

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, April 5, 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; Ed Birkmire; James Saunders; 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 March 1, 2018, meeting, were approved as presented.

### **AGRICULTURAL PRESERVATION DISTRICT APPLICATION FOR REVIEW:**

**ALP 18-02 Charles W. and Eva Mae Wiest** Mrs. Eva Mae Wiest, the sole property owner as Charles W. Wiest departed this life on 2 December 2013 although his name remains on the deed, Ms. Wiest seeks to establish an Agricultural Preservation District on her farm located at 34351 Cypress Road in the First Election District. The farm consists of 294.78-acres that is comprised of 75.1% qualifying soils and is in the Agricultural Zoning District (AZD). The farm is located on the south side of Cypress Road and there is one existing dwelling on the property. A pool shown on the aerial map has been demolished and removed from the site.

Present and duly sworn in was Ms. Tucker, Community Planner.

Ms. Tucker cited the applicable law found in the *Code of Public Laws of Kent County in Chapter 171-5: Agricultural Preservation Districts*, which sets forth the process and criteria for the establishment of districts; *Chapter 171-7*, provides that the sale of an easement shall be on the entire farm.; *Chapter 171*, which provides that the Agricultural Preservation Advisory Board and the Planning Commission shall advise the County Commissioners as to whether or not the establishment of the district meets the criteria of the Agricultural Article, Title 2, Subtitle 5, of the Annotated Code of Maryland Regulations 15.15.01; and is compatible with existing County plans and overall County policy.

Ms. Tucker further noted there are other protected lands in the vicinity. On the north side of Cypress Road are 225-acres in an easement held by the Maryland Agricultural Land Preservation Foundation (MALPF) and that easement adjoins the Millington Wildlife Management Area.

The Wiest farm is located outside the 10-year water and sewer planning service area and is within the Priority Preservation Area (PPA).

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

- The property meets or exceeds the criteria for creating an Agricultural Land Preservation District.
- Complies with the goal of the Comprehensive Plan to preserve large blocks of contiguous prime agricultural land.
- At least 50% of the land consists of Soil Capability Classes, I, II, or III or Woodland Groups 1 or 2.

- Generally, the land lies outside the 10-year water and sewer service area.
- As the land is leased rather than being an owner operated farm, the current Nutrient Management Plan is filed under the operator's name and the farm is compliance. Also, since there are no more than 25 contiguous acres of woodlands, the applicant will be required to obtain a Forestry Stewardship Plan if offered an easement by MALPF and prior to settlement of such easement.
- The Agricultural Preservation Advisory Board reviewed this application at their meeting on March 26, 2018, and unanimously submitted a favorable recommendation.

Mr. Crowding seconded the motion and the motion was unanimously approved.

### **APPLICATIONS FOR REVIEW:**

**#18-18 Enrique Pallares, et ux.** – Mr. Pallares is requesting special exception and site plan review for an adaptive reuse of an historic structure on his property located at 8355 Broad Neck Road. Mr. Pallares proposes to operate Casa Carmen, an artisanal winery tasting room, out of the Almshouse. Built in 1847, the Almshouse is listed in the Maryland Inventory of Historic Properties (K-95). The 6.45-acre property is zoned Rural Character, RC, and located in the Seventh Election District in the Mt. Pleasant Plantation Subdivision. The property is currently improved with a 2-story dwelling, the Almshouse (an accessory structure), an accessory shed, and a vineyard. The surrounding area is characterized by residential development within the Mt. Pleasant Plantation Subdivision approved in 1990 and along Broad Neck Road. Otherwise, the property is surrounded by both agricultural and forested land. This property is located approximately 2 miles south-west of the Town of Chestertown.

Present and duly sworn in were Enrique Pallares, applicant; Robert Nickerson, Extreme Measures Surveyor; 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 3.3 identifies the adaptive reuse of historic structures as a principal use permitted as a special exception in the RC District, subject to site plan review and standards found in Article VII; Article VII, Section 7.4 which authorizes the Board of Appeals to grant a special exception for the adaptive reuse of historic structures in the RC District; Article VII, Section 2 which establishes the required findings; and Article VI, Section 5 which outlines the procedures and requirements for site plan review.

Ms. Moredock read into record a letter addressed to the Planning Commission from Roy and Judy Crow, owners of Crow Vineyard in support of the Pallares' proposal.

Mr. Pallares stated that he and his family are trying to create something beautiful and unique on a small scale that is not in conflict with the neighborhood and will enhance the community. Mr. Pallares stated he is aware of the particular location and spirit of the neighborhood that the residents wish to maintain in the Mount Pleasant Plantation Subdivision. It is in that spirit that the proposal is proposed with self-limitations; he has not proposed to run a full winery, although he feels that the space is there. An alternate proprietorship was established with the Crow Vineyards which enables him to grow and process his grapes there. Mr. Pallares stated he believes there is a history of neglect on the property that he has inherited, and he is willing to work with the neighbors to ensure road safety and maintenance and privacy in the subdivision.

Mr. Nickerson stated that this is Mr. Pallares' primary residence first and business second. Mr. Pallares' stated he has a two-and-a-half-year-old daughter and another child due in May and it is important that

the neighborhood is friendly and a place to raise children. That is also another reason for the limitations and proposes a small business.

Mr. Sutton asked Mr. Pallares if he has a business partner. Mr. Pallares' stated that Casa Carmen is a family business; his brother Felipe oversees the operations.

Mr. Birkmire asked if the eventual plan was to restore the Almshouse to its original state.

Mr. Pallares stated that the plan is to renovate the enclosed space for use as a tasting room in the first phase and to secure the "ruins" in the second phase. That phase includes clearing out the basement to be used as a wine cellar, remodeling the floor, and securing the ruin walls for the use of an outdoor area for wine tasting. The plan is to use the historic structure "as is" and to prevent further deterioration.

Ms. Morris asked Mr. Pallares how many employees would be hired. Mr. Pallares stated, in addition to his family, there may be one or two employees in the summer to help in the tasting room.

Mr. Birkmire asked Ms. Judy Crow how many people visitor Crow Vineyards on a daily basis. Ms. Crow stated there is a distinct difference between Crow Vineyards wine and Casa Carmen wine. Both wines are premium wines; however, Casa Carmen's least expensive wine is \$30.00 whereas Crow Vineyards' most expensive wine is in mid-\$20.00 range. Therefore, the number of visitors to Casa Carmen would differ of those visiting the Crow Vineyards.

Testimony from the general public was offered by Judy Crow, Crow Vineyards, and James Price, Linda Thomas, and Rosie Elgin, residents of the Mount Pleasant Plantation Subdivision. The consensus of the subdivision neighbors who testified is that of concern with the number of events proposed, traffic generated on the subdivision private road, and the number of people who are projected to attend the Casa Carmen, artisanal wine tasting room (generally and for proposed events).

Mr. Price stated that he has lived in the subdivision for 20 years. The residents of the subdivision have been responsible for the maintenance of the private road and the grass. The road was black topped 16 or 17 years ago, and it is currently in need of maintenance. Mr. Price shared his concerns that guests will drive past the Pallares' entrance off of the private road and continue back to the subdivision causing more wear and tear on the road. He also expressed concern that the guests may decide to wonder off of the Pallares property and into the subdivision. Mr. Price is further concerned with the number of events per year and the number of people who may attend those events. He requested a 2-year trial period to allow the Pallares family to get started and established. After the 2-year trial, he suggested that the Pallareses meet with residents of the Mt. Pleasant Plantation Subdivision, Planning Commission, and Planning, Housing, and zoning staff.

Mrs. Thomas stated she is the newest resident of the subdivision and finds the neighborhood to be quiet. She also is concerned with the potential increase in traffic. She noted that the view of the vineyard is beautiful from her front door, but she is worried about the number of people walking the vineyard.

Ms. Elgin stated she has lived in the subdivision the longest and finds the neighborhood very quiet. She is concerned with the noise generated when the proposed events are taking place. Ms. Elgin is also concerned with the traffic and that their privacy will be invaded.

After much discussion and consideration of the testimony and all applicable laws, Mr. Hickman made a motion to send a favorable recommendation to the Kent County Board of Appeals for the Special Exception adaptive reuse proposal to operate an artisanal winery tasting room out of the Almshouse. He conditioned his motion on limiting the number of special wine tasting events to 12 per year and remaining within the

limitations of hours, capacity, noise and traffic, in addition to the proposed operating hours (from 12 pm to 6 pm on Fridays, Saturdays, Sundays and select holidays). Mr. Hickman based his motion on the following findings of fact:

- The proposal is consistent with many comprehensive plan strategies relative to promotion of existing local businesses, support of agritourism, and reuse and preservation of existing historic structures.
- The Almshouse, Mount Pleasant County Farm, is located at the entrance of the Mt. Pleasant Plantation Subdivision. Built in 1847, the Almshouse is listed in the Maryland Inventory of Historic Properties (K-95).
- The applicant intends to preserve the history of the Almshouse and proposes as minimal alteration as possible while ensuring the stability and longevity of the structure. Half of the Almshouse is underroof and the other half is exposed to the elements. In order to preserve the entire structure, the applicant proposes to carry out the renovation in two phases. Phase I consists of finishing the portion that has a roof by reinstalling the original door and finishing the windows and the interior for use as an artisanal winery tasting room and a place to sell their locally-crafted wine. Phase II consists of securing the ruins from further deterioration and repurposing the basement to serve as a wine cellar.
- The landscape plan has been addressed through the applicant's site plan application.
- The applicant proposes access to the site from the existing driveway off of Mt. Pleasant Plantation Drive. There is currently no access point from the site to MD Route 446, and the existing driveway is located approximately 75 feet from the state road. The applicant has provided verification to State Highway Administration (SHA) staff that the proposed use shall not generate traffic of a type or amount inappropriate for all access roads and the surrounding area and that the use does not require road improvements detrimental to the character of the area.
- The applicant proposes operating hours from 12 pm to 6 pm on Fridays, Saturdays, Sundays and select holidays. The Commission conditioned its support on limiting the number of special wine tasting events to 12 per year and remaining within the limitations of hours, capacity, noise and traffic. The Casa Carmen product is crafted in very small amounts and has a high price point; therefore, the nature of the product limits the number of people and traffic onsite.
- The surrounding area is characterized by residential development within the Mt. Pleasant Plantation Subdivision approved in 1990 and along Broad Neck Road. Otherwise, the property is surrounded by both agricultural and forested land.
- This property is located approximately 2 miles south-west of the Town of Chestertown where the closest churches, schools, and places of public gathering are located.
- The site is served by an onsite well and septic system. The Kent County Environment Health Department has assessed the adequacy of these onsite services, and the site plan reflects the location of the existing septic system, as well as the sewerage disposal areas. In addition, the existing well will be abandoned and replaced per Health Department specifications.
- The applicant proposes to maintain the Mount Pleasant County Farm property in its natural state while preserving the Almshouse from destruction by neglect by repurposing it for their agribusiness. The Almshouse is a significant historic structure and will be renovated and repurposed in two phases.
- The proposed use is consistent with many aspects of the purpose and intent of the Rural Character District.
- The Comprehensive Plan and the Ordinance encourage the preservation of historic structures. In the sense that this project involves the adaptive reuse of a documented historic structure, it is appropriate to both land and structure(s).
- In a deteriorating condition for decades, the restoration of the Almshouse should have a positive impact on property values. The applicant has outlined use of the property which is specific and clearly defined which should not have a negative impact on property values.
- The proposed renovations to the structure and additional areas of construction (patio and sidewalk) should not negatively impact water quality or the overall habitat onsite.

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

**# 17-07 Chester River 2, LLC** whom are requesting a one-year extension to a variance that was granted in 2017, Case No. 17-07. The applicant received a variance from the setback requirement established in the “RCD”, Resource Conservation District, relative to the required location of an accessory dwelling unit in relation to a principle dwelling unit. The applicant was granted a variance in order to construct the proposed replacement dwelling at a greater distance than is permitted in the Resource Conservation District. Substantial construction has not occurred in accordance with the approval and no changes to the approved design and conditions are proposed at this time.

The parcel is improved with a primary single-family dwelling and accessory dwelling unit that are located in the Critical Area buffer, a detached garage, 2 large accessory buildings, and several small outbuildings. The applicant proposes to demolish the primary dwelling unit and replace it an approximate distance of 509 feet from the accessory dwelling unit. The 45.7-acre parcel is located on Learman Road and on the Chester River. The property is located in the Seventh Election District and is zoned Resource Conservation District and Agricultural Zoning District. The surrounding area is characterized by waterfront homes and agricultural uses.

Present and duly sworn in were: Ryan Showalter, Counsel for the applicants, and Ms. Jones, Environmental Planner.

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 applicants 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.

Ms. Jones gave an overview and history 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 which 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.

Ms. Jones explained that the applicants have not submitted changes relative to the previously approved variance and no changes in the location of the proposed dwelling nor the building plans and landscaping plans have been proposed. Ms. Jones further noted that if the applicants alter the plans by increasing the square footage of the proposed dwelling or the location of said dwelling the applicants will be required to submit a new variance request.

Mr. Showalter explained that the applicants have not changed the plans nor have plans to change the plans that were approved at the April 2017 Board of Appeals meeting. Applicants are well aware that if changes are needed they will have to come back to the Planning Commission and Board of Appeals for approvals.

After some discussion and consideration of the testimony and all applicable laws, Mr. Crowding made a motion to send a favorable recommendation to the Kent County Board of Appeals regarding a one-year extension of the variance that was granted on April 26<sup>th</sup> of 2017 and that all other previously approved conditions remain consistent with the granting of the one-year extension as follows:

- 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 Commission based their recommendation on the findings made during their March 2017 review and the following additional facts:

- There have been no Ordinance changes to the provisions applicable to this application since the
- Granting of this variance.
- The applicants are currently asking for an extension of one year because substantial construction will not begin within the one-year approval of the 2017 variance.
- The applicants are continuing to evaluate several design considerations, including size, location, and orientation of the replacement home; however, no changes to the approved design or conditions of approval are proposed at this time.
- Start of construction had been estimated for winter of 2018; while the one-year extension would allow for it to begin in April of 2019.

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

### **Code Amendments- County Code of Public Local Laws of Kent County**

Having reviewed and discussed the Sale of Easement Provisions found in Chapter 171-7 of the County Code, the Planning Commission confirmed its support of an amendment to the provisions to allow for, under specified conditions, the exclusion of land from easement applications. This amendment is consistent with MALPF's policy that addresses "withheld" acreage.

Accordingly, Mr. Hickman made a motion to send a favorable recommendation to the County Commissioners to amend *Kent County Public Laws Chapter 171-7*. Mr. Crowding seconded the motion, and the motion passed unanimously.

### **Staff Reports**

Mitch Mowell:

- The Motion for Summary Judgement in the Bayshore Land Holdings Case be heard by Judge Jensen in Circuit Court on 21 March was canceled due to the snow event on that date. The hearing has not been scheduled.
- Mr. Mowell stated two enforcement actions involving zoning violations in the County were filed in the District Court regarding junk, debris, trailers, and untagged cars on parcels in Golts.

Amy Moredock:

- Ms. Moredock granted administrative special exceptions to construct accessory structures in excess of 1,200 square feet on parcels less than 5 acres on 19 and 26 March.
- The Board of Appeals denied an appeal of the zoning administrator's decision to deny a building permit for a cargo storage container on 19 March. The Board opined that the use of a cargo container as a residential accessory structure is not listed in the Ordinance and, therefore, not permitted

- The following public hearings were held on 27 March 2018 at 6pm in the Commissioners Hearing Room:
  - The Draft Comprehensive Plan – comment period closes on 6 April at 4:30pm. The Commissioners are considering comments received specific to Millington’s annexation plans reaching from their town boundary to the land surrounding the Route 291-301 intersection.
  - Zoning text amendment to address school bus parking in certain districts – approved as drafted on 3 April. The provision will be enacted on 14 April.
  - Zoning text amendment to allow food processing facilities in the Crossroads Commercial Zoning District – approved as drafted on 3 April. The provision will be enacted on 14 April.
- Millington has submitted draft amendments to their Comprehensive Plan which will be reviewed by the Planning Commission at their 3 May meeting and forwarded to the Commissioners thereafter. These amendments are specific to expanding the Town’s designated growth area. Staff is coordinating with the Town, Kent and Queen Anne’s County Departments of Water and Wastewater, Maryland Department of Environment, and Maryland Department of the Environment, as the Comprehensive Plan amendments are being supported by amendments to both counties’ Water and Sewer Plans.
- Kent County Bay Bridge Monitoring Committee –The Committee meets on the fourth Wednesday of each month at 10:00 a.m. in the Commissioners Hearing Room. The meetings will be livestreamed, and all Committee materials will be posted on the County’s website. Two meetings have been held since its reenactment. On 28 March, the Committee heard from a local National Environmental Policy Act (NEPA) expert. The next meeting will be held on 25 April; local grassroots groups have been invited to share their efforts with the members.
- The County submitted its 2018 Local Transportation Priorities letter to Maryland Department of Transportation.
- Staff has coordinated with the Public Works and Parks and Recreation Departments to review and issue permits for replacement signs at County parks.

Stephanie Jones:

- Ms. Jones attended the March 20<sup>th</sup> Eastern Shore Climate Adaptation Partnership meeting. The Community Rating System (CRS) for floodplain insurance was discussed. Currently, Kent County is not in the program because the cost/benefit is not present.
- Ms. Jones attended the Eastern Shore Planners Lunch, hosted by ESLC in which much of the meeting covered updates to what is happening in neighboring jurisdictions and the Denton natural gas power plant and pipeline.
- A pier length variance will be on the May Planning Commission agenda.
- Eastern Shore Land Conservancy is holding a spring climate conference entitled, “Climate, Culture, & Change: How Social Factors Shape the Eastern Shore’s Climate Dialogue” at Washington College on April 21<sup>st</sup>.
- Ms. Jones will be attending the Critical Area Commission Quarterly Meeting on April 19<sup>th</sup>.

Katrina Tucker:

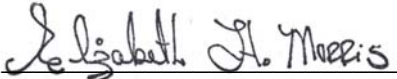
- The County Commissioner’s public hearing on the updated Comprehensive Plan was held on Tuesday, March 27 and the record for submission of written comments is open until close of business on Friday, April 6th.
- The Forest Conservation Annual Reports for the County and all municipalities were completed and submitted to Maryland Department of Natural Resources, Forestry Division.


- Staff attended the Eastern Shore Land Conservancy (ESLC) planner’s meeting that was held on March 23<sup>rd</sup>. Topics discussed included the Bay Bridge Crossing and a Natural Gas Pipeline that has been the subject of recent news articles. There have been numerous inquiries to county staff, as well as submission of a Public Information Act request concerning this pipeline; however, there have been no submissions to the County of anything with respect to such a project.
- She continues to assist property owners in the completion of applications to sell easements to the Maryland Agricultural Land Preservation Foundation (MALPF). Currently, 22 applications have been submitted for this year’s biennial cycle. Completed applications must be submitted to Ms. Tucker by May 1<sup>st</sup>, and everything is due to MALPF by June 29<sup>th</sup>.
- The Round 2 Kent County offers from the 2016 MALPF cycle continue to settle with baseline inspections of the farms and accompanying reports being completed. Kent County had a total of 6 applications receive either Round 1 or Round 2 offers from the 8 submitted in the 2016 easement MALPF cycle.
- The Maryland General Assembly approved the State budget with \$48.9 million for MALPF, which is a significant increase the amount budgeted in a single year for MALPF over the past decade. In light of this level of funding, there is a good probability that MALPF will return to an annual application cycle for FY2019. The MALPF Board of Trustees is seeking input from the local Agricultural Boards and Counties on the impact of returning to an annual cycle.
- Ms. Tucker reported that MARBIDCO’s (Maryland Agricultural and Resource-Based Industry Development Corporation) Next Generation Farmland Acquisition Program received \$2.5 million in funding in the State budget for FY2019. The Maryland General Assembly also approved a bill that requires three additional years of funding at the \$2.5 million level for this program, which will have to be budgeted in FY2020, 2021, and 2022. The application for the upcoming cycle is expected to be released by May 1<sup>st</sup> and the submission deadline to MARBIDCO will be July 31<sup>st</sup>. Therefore, applicants must contact their local program administrators prior to June 29<sup>th</sup>.
- She presented the County’s testimony at the March 6<sup>th</sup> Massey Solar, LLC. public hearing, and another public comment hearing has been scheduled for Thursday, April 26<sup>th</sup> at 6:30 p.m. at St. Clement’s Episcopal Church at 32940 Maryland Line Road in Massey. This proposal was presented to the Planning Commission as a conceptual site plan by Community Energy Solar, LLC. in December of 2015 and is proposed on the lands of Benjamin Stafford, that are zoned “Employment Center”. The Evidentiary Hearing is scheduled for May 2<sup>nd</sup> in Baltimore.

**General Discussion:**

The members asked for project updates regarding the following projects: the Swantown Creek stream restoration project (the Sassafras River Association received a grant and a sediment control permit to implement this project) and the food processing text amendment in the Crossroad Commercial District (the County Commissioners approved this text amendment which becomes effective on April 14<sup>th</sup>).

There being no further business for the good of the organization, the meeting was adjourned at 4:37 p.m.

  
Elizabeth Morris, Chairman

  
Tonya L. Thomas, Clerk