

MINUTES

The Kent County Planning Commission met in regular session on Thursday, May 3, 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; Kim Kohl; William Crowding; and Joe Hickman. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; Stephanie Jones, Environmental 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 April 5, 2018, meeting, were approved as presented.

APPLICATIONS FOR REVIEW:

#18-20 William N. Williams – Mr. William N. Williams is requesting a variance from the 150-foot pier length limit in order to construct a replacement 204-foot pier with mooring pilings. The existing pier is considered non-conforming because it is greater than 150-foot in length; once a nonconforming structure is voluntarily removed it must be replaced in conformance with the Ordinance provisions. The applicant proposed to retain an existing "L" head and boat lift. The property, located along Quaker Neck Road in the Seventh Election District, is improved by a single-family dwelling, swimming pool in the front yard, and the existing 204' pier. The property is zoned Critical Area Residential, "CAR", and the surrounding area is characterized by a residential neighborhood near to the Town of Chestertown. The property is located along the waterfront of the Chester River.

Present and duly sworn in were: Robert Nickerson, Extreme Measures Surveyors; Steve MacGlashan, Coastal Dock & Pile; and Ms. 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 5.5 establishes the minimum yard requirements; Article V, Section 5.4.8 which permits private piers as an accessory use under certain conditions; and Article IX, Section 2.2 which authorizes the Board of Appeals to grant variances from the pier length requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of the Ordinance.

Mr. Nickerson stated the main structure of the pier was built in the early 1960's, and the L shape pier may have been installed in early 1990's. There are no records or permits to know when the construction occurred. There are two existing platforms on the existing pier that are not in compliance with the state regulations. The two platforms exceeding 200 square feet are to be removed. A state permit was issued which would allow new pilings to be driven next to the existing pilings without the granting of variance from Kent County Board of Appeals. "Shoring up" construction would take approximately 3 weeks, be three times the cost, and cause more disturbance than it would if the pier were to be completely removed and replaced. Mr. Nickerson stated completely removing the pier would minimize the disturbance to the substrate, minimize the cost and reduce construction time.

Mr. MacGlashan stated the traditional way to remove a pier is to remove the pier in its entirety and stay within the riparian right buffer of the property owner as opposed to extending over the riparian rights of the adjacent property owner to anchor and construct within the limits of the existing pier.

Mr. Mowell stated there are no records to indicate the pier extension was permitted or a variance was submitted or granted. The existing pier is non-conforming and removing the pier and replacing the pier at a current length of 204 feet without a variance would still not be in compliance.

General Testimony was offered by David Yohn, adjacent property owner, and Barrie-Islev-Petersen, a resident of Kent County.

Mr. Yohn stated the cleanest and neatest thing that could happen is to completely remove the pier and replace it. He prefers the construction to efficiently and does not want the construction project to occur over a long period of time.

Ms. Islev-Petersen stated she is not directly-impacted by this construction; however, the tide runs through the area very quickly causing silting issues. The existing pier has been under water multiple times. She asked how high the new construction will be. Mr. MacGlashan consulted the exhibits and stated that the existing pier is approximately 2½ feet in height, and the new construction will be approximately a foot higher. The height is gauged on the measurement of mean tide. On average, he said that pier heights would be set at the lowest height of 2¼ feet and the highest being 3½ feet.

Mr. Birkmire asked how long it will take to remove the existing pier and construct a new pier versus shoring up the existing pier (repairing it in place). Mr. MacGlashan stated it will take up to 3 weeks for completion, depending on the weather conditions, to remove and replace the pier and add another week to 10 days to shore up (renovate in place) the pier and maneuver around the existing pier.

Ms. Kohl asked if the L-shape portion of the pier will be raised to meet the new pier. Mr. MacGlashan stated there will be a step down or an easy ramp from the new pier to the L-shape platform to minimize cost. The L-shape platform is in good shape and does not need to be replaced.

After much discussion and consideration of the testimony from Mr. Nickerson and Mr. MacGlashan and all applicable laws, Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals for a variance of 54 feet from the 150-foot pier length limit to construct a replacement 204-foot pier with mooring pilings and based on the following findings of facts:

- The proposed pier with mooring piles meets all setback requirements.
- The replacement 204-foot pier will neither exceed 25% of the width of the waterway nor will it encroach within the edge of the channel.
- A permit has been authorized by the Maryland Department of Environment and Army Corps of Engineers for the proposed pier. The State of Maryland does not have a pier length requirement.
- A variance of 54-feet is needed to construct a replacement pier with mooring piles at a total pier length of 204-feet.
- The granting of the variance will neither cause substantial detriment to adjacent properties nor change the character of the neighborhood which consists of small water front properties.
- The variance is consistent with the Critical Area Law, Comprehensive Plan, and Ordinance with regards to water quality.
- The practical difficulty onsite may be attributed to the construction option which presents the least amount of impact to the riverbed and subaquatic vegetation (SAV'S). Exhibit 1 documents a variance scenario in order to replace the 204-foot pier rather than to repair the existing structure (Exhibit 2) in accordance with the Ordinance nonconformance provisions. This option will result in approximately 45-square feet of decking removal that is currently

shading the riverbed. The removal of this decking and more expeditious construction timeframe result in a benefit to the river bed, the fisheries, and SAV.

- This construction scenario does not reflect a self-imposed hardship but does reflect a less-impactful project consistent with water quality strategies identified in County and Riverkeeper plans.
- The applicant representatives testified the new construction will be reducing the amount of shading from 450-feet to approximately 430 – 435-feet.

Mr. Crowding seconded the motion, and the motion passed 6-1 vote with Ms. Morris voting against the motion.

Millington Comprehensive Plan Amendments – The Town of Millington has proposed amendments to its Comprehensive Plan (last updated in 2014). As outlined in 2014, the town proposes to formalize significant changes to the following sections of their Comprehensive Plan to accommodate an expanded annexation proposal:

- Chapter 3 – Land Use
- Chapter 5 – Municipal Growth
- Chapter 7 – Water Resources
- Chapter 10 – Transportation

Ms. Moredock gave a brief overview explaining that the town proposes to formalize significant changes to the aforementioned sections of their Comprehensive Plan to accommodate an expanded annexation proposal. The proposed amendments include changes to text, tables, and maps.

After much discussion and consideration, Mr. Hickman made a motion to send a favorable recommendation to the County Commissioners for the Town of Millington Comprehensive Plan Amendments as submitted and based their decision on the following findings:

- The proposed amendments are consistent with the following 2018 Kent County Comprehensive Plan goals and strategies:
 - *Expand regulatory flexibility for the creation of and location of employment centers and industrial uses.* Through its economic development planning and land use implementation measures, the County will consider support flexibility in and an expanded area of employment center and industrial zoning in general to support commercial and mixed-use development. These efforts will especially focus on the Worton area, and the US 301 corridor with a priority that the area between the Town of Millington and the lands surrounding the Route 291-Route 301 intersection be guided by the desired expansion of services and land use identified by Millington’s municipal growth element.

Potential new sites will be located where infrastructure exists or can be cost-effectively developed consistent with this Comprehensive Plan and the County’s Water and Sewerage Plan.

- *Growth in Towns.* The five incorporated towns of Betterton, Chestertown, Galena, Millington, and Rock Hall are the County’s principal residential, commercial, and business centers. These towns are the best locations for future growth and development.

The towns have planning commissions, zoning boards, comprehensive and other plans, and ordinances along with supporting physical infrastructure. These growth centers also contain the critical mass of population allowing for the most efficient and convenient support systems and uses.

Given this goal of focusing growth in existing population centers, the County will coordinate and support town efforts to manage growth. To this end, Kent County will also coordinate its planning efforts with the towns' growth aspirations.

- *Water Resources Element Analysis.* The Water Resources Element identifies drinking water resources and wastewater treatment facilities needed to support existing and future development. It also identifies suitable receiving waters for existing and future wastewater and stormwater discharges. With the initial Water Resources Element adopted in 2010, Kent County and the Towns of Betterton, Chestertown, Galena, Millington, and Rock Hall prepared a water resources element to “focus growth in areas best suited to use the existing and planned water and wastewater infrastructure that will protect and preserve the natural environs, promote economic growth and support diversity of living environments in Kent County.” The current Water Resources Element continues this approach.
- *Transportation.* Coordination of local planning with our regional neighbors will be a key to properly managing growth in the US 301 corridor. Growth between the Town of Millington and the lands surrounding the Route 291-Route 301 intersection will be guided by the desired expansion of services and land use identified by the Town of Millington’s municipal growth element.
- The County’s policy has been and continues to be to review and approve the Town’s formally proposed changes during the annexation process. The County has documented that it would support an annexation proposal and is amenable to waive the “five-year rule” when that annexation review is presented.
- Please note and address apparent discrepancies between the map labeled “E-1: Kent County Existing Zoning” and “Map 5-2: Annexation Plan.” It may be that the map labeled “E-1: Kent County Existing Zoning” is not a map to be included in the Millington Comprehensive Plan; if this is the case, then please clarify.
- The County’s Tier Map, Comprehensive Water and Sewer Plan, Priority Funding Areas, and Critical Area Program are all governed by State requirements and may not be altered in the Comprehensive Plan. There are specific regulations which govern such amendments to these programs.
- The County’s Tier Map and Priority Funding Areas Map will be amended in the 2018 Kent County Comprehensive Plan to include all the land within the proposed area following the completion of the annexation projects as they occur. The County will coordinate with the Town to amend these maps in accordance with the state provisions as needed.
- The County will amend the Town of Millington Municipal Growth Area map in accordance with the amended map as presented.
- The County’s Growth Allocation Policy specifies that Growth Allocation is to be awarded to municipalities upon request. The County may not reclassify lands until an annexation proposal is under review.
- The County Comprehensive Water and Sewer Plan must be amended in accordance with the proposed amendments to the existing County service areas. Upon formal annexation proposal in conjunction with the proposed Millington Wastewater Treatment Plant closure with sewerage service transfer to the Sudlersville WWTP, the Department of Water and Wastewater would request the following:

- Completed amendment application form with all required information.
- The existing agreement between the Town of Millington and Kent County must be updated/amended subject to discussions with the Town of Sudlersville.
- Draft agreement between the Town of Sudlersville and Town of Millington specifying the terms of Sudlersville acceptance of sewerage from Millington, including the flow from Kent County that is the responsibility of Millington as documented in all existing intra-municipal agreements.
- Draft statement from Queen Anne's County documenting their concurrence with the proposal and their intent to amend the proposal into the Queen Anne's County Comprehensive Water & Sewerage Plan.
- Preliminary Engineering Report describing the project, including options investigated and associated costs.
- Additional discussion and more specifics are needed for both proposed water and sewer projects prior to any amendment to the plan.
- The Planning Commission members addressed questions and concerns about the Water and Wastewater issues regarding how they will be handled and the timing and pacing of the annexation, so it respects the current Town.

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

Staff Reports

Amy Moredock:

- The *Kent County Comprehensive Plan* was approved on 10 April by the Commissioners and adopted by resolution on 17 April 2018! She polled the members to discern who wished to have paper copies of the Comprehensive Plan and who would rather access the Plan online.
- Ms. Moredock granted an administrative special exception to construct an accessory structure in excess of 1,200 square feet on a parcel less than 5 acres on 23 April. Conditions relative to Ordinance compliance on this property for an illegal use and structure were placed on the approval of this case.
- 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 are livestreamed and all Committee materials are posted on the County's website. At its 25 April meeting, members of Kent Conservation and Preservation Alliance and Stop the Span shared their advocacy efforts and focus with members. The next BBMC meeting will be held on 23 May.
- On 10 May from 6-8pm, MDOT will hold a public meeting at Kent County Middle School to discuss the status of the Bay Crossing Study (Tier 1 NEPA). She will follow up with the members by emailing them the meeting notice.
- The County Agricultural Preservation Program Recertification application was submitted last week and will be considered for approval at the 23 May Maryland Agricultural Land Preservation Foundation (MALPF) board meeting. The Kent Agricultural Preservation Advisory Board approved the Recertification report on 26 April and the County Commissioners approved and submitted the application on 27 April.
- 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 this and next week. 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.

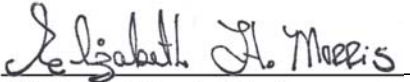
- Staff continues to assist property owners in the completion of applications to sell an easement to 2018 MALPF cycle. Currently, 22 applications have been submitted thus far for this year's biennial cycle. Ms. Moredock anticipates that approximately 25 applications will be completed for ranking to be forwarded to the MALPF Board.
- Due to the Governor fully funding MALFP in the FY19 budget and in anticipation of continued funding support, the MALPF Board approved the following changes to the easement cycle at its 24 April meeting:
 - Applications will be due on Monday, 2 July 2018
 - The application cycle will go back to a single funding year.
 - Each county may submit a maximum of 12 applications.
- Ms. Moredock alerted the members to a controversy which has arisen due to a property owner's proposal to subdivide a parcel in conflict with the Agricultural Zoning District poultry house provisions. These provisions establish that not only does the operation require 600-foot setbacks from all property lines and a current Nutrient Management Plan, but also the owner/operation to be in ownership of sufficient acreage to handle the manure and waste generated.


Stephanie Jones:

- Ms. Jones attended the public hearing on 26 April for the Massey Solar project to reiterate the County's position in complying with the Land Use Ordinance with regards to Forest Conservation and the State Forest Conservation Act. The evidentiary hearing was held on 3 May 2018.
- Ms. Jones attended the Translating Science for Comprehensive and Environmental Plans Workshop on 27 April at the Horn Point Laboratory in Cambridge, Maryland. The workshop included a tour of the laboratory with insights into the process of aquaculture restoration. Speakers addressed optimism with climate change, the science behind the Chesapeake Bay with more extreme weather events, and partnerships and initiatives that have been created to imbed the science in the planning that has/will occur.
- Ms. Jones will attend a pre-bid meeting for the second phase of a stream restoration project at St. Paul's Church. The first phase has been constructed.
- Ms. Jones will attend the Maryland State of the Coast Conference 22 May through 23 May.

General Discussion:

There being no further business for the good of the organization, the meeting was adjourned at 3:16 p.m.


Elizabeth Morris, Chairman


Tonya L. Thomas, Clerk