

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, December 6, 2018, 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; Commissioner, P. Thomas Mason; James Saunders; William Crowding; and Joe Hickman. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; Stephanie Jones, Environmental Planner; Carla M. Gerber, GIS Specialist; 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 November 1, 2018, meeting, were approved as presented.

## PUBLIC HEARINGS

Ms. Morris closed the public meeting and opened the public hearing session at 1:44 pm.

### **#18-60 Zoning Text Amendment – Fair Promise Family Limited Partnership, LP/Morgnec Road Solar, LLC - Special Exception for Solar Energy Utility Scale Systems in the Rural Residential (RR), and Community Residential (CR) Zoning Districts.**

Ms. Moredock gave a brief overview of the proposed amendments to the *Kent County Land Use Ordinance* Special Exception for Solar Energy Utility Scale Systems (Amend Article V, Sections 4.3, and 6.3 and Article VII, Section 7 to allow “utility scale solar energy systems”). The applicants are proposing to amend the provisions to allow “utility scale solar energy systems” as a Special Exception Use in the Rural Residential (RR) and Community Residential (CR) Districts and to establish additional standards.

Testimony from the public was offered by the following Kent County residents: Janet Lewis Christianson, John Lysinger, Elizabeth Watson, Doug West, Michael Wootton, Frank Lewis, and Frank Rhodes. In addition, Joe Stevens, Counsel for Urban Grid, offered testimony in support of the proposal. Testimony from County residents was not favorable and expressed concerns regarding the visibility of the site and its negative impact on the gateway to the Town of Chestertown. In addition, the residents noted the following key concerns: the seemingly site-specific nature of the application, inconsistency with the County Comprehensive Plan and the Town of Chestertown's designated growth area and infrastructure, and the potential for pushing residential development into County agricultural land.

### **#18-68 Zoning Text Amendment – Animal Shelters in the Agricultural Zoning Districts (AZD) and Crossroads Commercial (CC) Districts – Amend Article V, Section 1 and Section 10 to add “animal shelters” to the permitted uses and structures.**

Ms. Moredock gave a brief overview of the proposed amendments to Article V, Section 1 and Section 10 of the *Kent County Land Use Ordinance* to add “animal shelters as defined by the *County Code of Public Laws*” to the uses already listed in AZD and CC for veterinary hospitals or clinics.

Testimony from the public was offered by Denny Chatel, Michael Johnson, Janet-Lewis Christianson, Elizabeth Watson, Doug West, Cynthia Fulton, Jan Graham, Casey Hurd, Eugenia Wootton, Conner Stafford, George Wiedenmeyer, Richard Keaveney, Mallory McHenry, Angela Elburn, Michelle Timmons, Chris Kendall, Caty Johnson, Michael Wootton, Susan Hayman, Nancy Connelly, Dudley McHenry, and Mary Paroubianco, all residents of Kent County.

The consensus of the residents who testified in opposition to the proposal expressed the following key concerns: the location of the proposed shelter in a commercial district, inconsistency of a commercial dog kennel use in CC district, the overlooked option to locate an animal shelter in a zoning district which allows a commercial dog kennel use, adequacy of setbacks, noise impacts, and the nature of the use after business hours. The residents who testified in favor of the proposed text amendment shared their support for the services provided to the community by the existing animal shelter and the need to provide a zoning mechanism to permit a redevelopment option for the continued use of animal shelter services.

Ms. Morris closed the public hearing session and reopened the meeting at 3:05 pm.

### **APPLICATIONS FOR REVIEW:**

#### **Rural Legacy Program – Expansion of Area and Changes to Process**

The Eastern Shore Land Conservancy has been working for some time to overhaul the Rural Legacy Program, and they have asked the County Commissioners for a letter of support. Changes include expanding and adding new designated areas, adopting a new project evaluation protocol, and splitting the single Agricultural Security Corridor Rural Legacy Area to three independent Rural Legacy Areas. Kent and Cecil will now be known as the Harvest Crescent Rural Legacy Area.

Mr. Hickman stated he is a member of the Eastern Shore Land Conservancy Board; however, he did not participate in this mapping effort and feels that he can consider the request fairly.

Ms. Gerber stated the Rural Legacy Program has been active for approximately 20 years. The Eastern Shore Land Conservancy feels that they are running out of eligible properties and thought we should look to expand into other areas for properties that would be eligible to participate in the Rural Legacy Program. The Agricultural Advisory Commission reviewed this proposal and felt that expanding the areas made sense and supply additional opportunities for landowners in those areas that would be interested in selling an easement and preserving their land.

Mr. Hickman made a motion to send a favorable recommendation to the County Commissioners for the revised Rural Legacy Map as presented by The Eastern Shore Land Conservancy based on the following findings:

- Is consistent with the Kent County Comprehensive Plan.
- Provides additional opportunities to landowners who may wish to preserve their land.
- Supports preservation in areas where participation in MALPF is not as viable.

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

**# 18-60 Zoning Text Amendment – Fair Promise Family Limited Partnership/Morgnec Road Solar, LLC - Special Exception for Solar Energy Utility Scale Systems in the Rural Residential (RR), and Community Residential (CR) Zoning Districts – Amend Article V, Sections 4, and 6 and Article VII, Section 7 to allow “utility scale solar energy systems”**

Present and duly sworn in were; Joe Stevens, Counsel representing the applicants; Chip Yowell, Fair Promise Family Business Limited Partnership; Edward Franklin Depew, President of Urban Grid Holdings, LLC; Adam Thompson, Vice President of Development and Operation for Urban Grid, LLC.; and Ms. Moredock, Planning Director.

Ms. Moredock cited the applicable law found in the Article XII, Section 6 of the *Ordinance* which establishes the standards for the review and approval of a zoning text amendment.

Ms. Moredock explained that the applicants propose amendments to Article V, Sections 4.3 and 6.3 and Article VII, Section 7 of the Ordinance. The applicants are proposing to amend these provisions to allow “utility scale solar energy systems” as a Special Exception Use in the Rural Residential (RR) and Community Residential (CR) Districts and to establish additional standards. She called the members’ attention to the applicants’ narrative which they received in advance of the meeting. The narrative addresses the public need for the proposed amendment, an explanation of the special exception standards (which have been expanded beyond those standards applicable to utility scale solar systems located in Commercial, Crossroads Commercial, and Critical Area Commercial Districts), consistency with the intent of the RR and CR Districts, compliance with the Comprehensive Plan and Critical Area Law, and compliance with the Town of Chestertown’s Comprehensive Plan.

Specifically, the applicants propose to **ADD** the following:

District Regulations, Special Exceptions

Rural Residential (RR) and Community Residential (CR) Districts: Article V, Sections 4.3 and 6.3 respectively:

RR, Article V, Section 4.3

25.5. **SOLAR ENERGY SYSTEMS, UTILITY SCALE**

CR, Article V, Section 6.3

20.75. **SOLAR ENERGY SYSTEMS, UTILITY SCALE**

Special Exceptions, Special Exception [Uses and Performance Standards]: Article VII, Section 7:

**57.75 SOLAR ENERGY SYSTEMS, UTILITY SCALE, IN RR AND CR PROVIDED:**

- A. SOLAR COLLECTION DEVICE OR COMBINATIONS OF DEVICES ARE DESIGNED AND LOCATED TO AVOID GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND ADJACENT ROADWAYS AND SHALL NOT INTERFERE WITH TRAFFIC OR CREATE A SAFETY HAZARD.**
- B. SCREENING CAPABLE OF PROVIDING YEAR-ROUND SCREENING, IS PROVIDED ALONG ALL SIDES THAT DO NOT COLLECT ENERGY. SCREEN SHOULD BE A MINIMUM OF 50 FEET IN WIDTH**

**AND MAY BE PLACED WITHIN THE SETBACKS. EXISTING VEGETATION WITHIN THE DESIGNATED BUFFER AREA MAY BE USED TO SATISFY THE BUFFER STANDARDS.**

**C. SETBACKS OF SOLAR COLLECTION DEVICES OR ACCESSORY STRUCTURES:**

- I. 75 FEET FROM LOT LINES OF ADJACENT PROPERTIES.**
- II. 100 FEET FROM ANY ROAD OR RIGHT-OF-WAY.**
- III. INTERNAL BOUNDARIES ON ADJOINING**

**PROPERTIES TO BE USED FOR A SINGLE SOLAR ENERGY SYSTEM SHALL NOT BE SUBJECT TO THE SETBACK PROVISIONS HEREIN.**

- D. EXISTING TOP SOIL SHALL NOT BE REMOVED FROM THE SITE.**
- E. THE SOLAR COLLECTION DEVICES SHALL BE ENCLOSED BY FENCING.**
- F. SOLAR PANELS AND RACKING SYSTEMS SHALL NOT EXCEED 20' IN HEIGHT. LIGHT POLES, INTERCONNECTION AND RELATED EQUIPMENT SHALL NOT EXCEED 45 FEET IN HEIGHT.**
- G. INSTALLATION OF THE *SOLAR ENERGY SYSTEM* SHALL NOT ADVERSELY IMPACT ADJACENT PROPERTIES.**
- H. ALL *STRUCTURES* ASSOCIATED WITH THE *SOLAR ENERGY SYSTEMS* SHALL BE NEITHER VISUALLY INTRUSIVE NOR INAPPROPRIATE TO ITS SETTING.**
- I. ALL SOLAR COLLECTION DEVICES SHALL BE REGISTERED WITH THE DEPARTMENT OF EMERGENCY SERVICES AND SHALL SUBMIT A MAP NOTING THE LOCATION OF SOLAR COLLECTION DEVICES AND THE PANEL DISCONNECT.**
- J. THE APPLICANT SHALL DEMONSTRATE THAT THE *SOLAR ENERGY SYSTEM* SHALL NOT UNREASONABLY INTERFERE WITH THE VIEW OF, OR FROM, SITE OF SIGNIFICANT PUBLIC INTEREST, SUCH AS PUBLIC PARKS, A NATIONAL OR STATE DESIGNATED SCENIC BYWAY, A STRUCTURE LISTED IN THE KENT COUNTY HISTORIC SITE SURVEY, AND HISTORIC DISTRICT, OR THE CHESAPEAKE BAY OR ITS TRIBUTARIES.**
- K. THE MINIMUM PARCEL SIZE (OR GROUP OF PARCELS) ON WHICH THE SOLAR ENERGY SYSTEM MAY BE LOCATED (INCLUDING REQUIRED LANDSCAPING AND BUFFERS) SHALL BE NOT LESS THAN 150 ACRES NOR SHALL IT EXCEED 400 ACRES.**
- L. THE *SOLAR ENERGY SYSTEM* SHALL BE LOCATED WITHIN A TWO (2) MILE RADIUS ON EITHER SIDE OF THE ELECTRIC TRANSMISSION LINES WITH A CAPACITY EQUAL TO OR GREATER THAN 69 KV OR SIMILAR SIZED UTILITY SUBSTATIONS.**
- M. TREE REMOVAL SHALL BE MINIMIZED, AND ANY REMOVAL SHALL BE MITIGATED IN ACCORDANCE WITH THE CRITICAL AREA PROGRAM REQUIREMENTS.**
- N. THE *SOLAR ENERGY SYSTEM* SHALL COMPLY WITH ALL APPLICABLE FEDERAL AND STATE REGULATIONS.**

Mr. Thompson gave a brief overview of statutes and regulations that govern what does and does not constitute a formal utility scale solar system. There are 3 programs: net metering, virtual net metering, and wholesale marketing. Urban Grid specializes in wholesale marketing and utilizes sites that are easily-accessible to infrastructure such as high voltage transmission lines of 69kV (kilovolt) and above. There was an analysis done on all districts in Kent County that allow utility scale solar energy systems. Parcels within the zoning districts were analyzed to see if they were viable for solar projects; Urban Grid found none of them to be viable locations. In determining the lands viability, the location is tested and researched for wetlands, existing water resources, streams, floodplains, critical areas, access to transmission lines, and forests.

Mr. Depew stated there was one parcel in Kent County that was suitable for solar projects, but he could not get the landowner to engage. Mr. Thompson noted that this parcel is split-zoned with wetland issues, shading, and also contains a cell tower.

Mr. Thompson stated in order to be competitive and cost effective, the project would require a minimum wattage of 20MW (megawatts) or higher to be viable and generally requires a 150-acre site to allow for buffers, offsets from neighboring properties, and roads.

Mr. Yowell stated his family purchased the property as an investment property. For the last 30-years, the family tried to develop the property as a housing community. There have been 3 developers with contracts that have backed out due to the Town of Chestertown refusing to annex the property and allow for water and wastewater hookups. The family contacted Eastern Shore Land Conservancy to engage the interest of a gateway project and it was stopped due to the Town of Chestertown refusing to annex the property. Mr. Yowell stated he has lived in Kent County all his life and does not see the county moving towards development in the next 20 years. Installing solar panels on this parcel for the next 30-years would not be taking this property out of development potential. The county would benefit from the taxes generated on this parcel and then at that point if Kent County begins to develop thereafter, the property would be available.

Testimony offered by John Lysinger, resident of Kent County, who expressed sympathy with the loss of development on this parcel. However, he opined that when a text amendment is adopted, it becomes permanent, exposing the county to unnecessary risks for the benefit of a real estate spectator and company coming in that wants to make a profit by having control of the property. He is opposed to the text amendment.

Following a lengthy discussion and consideration of all testimony received during both the public hearing and the general meeting, Mr. Hickman made a motion to send an unfavorable recommendation for the proposed amendments as discussed based on the following findings:

- The County identified and designated locations suitable for larger/utility scale renewable resource facilities through Renewable Energy Task Force recommendations made in 2011. The RETF reconvened in 2015 to review the existing *Ordinance* provisions in this regard. At that time, the Planning Commission and County Commissioners found that the standing renewable energy provisions served the needs of the public and remained consistent with the Ordinance and Comprehensive Plan.
- Therefore, the Commission does not find that a public need now exists for the proposed text amendment.
- Further, the County has designed zoning districts in which the proposed use is already permitted.
- Many parcels zoned RR and CR are located within mapped designated growth areas, as well as within Tier 1, 2, and 3 Areas. Therefore, this proposal is inconsistent with municipal growth areas.
- The purposes of the RR and CR Districts are to provide for residential development, as well as commercial uses which support the communities and provide economic development opportunities.
- The amendment has been put forward solely for the interest of the applicant, as it is compatible with the developer's business model with no economic development potential for the County.
- The proposed amendment deviates from the Comprehensive Plan, as the scale of the proposal is neither consistent with the Comprehensive Plan nor the Intent of the Zoning Districts to which this proposal applies.

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

**#18-68 Zoning Text Amendment – Animal Shelters in the Agricultural Zoning Districts (AZD) and Crossroads Commercial (CC) Districts – Amend Article V, Section 1 and Section 10 to add “animal shelters” to the permitted uses and structures.**

Present and duly sworn in was Ms. Moredock, Planning Director.

Ms. Moredock cited the applicable law found in the Article XII, Section 6 of the *Ordinance* which establishes the standards for the review and approval of a zoning text amendment.

Ms. Moredock gave a brief overview and history of the text amendment. The Planning Commission voted unanimously to propose this zoning text amendment at their meeting of 5 July 2018. Staff was directed to prepare and present amendments to Article V, Section 1 and Section 10 of the *Kent County Land Use Ordinance* to add “animal shelters as defined by the *County Code of Public Laws*” to the uses already listed in AZD and CC for veterinary hospitals or clinics.

The Planning Commission opined that the *Ordinance* is unclear in this regard and that is not the intent of the *Ordinance* to prohibit an animal shelter use in the County. The purpose of this text amendment is to allow an animal shelter use in AZD and CC in a manner which is consistent with a comparable, existing use and with the County Code of Public Laws. She cited Chapter 64-1 (Animals, Definitions) which defines an animal shelter as follows:

Any facility operated by a humane society or municipal agency or its authorized agents for the purpose of impounding or caring for dogs or cats under the authority of this article or state law for care, confinement, return to owner, adoption or euthanasia.

Ms. Moredock further cited Title 2, Subtitle 17 of the *Annotated Code of Maryland* which defines animal shelter, establishes the legislative findings and intent of animal shelters, and establishes written veterinary care protocol for animal shelters.

Specifically, the Planning Commission proposes to **ADD** the following:

District Regulations, Permitted Principal Uses and Structures  
Agricultural and Crossroads Commercial Zoning Districts: Article V, Section 1.2.20 and 10.2.19 respectively

AZD, Article V, Section 1.2

20. Veterinary hospitals or clinics **AND ANIMAL SHELTERS AS DEFINED BY THE COUNTY CODE OF PUBLIC LAWS** provided that all open kennels shall be at least 200 feet from all property lines

CC, Article V, Section 10.2

19. Veterinary hospitals and offices **AND ANIMAL SHELTERS AS DEFINED BY THE COUNTY CODE OF PUBLIC LAWS**

Ms. Moredock stated there were two letters addressed to the Planning Commission which were included in the Planning Commission packets and read a letter of support to the Planning Commission that was submitted by Cora Dickson, President of the Eastern Shore Rabid Refuge located in Rock Hall, Maryland. Ms. Moredock also stated the Planning Commission received a letter from Casey Hurd during the Public Hearing.

Mr. Crowding asked staff what the setbacks would be on this use on the particular parcel purchased by the Humane Society. Ms. Moredock stated the parcel is zoned CC and that standard setbacks for that district would be required.

Mr. Keaveney, Human Society Director, emphasized that modern design specification for new animal shelters does not include open kennels. There would not be outdoor kennels; while there would be a doggie park. The staff is very conscious of the stress levels of animals and the design of modern animal shelters reflects stress reduction and overall annoyance of barking animals; therefore, each dorm will be heavily insulated to deafen the noise.

Discussion ensued regarding clarifications of setbacks and definitions and responses were provided to audience members.

Following a lengthy discussion and consideration of testimony during both the public hearing and the general meeting, Mr. Hickman made a motion to send a favorable recommendation for the proposed amendments as discussed based on the following findings:

- As the animal shelter use is not listed specifically in the *Land Use Ordinance* yet is very specifically defined and legislated in both the *County Code of Public Laws* and *Annotated Code of Maryland*, the proposed amendment provides for permitted use consistent with applicable laws germane to the *Ordinance*.
- The specificity and relevance of Chapter 64 of the *County Code* and Title 2, Subtitle 17 of the *Annotated Code* to the existing animal shelter operation provide the articulated public need for animal control and related veterinary care in Kent County.
- The zoning text amendment as proposed provides consistency within the existing *Ordinance*, as well as *County Code* and *Annotated Code of Maryland*.
- The proposed amendment is consistent with *Comprehensive Plan* strategies which promote the overall health, safety, education, and citizen well-being.
- The *Critical Area Law* is not applicable to the *Agricultural and Crossroads Commercial Districts*.

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

## Staff Reports

Amy Moredock:

- Ms. Moredock and Ms. Jones are participating in the Maryland Climate Leadership Academy; she noted that it is really a gratifying and positive workshop. Maryland is the pilot program for this international accreditation series as it is the first of its kind in the nation.
- The Community Planner position remains vacant as the selected candidate declined the offer (changed his mind about relocating his family). The position will remain open until filled.
- Ms. Moredock attended the mediation sessions regarding the Bayshore Land Holding, LLC Case (Request of Declaratory Judgment) with all three County Commissioners; Mr. Mowell, Planning Attorney; Ms. Jones; Fred and Megan Wicks, landowners; Dan Saunders and Megan Owings, Counsel for the Wicks; and mediator Rig Baldwin. The group will meet again January 13, 2019 to try to come to an agreement regarding the draft consent order.

Mitch Mowell:

- Mr. Mowell explained that the Court of Special Appeals rendered the decision that the local board regulations of solar energy projects are preempted by state law. Queen Anne's County solicited Kent County to join an amicus brief to ask the Court of Appeals to look at the issue because it is so important to the counties. The Kent County Commissioners are going to participate and share the cost of 1/3 of the participation in the legal process. Jurisdictions are also working with the legislature to get a sensible amendment to the Annotated Code to clear up this issue of preemption so that local zoning can apply.

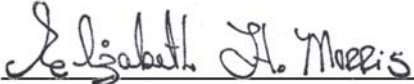
Stephanie Jones:


- On November 7<sup>th</sup>, Ms. Jones and Ms. Gerber attended follow up site visits for the Critical Area Remapping Project with the Critical Area Commission and Maryland Department of the Environment. Determinations were made at all site. All updates would be included in the draft map to continue the process.
- On November 8<sup>th</sup>, Ms. Jones represented the Planning Department, at a Realtors' Training Session hosted by the Kent County Economic Development Department. The meeting was well-attended. She focused her presentation on recent plans that have been completed including the Comprehensive Plan, introduced resources that realtors could use, and discussed site plan review.
- Maryland Department of Planning hosted the second round of workshops on November 14<sup>th</sup> in Chestertown with regards to the new state development plan "A Better Maryland." which is Strategies including environment, community development, economic development, and collaboration/coordination for the Plan were discussed in an open dialogue session.
- The Maryland Climate Leadership Academy was established in June of 2018 in partnership with the Association of Climate Change Officers. The Academy is now offering courses to prepare and earn the Climate Change Professional certification. Ms. Jones and Ms. Moredock attended a series of classes with the first of three being held November 19 through 20<sup>th</sup> at Chesapeake College. The next phase of two-day classes will be held in January.
- The Board of Appeals granted an after-the-fact buffer variance to reconstruct a 528-square foot addition, a 102-square foot covered porch, and 129-square foot of concrete to and around an existing nonconforming dwelling.
- On November 29<sup>th</sup> Ms. Jones attended a regional Watershed Implementation Plan meeting for the development of Phase III.

### General Discussion:

Mr. Sutton suggested a joint workshop for the newly-elected County Commissioners. There should be a discussion of the *Land Use Ordinance* and zoning issues which should be of particular focus during the zoning update.

There being no further business for the good of the organization, the meeting was adjourned at 4:45 p.m.

  
Elizabeth Morris, Chairman

  
Tonya L. Thomas, Clerk