

MINUTES

The Kent County Planning Commission met in regular session on Thursday, April 3, 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; Randy Bellows and Joe Hickman. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; Carla Gerber, Community Planner; Bill Kerbin, Housing Planner; G. Mitchell Mowell, Planning Commission Attorney; and Jennifer Butz, Secretary.

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

PUBLIC HEARING

The Kent County Planning Commission held a public hearing to review the Kent County Floodplain Ordinance and Mapping Update.

Ms. Moredock stated the Floodplain Management Ordinance and Floodplain Maps for Kent County are due to be updated. The Planning Commission reviewed the proposed changes at the March meeting and offered comments. A suggestion was made to add a requirement to submit an elevation certificate prior to the completion of the first floor construction. There is a specification on the elevation certificate for a submittal during construction. This will be added to the Ordinance to ensure the first floor is in compliance with the Flood Protection Elevation Requirement.

The other question asked was regarding the Limit of Moderate Wave Action (LiMWA) line and whether or not this is a requirement on the flood maps. Ms. Moredock clarified the LiMWA line is required to be shown on the floodplain maps and the benefit of this is if the County applies for the Community Rating Service program, County residents would receive lower flood insurance costs because the County is in compliance with state and federal requirements.

Ms. Moredock noted the new additions to the floodplain ordinance include the way the floodplains are identified, the increase in the floodplain protection elevation from one (1) foot above the floodplain to two (2) feet above base flood elevation. There is an elimination of the provision on the limit of fill which used to be 600 cubic yards; however, there is an impact analysis that must be completed. The model ordinance has removed the accessory building square footage limit of 600 square feet and has set the new size limit at 300 square feet. The County is going to put forth a reasonable argument that is the limit should remain 600 square feet to accommodate a typical two car garage.

The County is awaiting Maryland Department of the Environment's and the Federal Emergency Management Agency's feedback regarding the draft document. The Floodplain Ordinance and maps are to be adopted by June 9, 2014.

FEMA has contacted the county and has contracted a company to provide some outreach once the maps are adopted. Ms. Moredock stated some workshop will be scheduled to allow property owners an opportunity to become familiar with an online resource that will identify properties within the floodplain.

Receiving no comments from the audience, Ms. Morris closed the public hearing at 1:41 pm and re-opened the Planning Commission meeting.

The Floodplain Ordinance Update discussion was continued following the review of all agenda applications. Mr. Hickman made a motion to send a favorable recommendation to the Kent County Commissioners regarding the update of the Kent County Floodplain Maps and Ordinance, as well as amendments to the Specific Design Standards in each zoning District and Definitions Sections of the Land Use Ordinance as presented. He further stated that the update as presented may be altered to accommodate MDE and FEMA comments. Mr. Hickman based his recommendation of the following findings:

- The Kent County Comprehensive Plan encourages the maintenance, enforcement, and strengthening of floodplain regulations.
- The Ordinance update addresses a public need to comply with state regulations in accordance with the requirements of the Code of Maryland Regulations (COMAR) 26.17.04; Environment Article, §§1-404, 5-501—514, Annotated Code of Maryland; and the community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations (CFR) at 44 CFR Section 59.22.

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

APPLICATIONS FOR REVIEW:

14-03 Samuel Alexander (Haunted House) – Preliminary/Final Site Plan Review

Present and duly sworn in were Jane Alexander, property owner, Peter Naul, Robert “Buck” Nickerson, surveyor, and Ms. Moredock, Planning Director.

Ms. Moredock gave an overview of the application for the preliminary and final site plan review for the operation of a Haunted House for weekend use from September to November on their property located at 13335 Alexander Road in the First Election District. The site plan consists of the following improvements: two 4,000 square foot buildings, ticket booth, area for refreshment sales, portable restrooms, designated haunted hayride area, gravel driveway and parking area, grass parking area, dirt lane, and 50 foot landscape buffer along much of the site.

Ms. Moredock noted the applicable laws of the *Kent County Land Use Ordinance* to include Article V, Section 1.2, Section 1.7.B.8, Section 1.8 which establish the use, area, and yard requirements, the forest conservation requirements, the design standards, and the stormwater management and sediment control requirements; and Article VI, Section 5.3.B which establishes the site plan review standards. Ms. Moredock concluded by noting that the applicant has communicated with Millington Fire Company who has agreed to assist onsite as needed; sediment and erosion control and stormwater management plans have been approved, and the Forest Conservation Declaration of Intent has been submitted. All associated sureties must be submitted, including a letter of credit for the landscape plan.

Mr. Nickerson addressed a few changes made since the conceptual site plan review. Mr. Nickerson stated the accessory buildings have been increased to two 4,000 square foot buildings

and the ticket sales are scheduled to stop at 11:00pm and the premises cleared by 12:00am. In addition extended hours are proposed on Sundays to accommodate a younger clientele.

Discussion ensued amongst the Planning Commission regarding stormwater management, lighting, and signage. Mr. Hickman put forth a motion to approve both the preliminary and final site plan based on the following findings:

- The proposal is consistent with the Comprehensive Plan strategies to recruit new businesses which are desirable to the community and to promote development of small, locally-owned businesses.
- The site will be improved permanently with two 4,000 square foot buildings which will be used for agricultural purposes during the remainder of the year, a gravel driveway and recreational area, dirt lane, and 50 foot landscape buffer along much of the site.
- The site will be improved temporarily (September-November) by a ticket booth, an area for refreshment sales, portable restrooms, designated haunted hayride area, and a designated grass parking area.
- The proposed temporary operation is a permitted use and will be locally owned and operated.
- The parking lot is adequate and will be located approximately 60 feet from Alexander Road and 50 feet from Massey Road/MD Route 299.
- The site will be accessed by the existing entrance off of Alexander Road.
- The applicant has addressed the convenience and safety of both vehicular and pedestrian movement within the site and to adjoining ways and properties.
- Provisions for the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate lighting, and internal traffic control have been adequately identified and addressed.
- A 16 square foot temporary sign will be located onsite near the existing signage. This sign will be placed onsite on Friday and removed on Monday morning each weekend during the season.
- The proposed use will place reasonable demands on public services and infrastructure.
- An emergency plan has been submitted relative to both access and emergency operations. The applicant has communicated with Millington Fire Company which has agreed to assist onsite as needed.
- The Health Department approves this application with the conditions relative to sewerage disposal, hand washing, and food service licensing.
- The landscaping plan consisting of white pine trees planted along 10 foot centers appears to provide adequate screening from excessive or unreasonable noise, smoke, vapors, fumes, dust, odors, or glare.
- The haunted house is proposed to operate on a seasonal basis for a total of 16 days annually. The proposed period of operation is during weekends from the last Friday in September until the first Sunday in November. Hours of operation on Fridays and Saturdays will be from 7pm-12am and on Sundays from 3pm-11pm.
- A Forest Conservation Declaration of Intent has been submitted.
- Formal sediment and erosion control and stormwater management plans have been approved.

Mr. Hickman added that the approval be contingent upon the submittal by the applicant and acceptance by the County of all affiliated sureties for stormwater management, sediment control, and landscaping. Mr. Crowding seconded the motion, and it was approved unanimously.

14-05 Tolchester Marina – Preliminary Site Plan Review

As he is the property manager of an adjacent parcel, Mr. Hickman recused himself from hearing the application. Present and duly sworn in were Aaron Bramble, applicant, Katherine Bramble, applicant, Robert “Buck” Nickerson, surveyor, and Bill Kerbin, Housing Planner.

Mr. Kerbin gave an overview of the application for preliminary site plan review for the construction of a 3,200 square foot pole building over an existing tennis court on Tolchester Marina’s property located at 21085 Tolchester Beach Road in the Sixth Election District. This building will not have walls and will only have supports with no permanent fixtures beneath. Tolchester Marina has used this area for weddings and special events, and this structure will provide protection from inclement weather. The tennis court has historically existed in this location.

Mr. Kerbin noted the applicable laws of the *Kent County Land Use Ordinance* to include Article V, Section 13.5 which establishes the height, area, and yard requirements in the Marine District; Section 13.6.B.4 which establishes the Modified Buffer provisions; Section 13.4 which establishes the permitted accessory uses in the Marine District; Section 13.6 which establishes the environmental standards in the Marine District; Section 13.7B which establishes the design standards; and Article VI Sections 5.2 and 5.3 which establish the site plan review standards regarding this application.

Mr. Nickerson stated that following the Planning Commission meeting for conceptual site plan review, Tolchester Marina held a citizen participation meeting at the marina on March 26, 2014, and 7 of the adjacent property owners attended the meeting. They discussed screening between the Van Alton property and the marina. Mr. Nickerson stated the information was well received.

Mr. Nickerson noted that parking lot lighting was also discussed, and he added lighting detail to the site plan. Mr. Bramble gave specifications of the proposed lighting detail. Traffic flow was another issued discussed, and Mr. Nickerson said there would be security to oversee the participants and to make sure everyone vacates the premises in a timely manner.

Discussion ensued regarding the placement of the portable toilets along the fence. Ms. Bramble stated the portable toilets would be less visible against the fence as opposed to having them across the road. Mr. Crowding stated he would like to have the location of the portable toilets noted on the plat.

Mr. Michael Waal, neighbor, commented in favor of the application.

Mr. Ralph Dolinger, neighbor, also commented in favor of the application; however, Mr. Dolinger did express concern over a few issues. Mr. Dolinger stated he would like to know who he would contact regarding excessive noise, speeding and excessive trash along the road. Mr. Birkmire suggested calling 911 because they are the clearinghouse for everyone and would be

able to figure out who to contact depending on the complaint. Mr. Crowding stated the authorities should be notified because all of these complaints would be a law enforcement issue. Ms. Bramble said she would be happy to give out her cell phone number so he can contact her regarding issues so the marina can resolve them.

Mr. Hickman, representative of a neighboring land owner, also commented in favor of the application stating the citizen participation meeting was very well-received and was very informative. Mr. Hickman requested a schedule of events to be emailed to the neighbors regarding the big events. Ms. Bramble said she did not see a problem doing this.

Neil Metzbower, neighbor, commented in favor of the application stating he has not seen any problems with any of the events the marina has had so far, and he does not foresee any problems to come.

Mr. Sutton made a motion to approve the preliminary site plan based on the following findings:

- The proposal is consistent with the Comprehensive Plan strategies to expand and provide more diversity in the size, number and type of business in the County.
- The proposed seasonal structure is located outside of the 25 foot buffer and; therefore, compliant with the modified buffer provisions. The structure also meets the setback requirements.
- There will be no additional impacts to the Critical Area Buffer as all disturbance is existing and the existing tennis court, as well as the proposed pavilion, are located outside of the Modified Buffer.
- Construction of a seasonal events pavilion is a permitted use in the Marine District.
- To address concerns raised at the Citizen Participation meeting held on March 26, 2014, the applicant proposes to provide further screening and security.
- The hours of operation will be 9:00 a.m. to 12:00 a.m. Security personnel will be available at the conclusion of events to guarantee that the premises are vacated in an orderly and timely manner.
- No signage is proposed.
- The applicant noted that lighting would be placed beneath the pavilion and would be dark-sky compatible. Two parking lot lights are located in the traffic zone that leads to and away from the site.
- Temporary sewage disposal facilities, in the form of “comfort trailers,” will be used for special events at the site. These trailers will be removed within one (1) day of the conclusion of the event.
- The Kent County Health Department has approved the application with the following conditions:
 - “Comfort trailers” cannot be permanent and must come and go with each event.
 - “Comfort trailers” waste must be emptied at an approved facility.
 - The applicant must document compliance with these measures.
 - Once the structure becomes permanent, use exceeds approval of this site plan review and/or installation of plumbing, “comfort

trailers” are no longer acceptable means of waste disposal. Public sewer must be provided.

- A water quality improvement plan will not be required since the accessory structure will be constructed over existing lot coverage.
- The proposed structure includes 40 parking spaces to meet the requirements of an assembly hall as set forth in the Kent County Land Use Ordinance parking provisions.
- A landscaping plan has been submitted with a mixture of shrubs and trees to be planted to complement the existing landscaping at the site, provide screening from offsite, and enhance the Critical Area Buffer.

In addition, Mr. Sutton noted that the following conditions must be met in order to grant final site plan approval:

- Provide a landscaping plan with additional screening between the pavilion and Tolchester Beach Road.
- Sureties for landscaping must be submitted.
- Provide details as to the off-street loading and unloading of vehicles incidental to the normal operation of the uses associated with this pavilion.
- Provide details relative to the demands placed on public services and infrastructure impacted by this structure.

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

14-16 Oddmund Angell – Zoning Text Amendment

Present and duly sworn in were Kevin Shearon, DMS & Associates, Oddmund Angell, applicant, and Carla Gerber, Community Planner.

Ms. Gerber gave an overview of the application stating Mr. Angell has submitted an application to amend Article V, Section 7.2, Village District Permitted Uses, of the *Kent County Land Use Ordinance* by amending 7.2.16 to include the following language:

Neighborhood retail businesses which supply household commodities on the premises such as groceries, meats, dairy products, baked goods, or other foods, drugs, notions, flowers or hardware. All retail sales shall be conducted entirely within a building, **except where otherwise approved by the Planning Commission**. Other uses and structures which meet the criteria specified above may be approved by the Zoning Administrator. Neighborhood retail businesses shall require a site plan.

Ms. Gerber noted 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.

Discussion ensued amongst the Planning Commission regarding the public need for the amendment and its consistency with the Kent County Comprehensive Plan.

Mr. Hickman made a motion to send a favorable recommendation to the Kent County Commissioners to amend Article V, Section 7.2 (Village Permitted Uses) of the *Land Use Ordinance* by adding the provision in **bold-faced** type below to 7.2.16 as follows:

“Neighborhood retail businesses which supply household commodities on the premises such as groceries, meats, dairy products, baked goods, or other foods, drugs, notions, flowers or hardware. All retail sales shall be conducted entirely within a building, **except where otherwise approved by the Planning Commission**. Other uses and structures which meet the criteria specified above may be approved by the Zoning Administrator. Neighborhood retail businesses shall require a site plan.”

Mr. Hickman found that a public need exists to enhance opportunities and provide flexibility for small businesses. He further found that the proposed text amendment is consistent with the Comprehensive Plan goal to “expand and provide more diversity in the size and number and type of businesses in the County.”

Mr. Sutton seconded the motion to send a favorable recommendation to the County Commissioners. The motion passed with a 3 to 2 vote. Mr. Birkmire and Mr. Crowding opposed the text amendment.

13-83 Town of Chestertown (Gateway Park) – Preliminary Site Plan Review

The Town of Chestertown is requesting preliminary site plan approval and a stream protection corridor waiver for Gateway Park. The 11-acre parcel is located on the south side of Route 20, near the intersection with Flatland Road, adjacent to the town limits in the Seventh Election District. The parcel is zoned “AZD” Agricultural Zoning District. The area is characterized by a mix of commercial/industrial, residential and agricultural uses.

Present and duly sworn in were Perry Otwell, McCrone, Inc., Bill Ingersoll, Town Manager of Chestertown, and Carla Gerber, Community Planner.

Ms. Gerber gave an overview of the application stating the Town is proposing a basketball court, walking path to a 10 x 12 observation deck, picnic tables, a bike rack and a 10 space parking lot. Nearly all of the proposed development will occur within the stream protection corridor which comprises much of the upland site area.

Ms. Gerber also noted the following applicable laws of the *Kent County Land Use Ordinance*: Article V, 1.5 which establishes area, height, width and yard requirements, Section 1.7.B.2 which establishes the forest conservation requirements, Section 1.7.B.6 which establishes non-tidal wetland review requirements, Section 1.7.B.7 which establishes stream protection corridor waiver standards, Section 1.7.B.8 which establishes the stormwater management review standards, Section 1.8 which establishes the general design standards in AZD, Section 1.8.B.2 which establishes the floodplain review standards; and Article VI, Section 5.3.B which establishes the site plan review standards.

Mr. Otwell stated the comments from the concept review have been addressed via site inspections and letters. Discussion ensued regarding whether or not the application should be

tabled due to not having Joe Blizzard's approval of the stormwater management report which is necessary in making appropriate findings relative to documenting water quality and habitat improvements within the stream protection corridor. Mr. Ingersoll stated he did not wish to table the application, as he would like to have the neighbors and their issues heard so they do not have to keep coming back to the meetings.

Ms. Morris addressed the audience asking if there was anyone wishing to testify on behalf of or against the application.

Mr. Ron Athey, owner of Stepne LLC., was sworn in and stated he is in favor of providing parks. Mr. Athey had two main issues with the proposed park. The first concern relates to the park's adjacency to a farm which is encumbered by an easement. He noted that they already have a lot of restrictions and now there will be more restrictions on the property relative to spraying and hunting. Mr. Athey's second concern relates to the traffic situation stating, "It is an "accident waiting to happen."

Herman Hill, adjacent property owner, asked a question regarding the amount of impervious surface to be removed. He also asked if the property lines are correct due to the fact that the deeds are not correct. Mr. Hill stated the land needs to be surveyed to make sure the property lines are correct.

Due to the number of outstanding matters raised by the Planning Commission, Mr. Ingersoll requested that the application be tabled until the May 1, 2014 Planning Commission meeting.

14-17 Verizon Wireless – Special Exception (Renewal of Cell Tower)

Verizon Wireless is requesting renewal of a special exception for a personal wireless facility tower. The property is located at 12530 Dads Desire Road in the Second Election District and is zoned "AZD," Agricultural Zoning District.

Present and duly sworn in were Barbara Pivec, Atlantic Site Acquisition, a representative of Verizon Wireless on behalf of SE Engineering; and Ms. Gerber, Community Planner.

Ms. Gerber gave an overview of the application and noted the following applicable laws of the *Kent County Land Use Ordinance* to include Article VII, Section 7.35 which establishes the performance standards for a personal wireless facility tower in AZD, and Article VII, Section 2 which establishes the general standards for special exception project review.

Mr. Hickman asked if there has been any criticism from the neighboring community since the tower was constructed. Ms. Pivec responded she has had one call asking whether or not the tower had been built.

Mr. Bill Clark, Still Pond resident, was sworn in and spoke in favor of the cell tower special exception renewal.

Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals for the renewal of Special Exception for a Personal Wireless Facility Tower based on the following:

- Based on testimony from the original Board of Appeals approval, the nature of the site, traffic patterns and the surrounding area have not changed.
- Although located near the village of Still Pond, the tower does not have a negative visual impact.
- There is no impact on community facilities.
- The tower does not generate any vibration, toxic matter or other hazards.
- The tower has not affected neighboring property values.
- The tower is an appropriate use of the land.
- There is no impact on water quality or fish and wildlife habitat.
- The application is consistent with the Comprehensive Plan and the Land Use Ordinance.

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

MINUTES

The minutes were reviewed and Mr. Hickman would like to have added to the minutes the fact that he recused himself from the Tolchester Marina application review. Otherwise, the minutes are approved as presented.

STAFF REPORTS

Ms. Moredock reported on the 2015 Fiscal Year Planning, Housing, and Zoning Budget request meeting that was held Tuesday, April 1, 2014. Ms. Moredock stated she requested a new full time GIS position and 2 new County vehicles for the Planning Department.

Ms. Moredock stated FEMA has funded a consultant to come to various communities to give a floodplain map educational session. There is a meeting Monday morning to discuss logistics of the planned session.

She further noted that there is a Leadership Maryland Forum scheduled on April 17, 2014. If anyone is interesting in attending, please contact the Planning Department. Ms. Moredock also stated there will be an Upper Eastern Shore Watershed Implementation workshop on April 29, 2014 and the Radcliffe Creek Stream Restoration Project, spear-headed by Kees DeMooy and funding through the Kent County Local Implementation Grant, will be featured.

The meeting was adjourned at 5:05p.m.

Elizabeth Morris, Chairperson

Jennifer M. Butz, Clerk