

MINUTES

The Kent County Planning Commission met in regular session on Thursday, February 2, 2017, 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 1:30 pm.

MINUTES

The minutes of January 4, 2017, meeting, were approved as presented with a change to the attendance roster.

APPLICATIONS FOR REVIEW:

#16-01 & #16-09 P. Thomas Mason and Oxford Chase Development, Inc., is requesting minor subdivision and final site plan approval of the plans to construct a 9,115 square foot Dollar General Retail Store on a 1.302-acre lot proposed to be subdivided from the existing 28.014 acre parcel owned by Thomas P. Mason located in Worton at the corner of Route 297 and Porter's Grove Road. In addition to the proposed retail store, the site plan consists of 46 automobile parking spaces (including 2 handicapped spaces), 1 bike rack, a dumpster pad, and 1 truck loading/unloading area located behind the building. After development, the 1.302-acre site will have 0.79 acres of impervious surfaces or 61% of the property.

Citing a conflict due to business associations with Mr. Mason, the land owner, Chairperson Morris recused herself from acting as Chair and from deliberations on this application. Ms. Morris left the dais. Vice Chairman Sutton acted as Chair for this application.

Present and duly sworn in were; David Strouss of McCrone; representing the applicant; and Ms. Moredock, Planning Director.

Ms. Moredock gave an overview of the application and cited all applicable laws of the *Kent County Land Use Ordinance* to include Article V, Section 7.5. which establishes the density, height, width, bulk, and fence requirements; Article V, Section 7.8.C.10 which establishes the Village District Specific Design standards; Article VI, Section 6.2.2 which establishes the Subdivision General Requirements for Minor Subdivisions; Article VI, Section 6.3 which establishes the Minor Subdivision review procedures; Article VI, Section 6.4 which establishes the Plat Requirements to include narrative and plat standards; Article V, Section 7.6 that establishes the Village District general standards; Article V, Section 7.7 that establishes the Village District environmental standards; Article VI, Section 9 that establishes the sediment and erosion control standards; Article V, Section 7.8 that establishes the Village District general and specific design standards, as well as design elements which address site access, landscaping, screening, lighting, building design, parking lot configuration, display area, and pedestrian movement; Article VI, Section 1 that establishes the parking, loading, and bicycle parking standards; Article VI, Section 5 that establishes the procedures and standards for site plan review; and Article V, Section 7.2.16 that establishes the Permitted Principal Uses and Structures for the Village District relative to neighborhood retail businesses and outdoor sales.

Ms. Moredock also summarized the history of the project noting that many of the standards have already been met during the preliminary site plan review and approval which was granted by the Planning

Commission at their 3 November 2016 meeting. In addition to preliminary site plan approval, the Planning Commission made applicable findings and granted the following additional approvals in November:

- Two direct access points on a primary road/MD Route 297 created by the proposed minor subdivision;
- An entrance point to the site on a primary road/MD Route 297; and
- An area of outdoor storage is hereby approved not to exceed 25 linear feet as designated on the plan and to consist solely of sale/storage of an ice machine, water, and seasonal merchandise.

Mr. Strouss stated there were not many changes made since the November preliminary meeting. Planning Commission comments were addressed that included the ground cover in the landscape island areas and the follow-up letters of impact were received. The drainage ditch along Porters Grove Road will be graded and the ditch along Route 297 will be deepened.

After much discussion and consideration of the testimony and all applicable laws, Mr. Hickman made a motion to grant approval of the minor subdivision based on the following findings of fact:

- The minor subdivision is consistent with the Comprehensive Plan and in the intent of the Village Zoning District.
- The subdivision generally is consistent with the Village Design Specific Design standards and provides adequate parking.
- The proposal conforms to provisions of all applicable rules and regulations of county, state and federal agencies.
- Vehicular and pedestrian movement has been review by both the County Roads Department and the State Highway Administration and deemed convenient and safe.
- The subdivision does not place unreasonable demands on the public services and infrastructure.
- Adequate methods for sewage and refuse disposal and the protection from pollution of both surface water and groundwater have been addressed and include the minimization of soil erosion both during and after construction.
- The subdivision creates a corner lot with the frontage along a primary, state road (MD Route 297) and along a secondary, county road (Porter's Grove Road).
- The Health Department has approved the submittal; the adequacy of waste disposal will be addressed when Dollar General applies to the Health Department for a Food License.
- The Kent County Water and Wastewater Department has received payment of water and sewer allocations fees.
- The Citizen Participation meeting was held in Worton on March 30, 2016 allowed for comments from the public at which time all the road issues were debated and were addressed at the Preliminary meeting in November.
- The analysis of the cost of providing local government services to the proposed subdivision has been addressed through letters submitted by all appropriate agencies.
- The open space fee has been paid.
- The Forest Conservation fee in lieu payment has been received.

Ms. Kohl seconded the motion, and the motion passed with 3:1 vote with Mr. Crowding voting against the motion.

Mr. Hickman made a motion to grant Final Site Plan approval based on the following findings of fact:

- The proposal is consistent with many Comprehensive Plan goals and strategies.
- The Forest Conservation provision has been met in conjunction with the minor subdivision application.

- Stormwater management and water quality improvement plans which address 10% pollutant load reduction have been approved by the Kent Soil and Water Conservation District.
- Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties have been addressed and reviewed by both County Roads and State Highway Administration.
- Provisions for the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate lighting, and internal traffic control were addressed during preliminary site plan review.
- This proposal places reasonable demands on public services and infrastructure.
- Adequate methods for sewage and refuse disposal and the protection from pollution of both surface water and groundwater have been addressed and include the minimization of soil erosion both during and after construction.
- The applicant has addressed protection of abutting properties and County amenities from any undue disturbance caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, odors, glare, stormwater runoff, etc.
- The applicant is not proposing tree removal.
- The applicant has made efforts to integrate the proposed development into the existing landscape through design features such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.
- The proposal conforms to building setbacks, area, and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding townscape and the natural landscape.
- An area of outdoor storage was approved during preliminary site plan review not to exceed 25 linear feet as designated on the plan and to consist solely of sale/storage of an ice machine, water, and seasonable merchandise.
- The Maryland State Highway Administrative (SHA) has reviewed and conditionally approved plans and plat. Per phone conference with SHA staff, the general comments will be addressed during the entrance permit review.
- The applicant has identified 46 parking spaces resulting from the construction of the 9,115 square-foot retail business. Two handicapped spaces have been provided. A bike rack has been provided.
- A 52'x16' loading/unloading area has been identified on the site plan.
- Vehicular and pedestrian movement has been addressed by the applicant on Sheet No. P-2/Preliminary Truck Turning Plan.
- Lighting is to be by surface mounted lights on the building. These lights will be dark sky compatible.
- The Health Department has approved the submittal.
- The property is served by the Worton public sewer and water systems and the allocation fees have been paid.
- The Commission accepted a fee in lieu payment in order to meet the Forest Conservation requirement. That payment has been submitted.
- Conceptual landscaping and screening detail has been provided and appears to be adequate. The combination of deciduous trees and shrubs is commendable; the species have been identified and consist mainly of native cultivars.
- Landscaping around the building is provided at ground level.
- A tree is proposed to be planted in each bump out located amidst the contiguous parking spaces. Groundcover has been added to these areas in accordance with the Ordinance requirements.
- While the building design is not typical to Worton, it reflects a scale which is compatible

with the area. The building is surrounded by existing commercial structures which are comprised of block, metal, wooden siding, as well as industrial buildings such as the County Water Treatment building. Ground crew buildings (both pole and concrete block), as well as the more modern Community Center.

- Signage has been addressed and meets the Ordinance provisions. All proposed signage will be illuminated by indirect lighting.
- Sureties for sediment and erosion control, stormwater management, and landscape plans have been submitted.

Ms. Kohl seconded the motion, and the motion passed with 3:1 vote with Mr. Crowding voting against the motion.

17-04 Tolchester Marina is requesting a minor site plan review to construct two accessory structures for the use of the Shanty Beach Bar on its property located at 21085 Tolchester Beach Road in the Sixth Election District. The proposed kitchen will be housed in a 275 square-foot building that will replace an existing gazebo. The proposed permanent satellite bar will be located in a 170 square-foot building. The purpose of constructing the proposed kitchen and permanent satellite bar will be to become more efficient and to provide customers with highly quality service.

Tolchester Marina's 80.10-acre property is zoned "M" Marine and is located in Tolchester at the end of a dead end road adjacent to the Chesapeake Bay. This property is designated an Intense Development Area and a Buffer Modified Area. The property is currently improved with a marina. Parking areas, a restaurant, a swimming pool, a gazebo, a shed, and a special events pole building (pavilion). The surrounding area is characterized by residential development, agriculture, and undeveloped wooded areas.

Mr. Hickman disclosed an interest in a neighboring property but noted that his dealing with that property would have no impact on his review of the Marina's proposal.

Present and duly sworn in were; Robert Nickerson of Extreme Measures Surveying; Jay Silcox, P.E. of J.H. Silcox Engineering & Drafting; representing the applicant; Aaron Bramble and Kathleen Bramble, Applicants; and Stephanie Jones, Environmental Planner.

Ms. Jones gave an overview of the application and cited all applicable laws of the *Kent County Land Use Ordinance* to include Article V, Section 13.5 which establishes the minimum yard requirements; Article V, Section 13.6.B.4 establishes provisions for development in the modified Buffer; Article V, Section 13.2 establishes restaurants as permitted uses in the Marine Zoning District; Article V, Section 13.6 set forth the environmental standards which address forest and wetland protection, impervious surfaces, buffers, habitat, and stormwater management; Article V, Section 13.7 sets forth the design standards which address design of the site, buildings and structures, plantings, signs, street hardware, and other objects viewed by the public; and Article VI, Section 5.2 and 5.3 which establishes the general requirements and review standards for minor site plans.

Ms. Jones read correspondence received in the form of a letter of support of the business expansion from the Kent County Economic Development Commission.

Mr. Bramble addressed pedestrian access and safety onsite. He stated that pedestrian flow is existing and provides safe access on the bayside hill via a path that is raised off the beach and on the other side via a road that is used for golf cart shuttle service and pedestrians walking to beach. Mr. Nickerson stated there are a large number of patrons who arrive by boat and swim up to the beach. Therefore, much of the vehicular parking area is not utilized.

Mr. Crowding asked if there were plans to block off the 10-foot retaining wall from patrons. Ms. Bramble stated they eventually would like to install a fence. Mr. Silcox stated it can be addressed with plantings.

Testimony from the general public was offered by Mike Waal, a resident of Tolchester Heights Community and Mr. Neal Metzbower, a resident on Tolchester Beach Road. Mr. Wall stated that he supported the Marina, adding its business supports and enhances job creation for both the Marina and County. Mr. Wall is also a neighbor and has no complaints regarding noise or traffic.

Mr. Metzbower stated that he frequents the restaurant, adding the music is wonderful and the addition of the satellite bar and kitchen will allow patrons to move more freely around the area. Mr. Metzbower supports the Marina and its business expansion.

After much discussion and consideration of the testimony and all applicable laws, Mr. Hickman made a motion to grant approval of the final site plan based on the following findings of fact:

- The proposed use and structures are consistent with the Comprehensive Plan strategies to promote locally owned businesses and expand facilities that support natural resource-based economic development.
- No new development will encroach within 25 feet of mean high tide or 25 feet of the edge of tidal wetland. Expansion to the side or rear but not too close to the water may be permitted as long as the expansion is designed and located to maximize distance from the shoreline or to enhance or protect environmentally sensitive features on site.
- An area of existing impervious surface on-site equal to or greater than the area of new development shall be removed and revegetated, or
- A forest buffer will be planted on-site to three times the amount of newly developed impervious surface within the minimum 100-foot buffer (equal areas to be planted for other disturbance outside of the minimum 100-foot buffer); if there is not enough available space on the lot to create a buffer, the property owner must plant the required amount on-site outside of the buffer, off-site, or must pay a fee-in-lieu.
- The proposal does not affect forest, wetlands, or other sensitive species habitats.
- Lot coverage limits do not apply to this property; however, as a result of the net increase in lot coverage onsite, a Buffer Enhancement Plan totaling 188 square-feet is required. The applicant has submitted a Plan which exceeds this requirement.
- No tree removal required or proposed.
- Forest Interior Dwelling Birds (FIDBs) and Rare, Threatened, and Endangered Species are not present on this property.
- All new development and redevelopment within the Marine District shall reduce pollutant loadings coming off of site by 10%. The applicant has addressed this requirement through buffer planting.
- Site includes an entrance and exit from the property off of Tolchester Beach Road.
- The existing area of use is already established and has existing pedestrian access to the kitchen and satellite bar. Access from parking area to the kitchen and satellite bar also exists and has been clarified through testimony.
- Lighting inside the structures will be unobtrusive. There is no new lighting proposed for the exterior of the structures, but lighting already exists onsite.
- The bar will not include a seating area but will allow the customers to be served and then disperse to the existing seating areas. Internally the bar will include counter space, glass racks, ice bins, beer boxes, a soda station, and a kegerator. The kitchen will allow for customers to

be served more efficiently and offer certain items that are only currently available at the restaurant. The kitchen will include a countertop electric griddle, countertop deep fryers, an oven, microwave, sandwich preparation area, preparation sink, pantry, soda station, hand sink, and an ice cream station. Along with an area to place and pick up an order. Only employees will be within the bar and kitchen area.

- A requirement of 3 additional parking spots will be added to the existing parking lot that is located adjacent to the pavilion at the north part of the property.
- The existing parking lot has lighting and screening that was approved with a previous site plan for the pavilion. The proposed 3 additional parking spots will fall within the area of existing lighting and screening. The blacktop area adjacent to the pool and boardwalk is generally used for handicap parking.
- No signage is proposed.
- The only new lighting is to be inside the proposed structures. Lighting exists onsite near the structures.
- The proposed structures will neither change the operational plan of the existing marina nor the current hours of the Shanty Beach Bar. Current business hours are Friday, 3:30 pm to 11:30pm; Saturday, noon to 11:30pm; Sunday, noon to 5pm (11:30pm on holidays); and holiday Mondays, noon to 5:00pm. Currently the Shanty Beach Bar opens the weekend before Memorial Day and operates through September.
- Reasonable demands are being placed on public services and infrastructure. The Department of Water and Wastewater has no issues with the upgrades. No new allocation is required and there should be no impact on the existing County-owned grinder pump. Water and sewer was currently already hooked up to the gazebo.
- Existing restrooms will be used.
- The marina is on private well, and the Health Department has approved the application.
- A retaining wall is being constructed behind the proposed kitchen and satellite bar to support the existing hill. This will prevent erosion problems from what would be an open bank.
- With no change in the existing schedule of the marina and the Shanty Beach Bar and no new services being proposed, abutting properties and County amenities will not experience undo disturbance from noise, smoke, vapors, fumes, dust, odors, glare, stormwater runoff, etc.
- The proposed kitchen and satellite bar are proposed to be between an existing hill with a proposed retaining wall and the Chesapeake Bay. This will provide a barrier to abutting properties and natural screening. The proposed structures will be 356 feet from the left side property line (to north), 1,150 feet from the right side property line (to the south) and 2,747 feet from the rear property line (to the east).
- Synthetic thatch siding and grey and copper finishes are to be used on the accessory structures to carry on the Polynesian theme that already exist at the Shanty Beach Bar and to replicate the color scheme of the Marina.
- A Citizen Participation plan has been implemented by notifying adjoining property owners, including Tolchester Heights Community, in writing of the proposed structures and notification of a meeting held on January 4, 2017. Two property owners attended the meeting. The applicant received support and has not received any negative comments or feedback.
- The application has also received support from the County Economic Development Commission, as well as from testimony offered by neighbors at today's meeting.
- The Planning Department has received no complaints regarding the existing restaurant and Shanty Bar.

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

Staff Reports

Mitch Mowell:

- The Public Utility Law Judge in the Apex/Mills Branch Case upheld the Public Service Commission's (PSC) preemption authority in Certificate of Public Convenience and Necessity (CPCN) applications, but did support the significance of local zoning. So, the County is stuck with the preemption decision, but, in individual cases, the PSC will consider the County's position and zoning. There may be some action from the legislature to override the PSC's position on preemption.

Ms. Moredock noted that the Keep Kent Scenic group was instrumental in not only providing testimony but also in impacting the Public Utility Law Judge's understanding of local land use, the heritage area, and level of passion and investment that local residents have in land use matters.

- Another CPCN case known as Morgnec Road Solar, LLC was filed with the PSC regarding a utility scale solar energy system on the Clark Farm located on Morgnec Road. As in the Mills Branch Case, such systems are not permitted in the zoning districts on Morgnec Road property. The County Commissioners intervened in this Case. The prescheduling conference that was set for Tuesday, February 7, 2017 has been postponed.

Ms. Moredock added that the parcels which are the subject of this Case are located in the County but within the Town of Chestertown's priority Designated Growth Area as adopted in the town's Comprehensive Plan. Further, the parcels known as the "Clark Farm" have been the subject of a charrette that was held in conjunction with the Eastern Shore Land Conservancy. The charrette resulted in the creation of a "Green Belt Plan" which was adopted by resolution by the Town of Chestertown. That plan consists of mixed use development and retention of some areas of agriculture.

The Town of Chestertown has also intervened in the Morgnec Road Solar Case because of that designation in their Comprehensive Plan and because of all the planning efforts that have focused their infrastructure in this area. In addition to the charrette, this area has long-been identified as the terminus of the Chestertown Boulevard (formally known as "bypass"). There is a proposed bill that addresses Forest Conservation Mitigation thresholds. The proposed bill will intend to add energy generating facilities to the list of exceptions to the Forest Conservation Act. That is obviously related to the testimony in the two cases the Public Service Commission heard. One being the One Energy Blue Star in Kent County and one being the One Energy Blue Star case in Somerset County. The Bill is in draft form and the meeting is scheduled for the 7th of January. Currently working with Shelley Heller, The County Administrator on submitting comments regarding the bill.

Amy Moredock:

- In addition to potential legislation relative to preemption in CPCN cases, there are two more bills of note that are being introduced. One is specific to Kent County that enacts a Commerce Zone that would provide tax incentives to new businesses and existing businesses that are located in certified Priority Funding Areas. This program would complement the Enterprise Zones that were recently adopted in the County and Chestertown. There is also a

bill that opens funding under the Bay Restoration Fund regulations. The proposal would make funding available to upgrade of minor wastewater treatment plants from Biological Nitrogen Removal to Enhanced Nitrogen Removal capability.

Stephanie Jones:

- Ms. Jones attended the Eastern Shore Climate Adaption Partnership meeting on January 17. This is a bi-monthly meeting that focuses on climate change on the shore. At the January meeting, the Partnership heard a presentation from Dr. Clifford Mitchell from Maryland Department of Health And Mental Hygiene on anticipated health impacts due to climate change. His discussion included the increase in heart attacks and increase in asthma hospitalization due to increase in temperature and increase in foodborne and waterborne infections due to extreme heat and precipitation.

The Partnership also explored possible projects and collaborative opportunities.

She also attended the Critical Areas breakout session and spoke with CAC staff members and other planners from the shore about how different shoreline environments may have better planting options than what is required for the entire state at this time. They also discussed flood-resistant species.

- Ms. Jones is continuing to assist in the development of and adoption of the Rock Hall Working Waterfront Plan.

Katrina Tucker:

- Ms. Tucker attended the “Legislative Town Hall” open house hosted by the Eastern Shore Land Conservancy at its facility in Easton.
- The Maryland Department of Transportation completed its update to the Functional Classification of several roadway segments in the County and Town of Chestertown that commenced in the Spring of 2016. Since the majority of the updates affected roads within the Town of Chestertown we coordinated with the Town and County Roads staff. The change from “major collector” to “minor collector” or “minor arterial” to “major collector” for the segments in the Town will not affect the federal funding eligibility since the roads are in an Urbanized Area.
- The Board of Trustees for the Maryland Agricultural Land Preservation Foundation (MALPF) has had their staff at the Maryland Department of Agricultural updating policies and regulations.
 - An updated draft to the policy for uses permitted on land encumbered by a MALPF easement was circulated to the jurisdictions for review. The Kent County Agricultural Preservation Advisory Board offered numerous comments as did several other counties, which the MAPLF Board of Trustees considered at their January meeting and will continue to review at their February meeting.
 - The Overlay Easement Regulations are also being updated. These overlay easements must be approved by the Board of Trustees and encompass wetlands, streams, and stream-sides, as well as forest conservation areas. The new proposed regulations address private rights-of-way, utilities, public roads and bridges.
- Ms. Tucker continues to provide subsequent information requested by MALPF to support the 8 applications submitted in the Spring of 2016 for the current year (2017) easement cycle.
- She has re-inspected one farm for the baseline report required prior to settlement from 2014/15 easement cycle. The debris and materials dumping has been removed and site

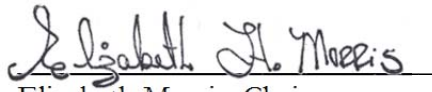
cleaned. The owners have been advised that they must maintain the property in accordance with the easement. Periodic inspections are conducted on every farm encumbered by a MALPF easement.

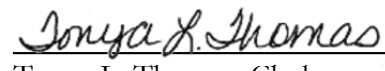
- She has also met with the Eastern Shore Land Conservancy (ESLC) and partner Counties for the Rural Legacy application. The Sassafras Rural Legacy Area in Kent County is part of the Agricultural Security Corridor which also includes Caroline, Talbot, Dorchester, and Cecil Counties. All five Counties are partners in a joint application coordinated by the ESLC.

General Discussion:

Ms. Morris thanked both Ms. Moredock and Mr. Mowell for all their hard work throughout the legal process regarding the Apex Case.

There being no further business for the good of the organization, the meeting was adjourned at 2:50 p.m.


Elizabeth Morris, Chairman


Tonya L. Thomas, Clerk