

MINUTES

The Kent County Planning Commission met in regular session on Thursday, July 6, 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; Kim Kohl; 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 June 1, 2017, meeting, were approved as presented.

PUBLIC HEARING

#17-28 Zoning Text Amendment –Proposed amendments to Article V, Section 1 and Section 2 of the *Kent County Land Use Ordinance* to address manure storage facilities by adding “Waste management facilities” to permitted accessory uses on farms in the agricultural Zoning District (AZD) and the Resource Conservation District (RCD) and to provide certain standards relative thereto.

Ms. Tucker provided a brief overview of the request advising that this zoning text amendment was initiated by the Planning Commission at their meeting May 4, 2017. Staff was directed to prepare and present amendments to Article V, Section 1 and Section 2 of the Kent County Land Use Ordinance to address manure storage facilities by adding “Waste management facilities” to permitted accessory uses on farms in the Agricultural Zoning District (AZD) and the Resource Conservation District (RCD) and to provide certain standards relative thereto. Ms. Tucker noted that waste management facilities are clearly articulated in the provisions for poultry houses in which a 600 foot setback from all property lines is required; however, the Ordinance does not include such specificity in the application of the distance from property lines for storage and management of manure generated from other types of livestock, except in certain instances such as commercial stables for horses..

Present and duly sworn in was Mr. Timothy Bishton, dairy farmer in Kennedyville.

Mr. Bishton stated he is a dairy farmer in Kennedyville, and he opposes the Zoning Text Amendment. Mr. Bishton stated the requirement for a 600-foot setback requirement for manure storage facilities in Kent County would place the Kent County farmer at an economic disadvantage in comparison to neighboring counties and opined that a 400-foot setback would be more reasonable. Mr. Bishton stated that every farmer is required to have a nutrient management plan for manure storage facilities. As a farmer, Mr. Bishton said he felt insulted that the language in the proposal would imply that the farmer would not already have a nutrient management plan in place and that the County would be an enforcement agency.

Mr. Birkmire asked Mr. Bishton if he knew the setback requirements in the surrounding counties. In reply, Mr. Bishton stated he was under the impression that both Cecil County and Queen Anne's County setbacks were 300 feet. Ms. Morris asked Mr. Bishton why he thought Kent County needed to be more in line with the neighboring counties. He explained the number of acres or the shape of the parcel may put the farmer at a disadvantage if the 600-foot setback requirement cannot be met.

Mr. Sutton asked staff if there had been any proposed manure storage facilities that were not approved because they could not meet the 600-foot setback.

Ms. Moredock advised that to the best of her knowledge a project has not been denied as a result of an inability to comply with the 600-foot setback requirement. In addition, she added that there have been several setback variances granted in consideration of limited circumstances and review of impact on neighbors to reduce the 600-foot setback requirement.

Mr. Bishton stated he was also representing the Kent County Farm Bureau. He testified that the Kent County Farm Bureau had reviewed this proposal and is in opposition to this Zoning Text Amendment. He further testified that the Kent County Farm Bureau would like to see the distance be changed to a 300-foot setback requirement. Mr. Birkmire noted that the Kent County Farm Bureau recommendation was different than the 400-foot setback recommended by the Kent County Agricultural Advisory Board.

There being no additional questions or testimony from the audience, the Chair closed the public hearing.

APPLICATIONS FOR REVIEW

#17-28 Zoning Text Amendment –Proposed amendments to Article V, Section 1 and Section 2 of the *Kent County Land Use Ordinance* to address manure storage facilities by adding “Waste management facilities” to permitted accessory uses on farms in the agricultural Zoning District (AZD) and the Resource Conservation District (RCD) and to provide certain standards relative thereto.

Present and duly sworn in were Mr. Bishton and Katrina L. Tucker Community Planner.

Ms. Tucker gave an overview of the application advising that at the Planning Commission’s meeting of 4 May 2017 staff reported that the Land Use Ordinance Agricultural Zoning District standards relative to poultry operations specify that manure storage facilities must be located at least 600-feet from all property lines. While that requirement is found under the poultry requirements, it historically has been interpreted to apply to any manure storage facility on a farm (housing manure from any animal). The interpretation is being challenged and legally the statute does outline that the requirement is specific to poultry manure storage facilities. Therefore, this Zoning Text Amendment to clarify this provision was initiated. Ms. Tucker cited all of the applicable laws of the *Kent County Land Use Ordinance* to include Article XII, Section 6 that establishes the standards for review and approval of a zoning text amendment.

Ms. Tucker stated a letter with the recommendations from the Kent County Agricultural Advisory Commission was received and a copy was included in the Planning Commission Members packet. Ms. Tucker advised that the Agricultural Advisory Commission reviewed the proposed zoning text amendment at their meeting of 26 June 2017 at which they discussed the difference between the impacts associated with a concentration of animal units for a CAFO, compared to a smaller operation with less animal units. The Agricultural Advisory Commission voted unanimously to recommend to the Planning Commission and County Commissioners that this amendment to add “Waste management facilities” to the permitted accessory uses on farms in the Agricultural Zoning District (AZD) and the Resource Conservation District (RCD) should apply a 400-foot setback for all livestock, other than poultry houses, that is not a Confined Animal Feeding Operation. Furthermore, it was their unanimous recommendation to delete from this text amendment the second sentence in paragraph “c” pertaining to the phosphorus index.

After much discussion, Mr. Hickman made a motion to send a favorable recommendation to the County Commissioners to amend Article V, Section 1 and Section 2 of the *Kent County Land Use Ordinance* to address manure storage facilities in the Agricultural Zoning District (AZD) and the Resource Conservation District (RCD) and to provide certain standards relative thereto based on the following findings:

- There is a public need to clarify the Ordinance regarding manure storage facilities.

- The amendment is consistent with all applicable laws and the Comprehensive Plan.
- A 600 foot setback is a relatively consistent distance in the *Land Use Ordinance* for waste management facilities.
- The Planning Commission concurs with the Kent County Agricultural Advisory Commission’s recommendation to delete the last two sentences in paragraph “c” which state “[w]here the phosphorus index, developed by the University of Maryland, indicates that phosphorus is a problem or has the potential to become a problem, the plan shall use phosphorus based nutrient management” and “[w]hen in the opinion of the Planning Director additional review is necessary from an outside agency, the Planning Director may forward the plan to the Maryland Department of the Environment or any other appropriate agency”.
- The Planning Commission recommends that the zoning text amendment read as follows:

ARTICLE V. DISTRICT REGULATIONS

SECTION 1. AGRICULTURAL ZONING DISTRICT

...

1.4 ACCESSORY USES AND STRUCTURES

- A. The following accessory uses are permitted on all farms in the Agricultural Zoning District.

...

10.5 WASTE MANAGEMENT STRUCTURES, WHERE NOT OTHERWISE STIPULATED IN THIS ORDINANCE, PROVIDED:

- A. WASTE MANAGEMENT STRUCTURES SHALL BE A MINIMUM OF 600 FEET FROM ALL PROPERTY LINES.
- B. NO WASTE MANAGEMENT STRUCTURE SHALL BE IN THE 100-YEAR FLOODPLAIN.
- C. THE OPERATION IS MANAGED ACCORDING TO WASTE AND NUTRIENT MANAGEMENT PLANS, APPROVED BY THE NATURAL RESOURCES CONSERVATION SERVICE, UNIVERSITY OF MARYLAND EXTENSION SERVICE, AND THE KENT COUNTY HEALTH DEPARTMENT.

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SECTION 2. RESOURCE CONSERVATION DISTRICT

...

2.4 ACCESSORY USES AND STRUCTURES

- A. The following accessory uses are permitted on all farms in the Agricultural Zoning District.

...

9. WASTE MANAGEMENT STRUCTURES, WHERE NOT OTHERWISE STIPULATED IN THIS ORDINANCE, PROVIDED:

- A. WASTE MANAGEMENT STRUCTURES SHALL BE A MINIMUM OF 600 FEET FROM ALL PROPERTY LINES.

- B. NO WASTE MANAGEMENT STRUCTURE SHALL BE IN THE 100-YEAR FLOODPLAIN.
- C. THE OPERATION IS MANAGED ACCORDING TO WASTE AND NUTRIENT MANAGEMENT PLANS, APPROVED BY THE NATURAL RESOURCES CONSERVATION SERVICE, UNIVERSITY OF MARYLAND EXTENSION SERVICE, AND THE KENT COUNTY HEALTH DEPARTMENT.

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

Staff Reports

Mitch Mowell:

- Mr. Mowell stated two enforcement actions involving zoning violations in the County were filed in the District Court regarding property located on Sunnyside Avenue, Rock Hall and on Chesterville/Millington Road. There is another zoning violation that will be filed against the same property owner for his property on the east side of Millington.
- Mr. Mowell and planning staff have met with representatives for BayShore Holding Campground in Rock Hall. There appear to be violations that have been pointed out by groups of neighbors and other interested parties. The campground has been in existence for 40 years and County records are not clear as to what has been approved. The County will file to ask the court what the property owners rights are regarding the extent of the nature of use. The County is also pursuing enforcement of current zoning violations.

Amy Moredock:

- Ms. Moredock conducted two administrative hearings: the case relating to an accessory farm dwelling located in the front yard of a waterfront parcel was approved, and the case relating to a side yard and buffering variance from the Agricultural Zoning District on a Crossroads Commercial parcel was likewise approved.
- Ms. Moredock represented Kent County and the Maryland Association of Counties Planners Affiliate at the MACo Agritourism Symposium on 12 June.
- Following the Public Hearing held on 13 June, the Zoning Text Amendment to allow a special exception use related to Safe Harbor for Tall Ships become effective on 20 June.
- The County Commissioners will now hold their public meetings only on 2 Tuesdays per month unless otherwise needed. These meetings will be held on the first and third Tuesday to correspond with legislative actions.

Katrina Tucker:

- Ms. Tucker announced that the Planning Commission's public hearing to receive testimony on the Draft Comprehensive Plan is currently scheduled for August 3, 2017 at 6:30 p.m. in the County Commissioner's Hearing Room located at 400 High Street, Chestertown. She inquired as to the Planning Commission's preference for the dates of publication of the public notice advertising the hearing. The Planning Commission determined that the two consecutive weeks prior to the August 3rd hearing were the most appropriate dates to publish the notice. Therefore, the notice will be advertised in the Kent County News on Thursday, July 20 and Thursday, July 27, 2017. Ms. Tucker advised that after the public hearing, and consideration of all comments, the Planning Commission may modify or revise the draft document and will ultimately prepare and adopt a final draft Comprehensive Plan and transmit it to the Kent County Commissioners. The County Commissioners

will then review the plan and must act within 60-days of its transmittal. They may adopt the plan in whole or in part, or return it to the Planning Commission for further consideration.

- Ms. Tucker attended the Annual meeting of the Maryland Chapter of the American Planning Association.
- A team consisting of Ms. Tucker, an inspector, and a staff person from the Soil Conservation District conducted inspections on 20 farms to ensure continued compliance with their Maryland Agricultural Land Preservation Foundation (MALPF) easement. A written report for each inspection is being completed and is due to MALPF prior to July 31st.
- The County Commissioner's held a Public Hearing on Tuesday, June 8th for the establishment of 8 Agricultural Preservation Districts; all of which were subsequently approved.
- Ms. Tucker Assisted the Economic Development Coordinator with queries concerning zoning and development regulations from a potential prospect for an industrial project in Worton.
- Ms. Tucker attended Maryland Environmental Trust's annual conference on land preservation.
- Participated in the Eastern Shore Land Conservancy's quarterly planner's gathering.
- Ms. Tucker completed the Annual Report for the Town of Rock Hall as well as their 5-year Mid-Cycle Report on the implementation of the Comprehensive Plan as required by the Maryland *Land Use Article*.
- Ms. Tucker has continued involvement with MARBIDCO, MALPF staff, and other County MALPF Program Administrators on the application for the Next Generation Farmland Acquisition Program (NGFAP). MARBIDCO is the Maryland Agricultural & Resource Based Industry Development Corporation, which is receiving \$2.5 million in State funding to launch this program to help qualified young and beginner farmers enter the agricultural profession. Essentially this is a farmland conservation easement option purchase program that is designed to help facilitate the transfer of farmland to a new generation of farmers. The key tool is an "easement purchase option contract" which will ultimately result in a permanent easement sale in the future with the Maryland Agricultural Land Preservation Foundation (MALPF), the Rural Legacy Program, or a local land trust, or other such easement. The program makes money available for a down-payment so that the next generation farm is able to meet the equity requirement for a commercial loan. Last week the final review of the draft application for the Next Generation Farm Program was conducted at which comments and suggestions were offered. The application was released July 1st, and applicants are required to contact their respective county agricultural preservation staff no later than July 31, 2017, and applications must be submitted to MARBIDCO by August 31, 2017. The local county staff will have to complete and attest to the accuracy of the part of the application which is equivalent to an application submitted to MALPF for easement acquisition.
- Massey Solar, LLC (concept plan presented as Community Energy Solar, LLC, to the PC in December of 2015) [on the lands of Benjamin Stafford and zoned Employment Center] has presented its procedural schedule to the Public Service Commission that includes an evening hearing for public comment in Kent County on August 24, 2017; the location and time is yet to be determined.

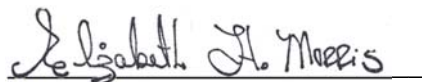
Stephanie Jones:

- Ms. Jones is currently working with the Town of Betterton and the Rigbie Bluff Condominium Association to create a major Buffer Management Plan to eradicate invasive species and plant native species on the County owned bank adjacent to the Betterton Beach bathhouse. Have been approved by the Critical Area Commission to use Afforestation funds for this project. County will send drafted plan to the CAC for approval.
- Ms. Jones' Critical Area Commission Quarterly Report due. There was 4 violations within the County this quarter.
- Ms. Jones will be attending the CAC quarterly meeting July 20th.
- She also participated in the Eastern Shore Land Conservancy's quarterly planner's gathering.
- Ms. Jones heard and granted approval of an administrative setback variances to two side yard and a front yard requirements.

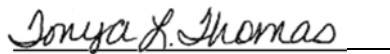
General Discussion:

Ms. Moredock shared that the Planning Commission members received an invitation to the MACO Summer Conference. This year's theme is "You're Hired". It is an economic development focused conference.

There being no further business for the good of the organization, the meeting was adjourned at 2:38 p.m.



Elizabeth Morris, Chairman



Tonya L. Thomas, Clerk