

MINUTES

The Kent County Planning Commission met in regular session on Thursday, October 5, 2017, in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland, with the following members in attendance: Elizabeth Morris, Chairman; William Sutton; Ed Birkmire; William Crowding, Kim Kohl, James Saunders, 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 1:30 pm.

MINUTES

The minutes of September 7, 2017 were approved as presented.

APPLICATIONS FOR REVIEW

#01-12 & #17-34 Massey Aero, LLC, is requesting amendments to certain conditions of approval noted in the Airport Special Exception Case #01-12 dated 3 May 2001, as well as combined concept, preliminary, and final site plan approval to construct a 12,640-square foot 10-unit aircraft hangar complex measuring 40 feet by 316 feet on a 93.40-acre property located at 33541 Maryland Line Road in the First Election District. The property is in the Agricultural Zoning District.

Present and duly sworn in were: Robert Nickerson, Extreme Measures Surveyors, Robert R. Dierker, and John Williamson, Applicants; and Katrina L. Tucker, Community Planner.

Ms. Tucker gave an overview of the application and provided the Board of Appeals history as outlined in her staff report. She also cited the applicable laws of the *Kent County Land Use Ordinance* to include Article V, Section 1.3 that identifies the principle uses and structures that may be permitted as special exceptions in the Agricultural Zoning District (AZD), subject to site plan review; Article VII, Section 7.5 which authorizes the Board of Appeals the authority to grant a special exception for an airport in the AZD; Article VII, Section 2 that sets forth the standards applicable to all special exceptions; Article V, Section 1.5 which establishes the density, area, height, width, and yard requirements in the AZD; Article V, Section 1.7 that establishes the AZD Environmental Standards; Article VI, Section 8.4.E, in which the Forest Conservation Fund is established, Article V, Section 1.8 that establishes the Agricultural Zoning District Design Standards; Article VI, Section 1.3 that establishes the parking standards; and Article VI, Section 5 which establishes the procedures and requirements for site plan review.

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

Mr. Nickerson gave an overview of the site and stated the applicants are proposing to construct a new hangar at the airport. He noted that during the site plan review it was discovered that one of the conditions of approval established by the Board of Appeals in the Special Exception Case #01-12 allowed no more than 15-acres to be removed from agriculture for the airstrip and accessory uses. As shown by the survey, the acreage limitation has been exceeded, and construction of the new hangar would further exceed the limit. Therefore, they are seeking to increase the acreage limitation on the area that can be removed from agriculture imposed by the conditions of the 2001 Special Exception, and relief from the requirement that if the museum ceases operation that approval for the airstrip will also lapse.

Mr. Birkmire asked if the airport is visited by transients that are not members of the airport or museum. In response, Mr. Williamson stated there are patrons that accompany the members of the airport and museum.

Mr. Hickman asked if the sale of fuel would generate more traffic of transient airplanes. Mr. Dierker stated many pilots do not use grass runways and adding the hangar would not generate more traffic.

Mr. Crowding inquired as to the process for refueling aircraft kept at the site. Mr. Dierker replied that the individual aircraft owners supply their own fuel that is brought to the property in fuel cans.

Following discussion, the applicant amended its request to also include removal of the conditions that aircraft based at the site shall be owned by members of the museum and tie-downs only be for members or guests of the museum, as well as to eliminate the prohibition on fuel sales at the site. All other remaining conditions of the 2001 approval would apply to the operation of this facility.

After much discussion, Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals to amend conditions 4, 5, 7 and 10 imposed in the 2001 Board of Appeals Conditional Use decision (Case No. 01-12) based on the following findings:

- Massey Airport has occupied the site and the nature of the proposed site, including its size and shape and the proposed size, shape, and arrangement of structures is appropriate for the location and consistent with the continued operation of the airport;
- Traffic patterns will not be altered as the site is currently accessed by existing entrances and driveways;
- The nature of surrounding area is predominately characterized by farms, preserved lands, and public property such as the adjoining Millington Wildlife Management Area;
- The amendments to the conditions will have no effect on proximity of dwellings, houses of worship, schools, public structures, and other places of public gathering;
- No adverse impacts on community facilities and services are anticipated with the amendments;
- Continued use of this airport supports the preservation of cultural and historic landmarks, significant natural features;
- No adverse effect of noise, vibration, smoke and particulate matter, toxic matter, odor, fire or explosive hazards, or glare upon surrounding properties is anticipated as a result of the amendments to the conditions;
- Continued operation of this facility with the amendments is consistent with the purpose and intent of the *Land Use Ordinance* as set forth in Article II;
- The site complies with the design, environmental, and other standards of the *Land Use Ordinance* as set forth in Article V;
- Continuation and expansion of this public use airfield and tourist attraction is the most appropriate use of the land and structure at this location;
- Property values will not be adversely affected;
- There will be no negative impact on water quality;
- There will be no negative impact on fish, wildlife and plant habitat;
- The site will continue to be consistent with the Comprehensive Plan and *Land Use Ordinance*;
- Continued operation of the airport with the amendments to the conditions is compatible with existing and planned land use as described in the Comprehensive Plan and *Land Use Ordinance*;
- An amendment to increase the amount of land to be removed from agriculture from 15-acres to 30-acres is appropriate to address the existing acreage that has been utilized for the essential airstrip area and to further allow the expansion of this public use airfield and tourist attraction.
- The current Special Exception provisions for an airport or landing field do not require a companion exhibition center museum, or similar type of community component. Therefore, removing the requirement for a museum to be associated with the airstrip and eliminating the condition that aircraft

based at the site must be owned by members or guests of the museum from the conditions are consistent with current provisions.

- Eliminating the prohibition for fuel sales at the site will offer the applicant flexibility in the operations of the airport and any future provisions of on-site fuel sales will require site plan review and approval that includes notification of neighbors and issuance of appropriate permits.

Furthermore, the Planning Commission recommends that the Massey Airport would be subject to the remaining conditions of the 2001 approval as shown below in underlined format for additions and ~~struck through~~ for deletion, along with the following minor textural edits recommended by the Commission:

1. Airstrip has turf runway;
2. Airstrip does not have lighting;
3. Airstrip conforms to FAA and MAA [Maryland Aviation Administration] regulations;
4. ~~Aircraft based at site be members of the museum and aircraft tie-downs be for members or guests of the museum;~~
5. No more than ~~45~~ 30 acres shall be removed from agriculture ~~of~~ for the airstrip and accessory uses such as buildings, area for tie-downs, etc. and associated facilities with the exception of features located within the area of improvements that existed in 2001 at the northwest corner of the property;
6. The airstrip shall cooperate with Dupont Fish and Game regarding flight patterns and hours of operation during Fish and Game events;
7. ~~Fuel shall not be sold at the site;~~
8. Aircraft repairs shall be conducted on impervious surfaces;
9. The airstrip complies with stormwater management and sediment control best management practices;
10. ~~The aircraft museum shall be associated with the airstrip and when and if the aircraft museum ceases operation the conditional use for the exposition center/museum and airstrip will lapse;~~
11. The site plan that addresses landscaping, storage areas, buildings, and the location of the airstrip, and the acreage occupied by all such non-agricultural uses shall be approved by the Planning Commission;

~~And~~ The following conditions apply to ~~for~~ the museum:

1. That a site plan is submitted for final approval by the Planning Commission;
2. Any expansion of the exhibition center shall occur within the area of improvements that existed in 2001 at the northwest corner of the property or the 45 30 acres designated for ~~the airstrip~~ removal from agricultural use;
3. The standard condition that the conditional uses granted will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

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

Mr. Hickman made a motion to grant combined preliminary and final site plan approval for the 12,640-square foot 10-unit aircraft hangar complex conditioned upon the Board of Appeals approval of the amendments to the 2001 conditions based on the following findings:

1. The proposal is consistent with the Comprehensive Plan goals and strategies to enhance and expand locally based tourism, and to develop year-round attractions and events that increase the County's tourism-related economic development potential.
2. The State Highway Administration had no comments regarding approval of this plan.
3. In general, the site plan objectives have been met.
4. Vehicular and pedestrian movement is adequately addressed onsite.
5. The off-street parking provided meets the requirements. There is adequate existing parking and availability for special event parking. Bicycle parking is located adjacent to the existing hangar next to the museum and office building.
6. The property is accessed by existing entrances and driveways.
7. No new employees are proposed.
8. No exterior lighting is proposed.
9. The property is served by a private well and on-site septic system.
10. Construction of the hangar will have to comply with sediment and erosion control requirements.
11. Stormwater management and sediment control plans have been approved and surety posted.
12. No new signs are proposed.
13. The architectural building elevations have been submitted.
14. Forest Conservation has been addressed through payment of a fee-in-lieu.
15. Landscaping along Maryland Line Road will provide some screening and soften the view of this 12,640-square foot structure. Additional landscaping is also proposed adjacent to the existing parking that is directly visible from the road.
16. Landscaping surety has been posted.
17. The applicant, through testimony, addressed the Citizen Participation Plan and submitted letters of support from adjoining neighbors.

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

#17-40 Mr. Havemeyer requests a special exception to construct 11 tie-out pilings at the location of an existing 140-foot pier. The proposed expansion will result in an overall pier length of 176 feet channelward for the purpose of the exclusive mooring use by a tall ship in order to provide safe harbor. The applicant's request is based on his desire to provide an alternate docking location for the Sultana during an extreme weather event.

Present and duly sworn in were Drew McMullen, President of Sultana Education Foundation, and Stephanie Jones, Environmental Planner.

Ms. Jones gave an overview of the application and cited all of the applicable laws of the *Kent County Land Use Ordinance* to include Article VII, Sections 6.42.5 and 7.59.5 that authorizes the Kent County Planning Commission to make recommendation and the Board of Appeals to grant a special exception Article VII, Section 2 requires that the Board of Appeals make findings, and Article VI, Section 5 outlines the procedures and requirements for the site plan review.

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

Mr. McMullen gave an overview of the proposed project and stated that the proposed mooring piles will only be used for safe harbor during severe weather. Mr. McMullen also wanted to clarify that the Sultana will be docked at the site a few times throughout the year regardless of the weather conditions for special events but would only be harbored onsite during extreme weather events.

After much discussion, Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals to construct 11 tie-out pilings at the location of an existing pier with the resulting overall length of 176 feet based on the following findings:

- The proposed 11 tie-out pilings will be emplaced at the end of the existing 140-foot pier.
- The resulting configurations will create a 176-foot overall pier length.
- The total waterway width in this location is 970 feet; therefore, the proposed pier extension would total approximately 18% of the waterway width. According to the site details the proposed tie out pilings are 100 feet from the channel.
- No non-floating fixed platforms, floating structures, or other decking extending out over the water are proposed.
- The existing pier is located on and adjacent to lands zoned Resource Conservation District.
- The existing pier currently meets all pier requirements in Article VI, Section 3.7.
- The proposed use for the tie out pilings to be installed farther than 150 feet from the mean high water mark are for the exclusive mooring use by the Sultana (tall ship) and for no other use.
- The Schooner Sultana is federally-documented by the United States Coast Guard that it is ported in Chestertown, Maryland.
- The narrative states that in cases of NOAA (National oceanic and Atmospheric Administration) issued tropical storm watch/warnings and hurricane watch/warnings, the Sultana will be secured to the tie out pilings.
- The proposal is consistent with many goals and strategies identified in the Comprehensive Plan.
- Preservation of cultural and historic landmarks, significant natural features and trees.
- The proposal is consistent with all County rules and regulations. Prior to the issuance of a County building permit for the pier extension, the applicant is required to obtain a joint license from Maryland Department of the Environment and the United States Army Corps of Engineers.
- Under the care of the six or seven Sultana Crew or Sultana Certified Volunteer Crew members the ship will be secured to the proposed and existing pilings. The East Fork of Langford Creek is mainly characterized by weekend boaters and the Sultana will pose minimal effect to other boaters or neighboring properties because the tall ship will only be harbored in this location during NOAA-designated severe weather events.
- The property is served by a private well and on-site septic system. There are no water or septic services required for this project, and the Health Department has approved this project.
- During the docking process of harboring of the Sultana, there should not be any noise, vibration, smoke, and particulate matter, toxic matter, odor, fire, or explosion hazards, or glare upon surrounding properties.
- Subaquatic Vegetation does not appear to be present in this location.
- No vegetation is being removed, nor is any lighting, signage, or landscaping proposed.
- The proposed development will be integrated into the surrounding landscape features.
- The Citizen Participation Plan was in the form of letters, and there were no objections to the proposed.

The Planning Commission conditioned their recommendation upon the applicant's receipt of a joint license from the Army Corps of Engineers and the Maryland Department of Environment prior to the issuance of a County building permit.

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

In addition to their review of the special exception application, the Planning Commission considered to site plan application relevant thereto. After much discussion, Mr. Hickman made a motion to grant combined preliminary and final site plan approval for the 11 tie-out pilings in accordance with the *Ordinance* site plan review provisions. The approval is conditioned upon the Board of Appeals' granting of the aforementioned special exception case and is based on the following findings:

- The proposal consists of a total of 11 tie-out mooring piles, including 2 cluster pilings of 3 new pilings 176 feet from the mean high tide, 3 new individual pilings that will be added to 3 existing individual pilings and 1 new cluster pilings of 2 at about 141 feet from mean high tide.
- All pilings are 12" class (B) marine grade commercial pilings set at a minimum of 8' above mean high tide. All cluster pilings will be bolted with appropriate galvanized hardware.
- The proposal is consistent with all County rules and regulations.
- The site plan meets the minimum standards and exceeds the building permit requirements affiliated with pier construction.
- Prior to the issuance of a County building permit for the pier extension, the applicant is required to obtain a joint license from Maryland Department of the Environment and the United States Army Corps of Engineers.

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

The Town Manager of Chestertown has forwarded for your review the proposed 2017 Chestertown Annexation totaling approximately 145.11 acres. The property which is subject of the Annexation is located on John Hanson Road (Tax Map 44, Parcel 231) and is zoned Resource Conservation District and "RR", Rural Residential. The parcel is comprised of the Chestertown Wastewater Treatment Plant (lagoons, aeration basins, and affiliated maintenance structures and roads) and a small scale solar energy system. The unoccupied land on the parcel is being farmed.

The zoning on Parcel 231, which is currently zoned RCD and RR, is proposed to be changed to "IN," Institutional District. This would result in a change to RCD and RR density provisions, as well as the intensity of permitted uses. The Town has requested a waiver of the 5-Year Rule which would be applicable in this case.

Present and duly sworn in were William Ingersoll, Town of Chestertown, Applicant, and Amy Moredock, Director.

Ms. Moredock also cited relevant strategies from the Kent County Comprehensive Plan and advised that in 2006 the Maryland General Assembly passed specific guidance for annexation. Most of the guidance dealing with annexation applies to town requirements for annexation. However, a "5-year rule" is applicable to the County comments on annexation. A standard applies to annexation projects that prohibit any annexation that proposes different uses or substantially higher densities than that permitted by the existing county zoning for five years unless the County grants a waiver.

Mr. Ingersoll gave a brief overview of the site and stated that this parcel is included on the Town Planning Boundary map and Southwest Planning Area. He added that this is an area that is not a designated Priority Funding Area and is not designated for growth on Town or County Tier Maps. The Town intends this area to be annexed in order to establish development control and authority in this area to ensure the natural buffer and greenbelt. Mr. Ingersoll specified that there is no intention on the part of the Town to change the use of the parcel, as it is the historic and current location of the Town's Wastewater Treatment Plant. The Town, therefore, requests a waiver of the 5-year hold on the current zoning.

Following careful consideration of the proposal as presented by the Town of Chestertown, Mr. Hickman made a motion to send a favorable recommendation to the County Commissioners regarding the Town's 2017 Annexation proposal and the approval of the waiver of the 5-Year Rule citing the following:

- The proposed annexation proposal is consistent with the Kent County Comprehensive Plan strategies relative to Growth in Towns and Designating Growth Areas in cooperation with Towns.
- While the Town is proposing to change the zoning, it is not proposing to change the land use. This fact is substantiated in the Town's Comprehensive Plan.
- This parcel is included on the Town Planning Boundary map and Southwest Planning Area identified in the Town Comprehensive Plan.
- The Town intends this area to be annexed in order to establish development control and authority in this area to ensure the natural buffer and greenbelt.
- This is an area that is not a designated Priority Funding Area and is not designated for growth on Town or County Tier Maps.
- As there is no intention on the part of the Town to change the use of the parcel, as it is the historic and current location of the Town's Wastewater Treatment Plant, a waiver of the 5-Year Rule is appropriate.

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

Employment Center and Industrial District Errata (Office Building). During the recent review of the site plan for development in the Industrial District in which an office building was proposed, Staff observed that the *Kent County Land Use Ordinance* in Article V, Section 15.5 includes a provision for a "minimum" building footprint of 10,000 square feet for office buildings. This provision is also duplicated Article V, Section 14.5 for the Employment Center District.

In concurring with staff and the Planning Commission's attorney, the Planning Commission considered this to be a typographical error in the text of the *Ordinance*, and that this provision should be a "maximum" footprint rather than a "minimum." With the deletion of the text "Minimum building footprint," then "Office Buildings" will become part of the list of other structures under the heading of "Maximum building footprint."

This action does not require a zoning text amendment, as this is a nonsubstantive, de minimis correction to the Ordinance; however, it does require the review and approval of the Planning Commission in order to authorize staff to sign the errata and make the necessary correction to the Land Use Ordinance.

Mr. Hickman made a motion to approve the errata to correct the typographical in the building footprint standards listed in Article V, Section 14.5 Employment Center District and Article V, Section 15.5 Industrial District:

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

Staff Reports

Amy Moredock:

- Morgnec Road Solar, LLC (Urban Grid) has withdrawn its application for a CPCN. They cited in their 27 September 2017 letter to Commission President William Pickrum that there are too many obstacles for their proposal and even apologized for their less-than-professional interactions with local agencies. However, they did not say that they are taking a pause and hope to refine their proposal for resubmittal.

- Ms. Moredock attended the MDOT Pre-Tour and the MDOT Consolidated Transportation Program meetings. The Commissioners expressed their continued opposition to a third Bay Bridge span with a terminus in Kent County and their frustration with the lack of support for the construction of a second Chester River crossing and the Chestertown Boulevard.
- Ms. Moredock granted an administrative special exception hearing a proposal to construct a large accessory structure on a parcel less than 5 acres located in the Gentle Winds subdivision.
- Ms. Moredock has been contacted by Karen Couch regarding a zoning text amendment to address bus parking in the County. She will continue to coordinate with Ms. Couch and the Commissioners regarding options.
- The Commissioners voted on 3 October 2017 to adopt the zoning text amendment relative to setback requirements for manure storage structures on agricultural land as recommended by the Planning Commission.
- The 13th Annual Maryland Association of Stormwater and Floodplain Managers will be held on 12 October 2017 in Linthicum. Ms. Moredock has been the Eastern Regional Representative for many years and assists with conference preparation annually. This is a well-attended conference that provides valuable training to stormwater and floodplain plan reviewers.
- Ms. Moredock will participate in a panel discussion at a Solar and Wind Energy Session at this year's Maryland Planning Commissioners Association's annual conference on 3 November 2017.

Katrina Tucker:

- Completed and submitted the recertification draft application for the County's Agricultural Land Preservation Program which was due to the Maryland Department of Planning (MDP) and the Maryland Agricultural Land Preservation Foundation (MALPF) by October 1st. The recertification report is finalized and approved after the draft is reviewed by MDP and MALPF and their comments are addressed.
- The draft recertification report reflects that the acreage in easements represents achieving 34% of the County's goal to protect 80% of the remaining undeveloped land in the Priority Preservation Area (PPA).
- A MALPF Round 1 offer from the 2016 easement cycle has been approved by the State Board of Public Works (BPW).
- In concert with the Director of the County's Department of Recreation and Parks, commenced the update of the Land Preservation, Parks, and Recreation Plan (LPPRP).
- The Maryland Department of Natural Resources Power Plant Research Program (PPRP) staff forwarded a proposed schedule for the Massey Solar, LLC, project (for which the concept plan was presented as Community Energy Solar, LLC, to the Planning Commission in December of 2015, and is proposed on the lands of Benjamin Stafford, that are zoned "Employment Center") that included a date of October 9th for a public hearing and other dates in the month of October for submission of intervenor and rebuttal testimony. The Kent County Department of Planning, Housing, and Zoning staff advised that October 9th was a holiday and the PPRP staff advised that they were aware and were going to propose another date for the public hearing; however, no new notice of an updated schedule has been received.


Stephanie Jones:


- Cliff Road Properties, also known as the Great Oak Manor was granted, by the Board of Appeals, the amendment to their Country Inn Special Exception conditions to the current provisions allowing them to be consistent with all other Country Inns in the County.
- Ms. Jones attended an Eastern Shore Climate Adaptation Partnership meeting this month. The presentations included community solar from Neighborhood Sun which is Maryland's Community Solar (pilot) Program and a speaker from the Urban Sustainability's Director's Network who is a great resource for peer-to-peer information exchange across jurisdictions and municipalities. County Hazard Mitigation Plans were previously reviewed for shared hazard mitigation and climate resilience priorities.
- Ms. Jones attended a workshop in regards to chronic flooding hosted by the Eastern Shore Climate Adaptation Partnership. Two scientists from the Union of Concerned Scientist spoke on a report that came out this year "When Rising Seas Hit Home". The report focused on the outlook of sea level rise and chronic inundation at different scenario levels to 2100.
- Ms. Jones will be attending the Maryland Association of Floodplain and Stormwater Managers Conference on October 12th.
- From October 30th to November 1st Ms. Jones will be attending the national Keeping History Above Water Conference in Annapolis. Alongside Brian Ambrette, from ESLC, Ms. Jones will be presenting on the Climate Change and Sea Level Rise Adaptation Report (VCAPS 2016) and the Eastern Shore Climate Adaptation Partnership.

General Discussion:

Discussion of transportation on the Middletown by-pass and the traffic generated.
Discussion of motions and information presented.

There being no further business for the good of the organization, the meeting was adjourned at 3:33 p.m.


Elizabeth Morris, Chairman


Tonya L. Thomas, Clerk