administrative variance from the front yard setback requirement was granted in order to construct a replacement single family dwelling 30 feet from the front property line in Kentmore Park.
 - An administrative variance from the buffer requirements in order to install a replacement septic system within the 100 foot Critical Area buffer was granted.
 - Cases involving a setback variance for a manure composter on Big Stone Road, a replacement septic in the Critical Area Buffer in Langford Bay Estates; and special exception to construct an accessory structure in the front yard of a waterfront property in Georgetown.

Katrina Tucker: Attended the Maryland Citizen Planning Association annual conference on October 17, 2014 held in Solomons, Calvert County, Maryland.

GENERAL DISCUSSION

There being no further business for the good of the organization, the meeting was adjourned at 6:27 p.m.

Elizabeth Morris, Chairman

Tonya L. Thomas, Clerk