

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, October 6, 2016, in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland, with the following members in attendance: Elizabeth Morris, Chairman; William Sutton, Vice Chairman; Ed Birkmire; James Saunders; Kim Kohl; William Crowding; and Joe Hickman. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; Stephanie Jones, Environmental Planner; 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 September 7, 2016, meeting were approved as presented.

## APPLICATIONS FOR REVIEW:

**#16-66 Chester River Yacht and Country Club Pier Length Variance.** The applicants wish to construct a third pier on site totaling 183 feet. A variance of 33 feet is required to construct the pier. The approximately 175-acre property is located on Quaker Neck Road in the Seventh Election District. The property is currently comprised of a private country club and yacht club, a golf course, a swimming pool, two piers, a boathouse, and two accessory buildings incidental to the maintenance of a private club and golf course. The surrounding area is characterized by residential development and is zoned Critical Area Residential, "CAR", Community Residential, "CR" and Rural Residential, "RR". The proposed pier will be constructed within the CAR district.

A conditional use was granted to the Chester River Yacht and Country Club in 1963 to operate a private club. In 1993, a buffer and slope variance request to expand an existing pump house with additional bathrooms near the swimming pool area was denied by the Board of Appeals and in 2008 a pier length variance for 70 feet in order to construct a second pier onsite was approved by the Board of Appeals.

Mr. Birkmire noted for the record he is a member of the Chester River Yacht and Country Club but he did not believe that would affect his ability to make a decision based on the facts presented.

Present and duly sworn in were Dan Saunders, Counsel for applicant, Kevin Shearon, Engineer for DMS & Associates, and Ms. Jones, Environmental Planner.

Ms. Jones gave an overview of the application, the history of prior approvals of special exceptions for the Chester River Yacht and Country Club, and cited all the applicable laws of the *Kent County Land Use Ordinance* to include Article V, Section 5.5 which establishes the minimum yard requirements; Article VI, Section 3.7.3 which establishes the special requirements for water dependent uses; Article V, Section 5.4.8 that establishes permitted accessory uses in the Critical Area Residential Zoning District; and Article XI, Section 2.2 which authorizes the Board of Appeals to grant variances from yard, height, bulk, parking, loading, shoreline cliff, 15% slope, pier length, impervious surface, stream protection corridor, and buffer requirements.

Mr. Shearon gave an overview of the proposal and explained the Maryland Department of Environment (MDE) permit process and conveyed that the MDE does not want boat slips in the shallow water habitat. It has been recommended by the MDE that the pier construction extend beyond the shallow area into deeper water before the pilings are driven.

Mr. Sutton asked if there were any safety issues or interference in the channel with the proposed 183 foot pier being 13 feet from the channel.

Mr. Shearon stated that MDE prefers to protect shallow water habitat and allow piers to extend channelward. This is an attempt to honor shallow water habitat.

After much discussion and consideration of the testimony and all applicable laws, Mr. Hickman made a motion to forward a favorable recommendation to the Board of Appeals for the construction of a 183-foot pier based on the following findings and recommendations:

- In accordance with expert testimony the report from the professional engineer states that the proposed pier appears to meet side setback line requirements as they extend over the water. The pier and its pilings appear to be located approximately 396 feet from the north side lot line and 56.9 feet from the south lot line..
- The proposed will not exceed 25% of the width of the waterway or the edge of the channel.
- The variance would not cause a substantial detriment to adjacent or neighboring property nor would it change the character of the neighborhood or district. Similar pier length variances have been granted onsite and in the vicinity.
- The variance is consistent with the Comprehensive Plan.
- That the practical difficulty found was that the Maryland Department of the Environment recommends that slips have 3 to 4 feet depth to prevent disturbance to the riverbed. This relates to the 2008 variance finding that “the sediment from the lake deposited in the area and it was desirable not to unduly disturb the river bottom”. It was noted that the same conditions, concerns, and needs exist today as existed in 2008.
- Practical difficulty or other injustice was not caused by the applicants own actions.
- Mitigation will be set at a ratio of 3:1 for buffer disturbance and that the areas of mitigation be approved onsite and planted with native cultivars.

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

## **Staff Reports**

Amy Moredock:

- Attended the Governor’s Intergovernmental Committee on Agriculture as the Maryland Association of Counties (MACo) representative on September 27<sup>th</sup> Renewable Energy Systems, namely solar, were discussed.
- Represented the County at the Upper Eastern Shore WIP Phase III Workshop. I sat on a panel to share Kent County’s experience with the Phase II WIP process and make suggestions as to how to make the Phase III WIP a little more local jurisdiction-friendly and attainable.
- On October 20<sup>th</sup> the Maryland Association Floodplain and Stormwater Managers will hold its 12<sup>th</sup> Annual Conference. I am the Eastern Regional Representative on the committee and assist in the organization of this conference. This year, I will be co-presenting with Brian Ambrette, Eastern Shore Land Conservancy Coastal Resiliency Specialist, to share the findings and process that led to the acceptance of the Coastal Resiliency Vulnerability Study for Kent County.
- MACo has formed a sub-committee to study the sprinkler provisions. Since the 2015 update of the International Building Code, local jurisdictions have been unable to offer an “opt out” option for own-occupied, stick-built single family dwellings. Commissioner Ronald Fithian represents the County on that committee. The committee is planning to send the Legislature a

proposal this session to find a provision for a second option to opt out of installation of a sprinkler system. The committee and local jurisdictions are gathering data to provide the number of new single family dwelling permits that have been issued in each jurisdiction and the average square footage of a home. They are trying to determine the cost associated with each sprinkler system which is hard to do because the cost of neither the sprinkler system nor the installation is not captured at the time of application. There are multiple types of sprinklers systems that are inspected by the Fire Marshall with differences in terms of the price and installation relative to whether the systems are on private wells or public systems. The data is easy to compile but the cost is the important piece of information to share with the Legislature to show the impact of all single family residences.

Mitch Mowell:

- The motion that Kent County filed to Dismiss Public Service Commission Law Judge Sober's preemption decision in the Mills Branch case was heard in Kent County Circuit Court on 16 September. The sitting judge granted the PSC's and Mills Branch Solar's motion to dismiss the County Appeal. The judge found that the motion was filed prematurely as there has been no final decision rendered in the Mills Branch case. He cited that the decisions documented to date have been preliminary and not interlocutory; he stated that a formal motion must be rendered which will open appeal procedures.

Stephanie Jones:

- The Healthy Water Round table held a Best Management Practice Inspection, Maintenance and Retrofit Workshop October 5, 2016. Chesapeake Stormwater Network went over inspections of bio-retention ponds, how to retro fit an existing facility if it's not being maintained properly and give credits for the new facility when working properly.
- The Sewer Extension workgroup will be holding a workshop Wednesday, December 14 at Chesapeake College with MDE and MDP.
- Attended Upper Shore WIP workshop.
- Two Administrative Buffer Variances are scheduled for October 17<sup>th</sup> regarding septic system upgrades within the 100-foot Critical Area Buffer.
- Will attend the Critical Area Commission quarterly meeting.

Katrina Tucker:

- The Land Use Ordinance has been updated to incorporate adopted Zoning Text Amendments. Replacement pages with these updates will be included in next month's packet.
- The Historic Preservation Commission (HPC) conducted stewardship visits for four (4) of the six (6) properties that are under the County's Local Historic District Preservation Agreement Easements. One land owner that will need to obtain retroactive approvals of a Certificate of Appropriateness from the HPC for renovations that were done to the exterior of the property. The six (6) properties in the County's Local Historic District are required to seek approval from the HPC prior to making any exterior changes to ensure alterations comply with the standards that are based on the time period of the structure.
- The Next Generation Farmland Acquisition Program (NGFAP) was authorized by the Maryland General Assembly in 2016 to enable MARBIDCO (Maryland Agricultural and Resource-Based Industry Development Corporation) to help young and beginning farmers who have trouble entering the agricultural profession because of high land costs and a lack of adequate financial resources. The NGFAP is a rapid response farmland conservation easement option purchase program designed to help facilitate the transfer of farmland to a new generation of farmers, while also effectively helping to preserve the subject agricultural

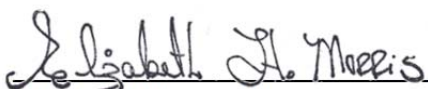
land from future development. MARBIDCO is slated to receive \$5 million from the State Government for the NGFAP in FY 2018. Funding will be made available to qualified applicants on a competitive basis beginning in July 2017. MARBIDCO intends to purchase an option on the development rights on a farm property being purchased by a qualified beginning or low-resources farmer. By selling MARBIDCO the option to extinguish the development rights at 51% of Fair Market Value (FMV), the beginner farmer hoping to buy the un-eased farmland would be able to meet the equity (and/or cash flow) requirements that a commercial lender would require before being approved for a mortgage loan. The beginner farmer will, in effect, use the money as equity to apply to a commercial lender for a loan to purchase the farmland. Once the farmland is purchased, the farmer has a limited period of time (four to seven years) to sell the permanent conservation easement, which in Kent County would be to the Maryland Agricultural Land Preservation Foundation (MALPF). There are several Counties in the State that have their own Agricultural Land Preservation Programs. Once the permanent easement is sold, MARBIDCO will be repaid for the original easement option it bought and will collect an additional 3% fee to help sustain the program in the future, similar to a revolving loan fund. How this may translate into Kent County's local rankings of MALPF applications hasn't yet been evaluated.

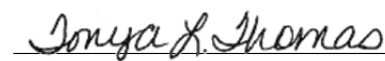
#### **General Discussion:**

Brian Ambrette, Coastal Resiliency Specialist with the Eastern Shore Land Conservancy, gave a brief summary of the Kent County Coastal Resiliency and Vulnerability Study. Mr. Ambrette stated the project was started in November 2015. In the early winter of 2016, he and the team conducted approximately thirty interviews with stakeholders within the county government departments with one-third of those interviews conducted outside county agencies. Once the feedback was collected, all interviewees were invited to a two-day workshop in February to learn about the science and the causes of climate change and what the expected impacts to the county will be. The participants in the workshop worked through a process of building a cause and effect chain of many hazards.

After much discussion Mr. Hickman made a motion to approve and adopt the Coastal Resiliency and Vulnerability Study and to incorporate support of the Study in the Kent County Comprehensive Plan Draft. Mr. Crowing seconded the motion, and it was approved unanimously.

There being no further business for the good of the organization, the meeting was adjourned at 2:37 p.m.

  
Elizabeth Morris, Chairman

  
Tonya L. Thomas, Clerk