

MINUTES

The Kent County Planning Commission met in regular session on Thursday, March 2, 2017, in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland, with the following members in attendance: Elizabeth Morris, Chairman; Ed Birkmire; James Saunders; Kim Kohl; William Crowding; and Joe Hickman. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; 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 February 2, 2017, meeting, were approved as presented.

AGRICULTURAL PRESERVATION DISTRICT APPLICATIONS FOR REVIEW:

ALP-17-01 Allan and Kathleen Leager seek to establish an Agricultural Preservation District on their farm located at 11761 Augustine Herman Highway (MD Route 213), Kennedyville, in the Second Election District. This farm is comprised of 107.53 acres containing 78.1% qualifying soils and is in the Agricultural Zoning District (AZD). There is one existing dwelling on the farm.

Present and duly sworn in were Mr. Leager the applicant; and Ms. Tucker, Community Planner.

Ms. Tucker gave an overview of the application and explained that there are two half-acre lots fronting on Route 213 which were subdivided from the farm in 1989. These two lots are served by both public water and sewer. The maps in the Kent County Comprehensive Water and Sewerage Plan reflect an area of approximately an acre of this farm adjacent to these lots and abutting Route 213, where the farm lane enters the property, as also being within the Existing Service Areas. However, staff believes that this is a mapping error that has been carried through the years since the dwelling on the farm is not connected to public water or sewer. Moreover, the entire farm is mapped within the Priority Preservation Area. The rest of the farm is located outside the 10-year water and sewer planning service area.

Ms. Tucker further noted that this farm is located within the Priority Preservation Area and other protected lands are in the vicinity. The adjacent farm on the east is under an easement held by the Maryland Agricultural Land Preservation Foundation (MALPF) as are other farms within a 1 1/2-mile radius.

Ms. Tucker cited the applicable law found in the *Code of Public Laws of Kent County in Chapter 171: Agricultural Preservation Districts*, which establishes a program of Agricultural Land Preservation.

Ms. Tucker advised that the Agricultural Preservation Advisory Board reviewed this application at their meeting on February 21, 2017 and unanimously submits its favorable recommendation provided that the Leager's clarify that they have no intention of seeking public water and sewer service for any portion of this 107.53 acre farm. She advised that Mr. Leager has submitted in writing that he has no intention of subdividing any further lots from the farm in this location that would require connection to public water and sewer service.

Following discussion by the members of the Planning Commission, Mr. Hickman, made a motion to forward a favorable recommendation to the County Commissioners based on the following findings:

- The property meets the criteria for creating an Agricultural Land Preservation District.
- It complies with the goal of the Comprehensive Plan to preserve large blocks of contiguous prime agricultural land.
- The Nutrient Management Plan as well as the Soil and Water Conservation Plan are current.
- The Kennedyville Service Area maps in the Water and Sewerage Plan appear to be in error and it is recommended that they be corrected with the next update of that Plan.
- The Agricultural Preservation Advisory Board has recommended approval.

Ms. Kohl seconded the motion, and it was approved unanimously.

ALP-17-02 Michael L. Boyle seeks to establish an Agricultural Preservation District on his farm located at 29031 River Road, Millington, in the Second Election District. This farm is comprised of two parcels: Parcel 19 is 142.49 acres, and Parcel 38 is 21.89 acres. Combined, the entire farm is 164.38-acres containing 87.6% qualifying soils. This farm is on the Chester River with approximately 88.65 acres zoned Resource Conservation District (RCD) and 75.75 acres in the Agricultural Zoning District (AZD). There are no dwellings on this farm. A dwelling is on the 3.17-acre parcel interior to the farm also owned by the applicant, Parcel 40, which was previously subdivided from the property sometime in the mid 1960's.

Present and duly sworn in were Mr. Boyle the applicant; and Ms. Tucker, Community Planner.

Ms. Tucker gave an overview of the application and cited the applicable law found in the *Code of Public Laws of Kent County in Chapter 171: Agricultural Preservation Districts*, which establishes a program of Agricultural Land Preservation. She further noted that this farm is located within the Priority Preservation Area and is located outside the 10-year water and sewer planning service area. Other protected lands in the vicinity are due north, directly across River Road. Additionally, significant blocks of preserved lands encompassed by easements held by the Maryland Agricultural Land Preservation Foundation (MALPF) are within a one-mile radius to the east. Ms. Tucker advised that the Agricultural Preservation Advisory Board reviewed this application at their meeting on February 21, 2017 and unanimously submits its favorable recommendation.

Following discussion by the members of the Planning Commission, Mr. Hickman, made a motion to forward a favorable recommendation to the County Commissioners based on the following findings:

- The property meets the criteria for creating an Agricultural Land Preservation District.
- It complies with the goal of the Comprehensive Plan to preserve large blocks of contiguous prime agricultural land.
- The Nutrient Management Plan as well as the Soil and Water Conservation Plan are current.
- The Agricultural Preservation Advisory Board has recommended approval.

Ms. Kohl seconded the motion, and it was approved unanimously.

APPLICATIONS FOR REVIEW:

#17-07 Chester River 2, LLC requests a variance from the nonconformity requirements in order to construct a replacement single family dwelling. Specifically, the applicant is seeking a variance from the required location of an accessory dwelling unit in relation to a principle dwelling unit. As the

necessary dwelling unit is an existing, nonconforming structure, a variance is required in order to construct the proposed replacement dwelling unit at a greater distance than is permitted.

Citing a conflict due to a business association with the applicant, Mr. Hickman recused himself from deliberations on this application. Mr. Hickman left the dais.

Mr. Birkmire noted for the record that he had done work for the applicant and has visited the site; however, he did not feel that would affect his ability to make a fair and just decision based on the facts presented.

Present and duly sworn in were Ryan Showalter, Counsel; and D. Miles Barnard, South Fork Studio Land Arch., Inc.; 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 2.5 which establishes the minimum yard requirements; Article V, Section 2.4.B establishes the accessory use provisions; and Article IX, Section 2.2 that authorizes the Board of Appeals to grant variances from the yard requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions.

She explained that the primary and accessory dwelling units onsite are legally nonconforming in that their construction predates the enactment of the County Critical Area Program. Both structures are located within the Critical Area Buffer and do not meet the current provision which requires that an accessory dwelling unit be located within a 100-foot perimeter of the primary dwelling. The accessory dwelling unit is located within 400 feet 2 inches of the main dwelling. The applicant proposes to replace the existing main dwelling in a location that would place the accessory dwelling within 509 feet of that structure. The variance request will intensify the nonconformity with the requirement that an accessory dwelling unit in RCD be located within a 100 foot perimeter of the main dwelling unit.

Ms. Moredock read into record the Critical Area Commission letter and a letter from adjacent property owners, Mr. and Mrs. Peters stating they were not opposed to the proposal.

Mr. Showalter noted that the Habitat Development Plan, the desired preservation of a significant Silver Maple Tree, the location of the septic system, the location of the existing accessory structures, and the Buffer constitute a practical difficulty onsite. These site conditions collectively necessitate the construction of the replacement primary dwelling in a location which is in greater nonconformity with the RCD accessory dwelling unit standards.

After much discussion and consideration of the testimony and all applicable laws, Ms. Kohl made a motion to send a favorable recommendation to the Board of Appeals regarding the variance to move a nonconforming structure (primary dwelling) an additional 109 feet from the existing nonconforming accessory dwelling (cabin). Staff further recommends that any approval be conditioned upon the following:

- A Critical Area tree Plan be submitted and implemented for any proposed tree removal affiliated with the project.
- A Buffer Enhancement Plan be submitted and implemented for any additional lot coverage affiliated with the project.
- The Habitat Protection Plan must be recorded and implemented and maintained accordingly. It is recognized that this Plan may evolve over time.
- The Silver Maple tree must be preserved in accordance with the testimony offered by the applicant's Narrative. The tree must be protected during construction and all efforts to maintain the health of the tree must be implemented for the natural lifespan of the tree.

The Planning Commission based their decision on the following findings of fact:

- The existing primary dwelling is located within the Critical Area Buffer. The applicant proposes to demolish that structure and rebuild a replacement dwelling outside of the Buffer.
- The removal of the primary dwelling from the Critical Area Buffer addresses the intent of the nonconformity provisions of the Ordinance.
- The existing accessory dwelling is located within the Buffer and will not be altered.
- Currently, the accessory dwelling unit is located within 400 feet 2 inches of the main dwelling. The applicant proposes to replace the existing main dwelling in a location that would place the accessory dwelling within 509 feet of that structure.
- The variance request will intensify the nonconformity with the requirement that an accessory dwelling unit in RCD be located within a 100 foot perimeter of the main dwelling unit.
- Constructing the replacement dwelling in greater nonconformity with the accessory dwelling unit standards established in the RCD accessory use provisions will not cause a substantial detriment to neighboring properties nor will it change the character of the neighborhood or district.
- The proposal is consistent with the overall intent affiliated with RCD accessory dwelling unit provisions in that both dwellings will be served by the same entrance and septic system.
- The protection of a significant and very large Silver Maple tree and the creation of a Habitat Development Plan are noted as a means of establishing the practical difficulty preventing the applicant from meeting the location provision established in RCD.
- In light of the Habitat Development Plan, the protection of the Silver Maple tree, the location of the septic system, the location of the existing accessory structures, and the Buffer, the proposal may be interpreted as representing reasonable use of the entire parcel, thus necessitating the construction of the replacement primary dwelling in a location which is in greater nonconformity with the RCD accessory dwelling unit standards.
- The proposal is consistent with the Comprehensive Plan strategies which direct the County to insure that future development, redevelopment, and infill is completed in an environmentally and context sensitive manner and to maintain, enforce and if necessary, strengthen existing regulations for buffer.

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

Staff Reports

Mitch Mowell:

- The Public Service Commission scheduled a pretrial conference in Baltimore for the 28th of March regarding the Morgnec Road Solar, LLC project on Clark Farm located on Morgnec Road.

Amy Moredock:

- Ms. Moredock met with staff from Morgnec Road Solar, LLC. who plan to proceed with their application.
- As much interest has arisen in the charrette and resulting Plan entitled the “Chestertown Greenbelt” sponsored by Eastern Shore Land Conservancy, it is now posted on the Planning Department website under the “Current Projects” section. A paper copy is also available in the office. The plan was adopted by resolution by the Town of Chestertown and is referenced in their current Comprehensive Plan.
- Blue Star One Energy Solar is proceeding and plans to resubmit their application to the Planning Commission. It has been over a year since the Planning Commission granted Preliminary Site Plan approval and they will come back before the Commission with a new Preliminary Site Plan. They expressed an intent to shift some of the panel locations. This is largely based on the criticism they are

hearing around the State. Blue Star One Energy Solar likewise is working on an enhanced screening and landscape plan.

- The Phase II Watershed Implementation Plan (WIP) was adopted in 2011. The State is now moving into Phase III. Ms. Moredock is coordinating directly with Maryland Department of the Environment to develop a Plan that will more-closely accommodate reasonable and achievable goals for local jurisdictions. A positive outcome of the Phase II process has been all the community meetings that the MDE has been amenable to holding (largely in conjunction with the Center for Agricolgy). It has been a great partnership with the local participation. The Healthy Waters Roundtable has also contributed to a lot of the collaboration among Eastern Shore counties and towns.
- The Senate Bills that Ms. Moredock mentioned last month are moving forward. Senate Bill 343 which will expand the eligible costs to be covered by the Bay Restoration Fund for minor wastewater treatment plan upgrades has received a lot of support by local jurisdictions, Kent County being one of them. Senate Bill 365 which addresses the exemption provisions for Solar Energy Systems through the Forest Conservation Act is moving forward with mixed support. The County Commissioners sent a letter of opposition to Bill 365. Both hearings and concurrent House Bills were held on February 7th. On February 3rd, Senate Bill 931 was introduced which is the energy citing legislation that has been co-sponsored by our representative Senator Hershey and the hearing is scheduled for the 15th of March.
- Ms. Moredock will conduct two administrative hearings specifically relating to large accessory structures on parcels less than five acres on March 20th. She will also staff the Board of Appeals meeting to hear the Chester River 2, LLC variance request heard today.

Katrina Tucker:

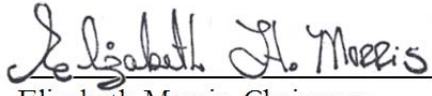
- Ms. Tucker attended the Maryland Energy Administration's seminar on Community Wind Energy that was held at Chesapeake College.
- The Historic Preservation Commission issued a Certificate of Appropriateness for the renovations and restoration work at the Asbury United Methodist Church of Georgetown, which is one of the 7 properties in the Kent County Register of Historic Places listed as HPC 11-001.
- The Historic Preservation Commission (HPC) is interested in pursuing the Certified Local Government designation through the Maryland Historic Trust (MHT). MHT staff is scheduled to attend the HPC's meeting in April to present and discuss the Certified Local Government program.
- The Agricultural Preservation Advisory Board (APAB) reviewed HB 863 that has been introduced during this current session of the Maryland General Assembly. The bill proposes allowing up to 25 percent of a farm that is under easement with the Maryland Agricultural Land Preservation Foundation (MALPF) to be converted from agricultural production to solar energy systems. The current provisions allow no more than 5 percent or 5 acres, whichever is less on MALPF properties. The APAB was not in favor of this bill, and their unanimous recommendation and comments were shared with the County Administrator for testimony at the hearing on the House Bill.
- The changes proposed by MALPF to its current Overlay Easement Regulations were reviewed by the APAB. The APAB's favorable recommendation was sent to MALPF staff.
- Ms. Tucker was pleased to report that there is a fair amount of interest in MALPF and agricultural land preservation. Additional applications for establishing a Kent County Agricultural District are anticipated.

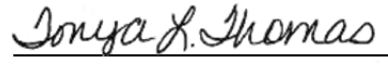
General Discussion:

The Kent County Planning Commission will host its third and final Community Forum on the Comprehensive Plan Update. The draft Vision and Purpose, Historic and Cultural Preservation, Community

Facilities and Public Services, and Implementation Strategies sections will be shared to obtain public comments on Wednesday, March 15, 2017, from 6:00 p.m. to 8:00 p.m. at the Kent County High School.

There being no further business for the good of the organization, the meeting was adjourned at 2:40 p.m.


Elizabeth Morris, Chairman


Tonya L. Thomas, Clerk