

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, February 7, 2019, 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; James Saunders; Kim Kohl; Joe Hickman; William Crowding; and Commissioner, P. Thomas Mason. Staff in attendance were Amy Moredock, Director of Planning, Housing, and Zoning; Stephanie Jones, Environmental Planner; Carla 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** – December 6, 2018 minutes were approved as written and distributed.

### **PUBLIC HEARING**

Ms. Morris closed the meeting and opened the public hearing.

**#19-03 County Commissioners of Kent – Zoning Text Amendment Special Exception Use in Agricultural Zoning District (AZD)** – Structures for the buying, processing, and sale of farm products related to agriculture (increasing the size limit from 25,000 square feet to 50,000 square feet.).

Ms. Moredock gave a brief overview of the proposed amendments to the *Kent County Land Use Ordinance* District Regulations, Agricultural Zoning District: Article V. Section 1.3 and Special Exceptions: Article VII, Sections 7 (59). The County Commissioners of Kent are proposing to amend the provisions to increase the size limit placed on structures for the buying, processing, and sale of farm products related to agriculture from 25,000 square feet to a 50,000 square foot limit.

Testimony was not offered by the audience; therefore, Ms. Morris closed the public hearing and re-opened the meeting at 1:34 p.m.

### **AGRICULTURAL PRESERVATION DISTRICT APPLICATIONS FOR REVIEW**

**ALP 19-1 John Louis and Barbara Ann Chance – Mr. and Mrs. Chance wish to create an Agricultural Preservation District on their 131.973-acre farm located on Dudley Chance Road in the First Election District.** The farm consists of 118 acres of crop land. One hundred percent of the soils are considered Class II or III. There are 2 dwellings on the farm. The farm is zoned “AZD”, Agricultural Zoning District, and is outside the 10-year water and sewer plan.

Present and duly sworn in were John Chance; owner, and Carlena Aldrich, and Carla Gerber, GIS Specialist.

Ms. Gerber provided background information and applicable laws as outlined in the staff report. She further noted that this farm is located within the Priority Preservation Area (PPA). The farm is located outside the 10-year water and sewer planning service area. Ms. Gerber advised the Agricultural Preservation Advisory Board reviewed and recommended approval of this application.

Mr. Chance stated he was getting older and can no longer farm. Carlena and her husband have been tending to the chickens and cows. It is with hopes that Mr. and Mrs. Aldrich will purchase the farm later.

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

- Meets the minimum size requirement of 50 acres.

- At least 50% of the land consists of Soil Capability Classes I, II, III, or Woodland Groups 1 or 2.
- The land is outside of the 10-year water and sewer service area.
- The property consists of land which is either used primarily for production of food or fiber or is of such open space character and productive capability that continued agricultural production is feasible.
- The Agricultural Preservation Board reviewed this application and unanimously submitted a favorable recommendation.
- The property meets or exceeds the criteria or creating an Agricultural Land Preservation District, complies with the goal of the Comprehensive Plan to preserve large blocks of contiguous prime agricultural land, and is located within the County's PPA. The nutrient Management Plan as well as the Soil Conservation Plan are current.

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

**ALP 19-2 Gregg C. and Christine M. Asplundh – Mr. and Mrs. Asplundh wish to create an Agricultural Preservation District on their 330.92-acre farm located on Shallcross Wharf Road in the Second Election District.** The farm consists of 230 acres of crop land and 95 acres of woodland. Approximately 73% of the soils are considered Class I, II, or III or Woodland Group 2. There is one dwelling on the parcel; a second dwelling was demolished in early 2018. The farm is zoned "AZD", Agricultural Zoning District, and "RCD", Resource Conservation District. It is outside the 10-year water and sewer plan.

Mr. Hickman stated he is the caretaker for the farms adjacent to the property and 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 Phil Hoon, Counsel for Mr. and Mrs. Asplundh, and Ms. Carla Gerber, GIS Specialist.

Ms. Gerber provided background information and applicable laws as outlined in the staff report. She further noted that this farm is located within the Priority Preservation Area (PPA). The farm is located outside the 10-year water and sewer planning service area. Ms. Gerber advised the Agricultural Preservation Advisory Board reviewed and recommended approval of this application.

Mr. Hoon stated Mr. and Mrs. Asplundh purchased the farm a little over a year ago and would like to preserve the land under the program. The property owners have a house on a farm adjacent to the property.

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

- Meets the minimum size requirement of 50 acres.
- At least 50% of the land consists of Soil Capability Classes I, II, III, or Woodland Groups 1 or 2.
- The land is outside of the 10-year water and sewer service area.
- The property consists of land which is either used primarily for production of food or fiber or is of such open space character and productive capability that continued agricultural production is feasible.
- The Agricultural Preservation Board reviewed this application and unanimously submitted a favorable recommendation.
- The property meets or exceeds the criteria or creating an Agricultural Land Preservation District, complies with the goal of the Comprehensive Plan to preserve large blocks of contiguous prime agricultural land, and is located within the County's PPA. The nutrient Management Plan as well as the Soil Conservation Plan are current.

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

**APPLICATIONS FOR REVIEW:**

**#19-03 County Commissioners of Kent – Zoning Text Amendment Special Exception Use in Agricultural Zoning District (AZD) – Structures for the buying, processing, and sale of farm products related to agriculture (increasing the size limit from 25,000 square feet to 50,000 square feet).**

Present and duly sworn in were Larion Stoltzfus, owner/operator of Delmarva Feed and Seed, and Ms. Moredock, Director.

Ms. Moredock stated, on behalf of the County Commissioners of Kent County, staff puts forward the proposed amendments to the *Kent County Land Use Ordinance* District Regulations, Agricultural Zoning District: Article V. Section 1.3 and Special Exceptions: Article VII, Sections 7 (59) to amend the provisions to increase the size limit placed on structures for the buying, processing, and sale of farm products related to agriculture from 25,000 square feet to a 50,000 square foot limit. She noted that the County Commissioners, at their 18 December 2018 meeting, unanimously agreed to sponsor this zoning text amendment citing changes in the agricultural industry and a need to provide an increased size limit on this business which supports the local industry.

Such structures are permitted as primary uses in the agricultural zoning districts. These applications go straight to the Board of Appeals as special exception cases. This application for amendment is specific to cases from 10, 001 square feet up to 25,000 square feet with the proposal to cap that limit for the Board of Appeals at 50,000 square feet. 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.

Specifically, staff proposes to **ADD** and ~~delete~~ the following:

District Regulations, Agricultural Zoning District, Special Exceptions: Article V, Section 1.3

28. *Structures* for the buying, processing, and sale of farm products related to *agriculture*, including the sale of fertilizer and seed but not including animal products, in *structures* that exceed 10,000 square feet but are less than ~~25,000~~ **50,000** square feet

Special Exceptions: Article VII, Section 7

59. *Structures* for the buying, processing, and sale of farm products related to *agriculture*, including the sale of fertilizer and seed but not including animal products, in *structures* that exceed 10,000 square feet but are less than ~~25,000~~ **50,000** square feet

The Planning Commission members expressed concern regarding the impact of an operation of the proposed size on neighboring properties and discussed a need to provide adequate setbacks or property size to accommodate such a large operation. In addition, members asked for an explanation of the changes in the agricultural industry which substantiate a need for the amendment to the existing size limitation. Mr. Stoltzfus explained that small dairies and feedlots are struggling; therefore, operations are growing in size and feed orders are much larger. He said that there is a need to provide more product to compete in the market.

Following a lengthy discussion and consideration of testimony, Mr. Hickman made a motion to send a favorable recommendation for the proposed amendments with the following proposed addition to the language which addresses adequacy of property size:

District Regulations, Agricultural Zoning District, Special Exceptions: Article V, Section 1.3

28. *Structures* for the buying, processing, and sale of farm products **ON FARMS** related to *agriculture*, including the sale of fertilizer and seed but not including animal products, in *structures* that exceed 10,000 square feet but are less than ~~25,000~~ **50,000** square feet

Special Exceptions: Article VII, Section 7

59. *Structures* for the buying, processing, and sale of farm products **ON FARMS** related to *agriculture*, including the sale of fertilizer and seed but not including animal products, in *structures* that exceed 10,000 square feet but are less than ~~25,000~~ **50,000** square feet

Mr. Hickman based his recommendation on the following findings:

- The County Commissioners of Kent have identified a need for the proposed amendment to the *Ordinance* citing changes in the agricultural industry and a need to provide an increased size limit on this business which supports the local industry.
- The Kent County Agricultural Advisory Commission has reviewed and recommended approval of the proposed zoning text amendments.
- The Planning Commission finds a need to ensure adequate property size and setbacks from property lines for a structure and use of this size. The *Ordinance* defines a farm as “a parcel of land not less than 20 acres in size used for agriculture as defined in Article XI of this *Ordinance*.”
- The Comprehensive Plan recognizes that agriculture is the keystone to Kent County’s heritage and its future. Agriculture is the linchpin that buttresses the County’s economy, culture, history, and everyday experiences.
- The Comprehensive Plan outlines goals and strategies which support existing businesses; seeks to retain and promote existing businesses and assist in their growth; encourages the development of farm-based business including agri-tourism; and promotes and supports the agricultural industry and secure its future in the County.
- The Critical Area Law is not applicable to the Agricultural Zoning District.

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

**# 18-74 James and Deborah C. Peters – Minor Amendments to a Subdivision (Building Restriction Line Removal)** The applicants are proposing an amendment to the approved building restriction lines (Approved Building Area) on their Lot 7 within the Langford Farm Subdivision. Specifically, the applicants propose to remove the building restriction lines in their entirety.

Present and duly sworn in were Jon Glass, Kustomscapes representing the applicants, and Ms. Jones, Environmental Planner.

Ms. Jones gave an overview, including a description and history of the application, and cited all applicable laws of the *Kent County Land Use Ordinance* as follows: Article V, Section 2.5 which establishes the minimum yard setback requirements; Article VI, Section 6 which establishes subdivision requirements and authorizes the Planning Commission to grant final subdivision approval, and Article VI, Section 6.5 which establishes subdivision amendment requirements.

Ms. Jones gave a brief overview of the subdivision history and stated since the approval of the Langford Farm Subdivision such plat amendments have been submitted by property owners of lots 5, 8, 13, and 15 in the subdivision and approved by the Planning Commission.

Mr. Glass stated that when the house was originally built, the house was close to the building restriction lines.

Mr. Hickman asked if the building restriction lines applied to all the lots in the Langford Farm Subdivision. Ms. Jones stated it did apply to all the landowners in the subdivision, and the subdivision could have applied for the building restriction line removals had they chose to. Traditionally, each property owner has applied individually and not the subdivision residents as a whole.

Ms. Moredock stated that if the Planning Commission approved this application, then it would be the fifth revision in this subdivision. Ms. Moredock asked if the members felt such applications could be streamlined in the future by authorizing administrative review moving forward.

After much discussion and consideration of the testimony and all applicable laws, Mr. Hickman made a motion to approve the minor amendment to the approved subdivision plat for removal of building restriction lines of the Langford Farm Subdivision based on the following findings of fact:

- Conditions have changed since the original subdivision was established.
- The removal of building restriction lines will be in line with the neighbors, and there have been no objections to this request or requests in the past.
- There have been other lots that have had the building restriction lines removed.
- The Resource Conservation District setback requirements will remain.
- The applicants received a letter of approval from the Architectural Committee.

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

Mr. Hickman made a motion to authorize the Planning Director to review and approve requests for minor amendments (such as the removal of building restriction lines) to approved subdivisions administratively.

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

## **Staff Reports**

Amy Moredock:

- Four amendments were conveyed to the County Commissioners at their 8 January meeting (sediment control mandated updates, country inn provision updates, animal shelter clarification, and utility scale solar systems in residential districts as special exception uses). The hearing schedule has been set to ensure due consideration of each case as follows:
  - CHR Bill No. 1-2019 – Country inn special exception provision updates
    - ✓ 1<sup>st</sup> reading/introduction: 5 February 2019
    - ✓ 2<sup>nd</sup> reading/public hearing: 5 March 2019
    - ✓ 3<sup>rd</sup> reading/vote: 19 March 2019
  - CHR Bill No. 2-2019 – Utility scale solar systems in residential districts as special exception uses
    - ✓ 1<sup>st</sup> reading/introduction: 19 February 2019
    - ✓ 2<sup>nd</sup> reading/public hearing: 19 March 2019
    - ✓ 3<sup>rd</sup> reading/vote: 2 April 2019
  - CHR Bill No. 3-2019 – Animal shelter use: TBD
  - CHR Bill No. 4-2019 – Sediment control mandated updates

- ✓ 1<sup>st</sup> reading/introduction: 16 April 2019
- ✓ 2<sup>nd</sup> reading/public hearing: 7 May 2019
- ✓ 3<sup>rd</sup> reading/vote: 21 May 2019
- Aberdeen Proving Ground Joint Land Use Study: GIS Specialist Carla Gerber attended the Draft Presentation of Susquehanna River Impacts & Accretion Study by EA Engineering meeting on 31 January. She is verifying Kent County data to be included in this Plan. This JLUS attempts to mitigate existing compatibility issues, facilitate the prevention of future issues, and improve coordination between the local communities and APG. The intent of the process is to establish and encourage a working relationship between the local communities, agencies, and APG.
- Ms. Moredock participated in the MDOT Chapter 30 Briefing on 6 February. This is a briefing for counties and municipalities to do a quick refresher on Chapter 30 requirements, the application portal use, and revised technical guide changes. All Chapter 30 applications are due through the Chapter 30 Portal on March 1, 2019. The Chestertown Boulevard project qualifies for submittal through this Portal and must be resubmitted annually. Jim Wright and I coordinated this process last year and will do so again.
- MDOT local priorities letters must be submitted no later than 31 March.
- The Bay Bridge Monitoring Committee will meet on 27 February meeting. Agenda items will include updates from Kent Conservation and Preservation Alliance and Queen Anne's County and about proposed legislation (Anne Arundel County). I will continue to seek updates from MDOT (I have not been successful, hence the cancellations in the past).
- Proposed legislation of interest:
  - SB107/HB212 – Proposal to add Anne Arundel County to list of consent counties noted in Transportation Article 4-408. The hearing is scheduled for 13 February at 1pm.
  - HB102/SB442 – Proposal to delete all counties (which are Eastern Shore Counties) from list of consent counties noted in Transportation Article 4-408 with the effect of expanding to all counties in the State a prohibition on State agencies constructing within the nine Eastern Shore counties a toll road, toll highway, or toll bridge without the consent of majority of the affected counties. The hearing is scheduled for 7 February at 1pm.
  - SB99/HB639 – Proposal to add Anne Arundel County to an existing list of Counties which are “exempted” from meeting certain building code provisions for agritourism structures (as defined).
- Certificate of Public Convenience and Necessity (Urban Grid/Morgnec Solar, LLC): The company has filed a second CPCN application, this time to Construct a 45 MW Solar Photovoltaic Generating Facility in Kent County, Maryland on the land known as the Clark Farm. The County, the Town of Chestertown, and Kent Conservation and Preservation Alliance have filed motions to intervene. All parties requested that a scheduling conference set for 23 January in Baltimore be postponed in light of the amicus brief that Chris Drummond submitted relative to the Washington County v. Perennial Solar case and the Morgnec Solar, LLC ZTA application. Due to these requests and PPRP staff's findings that the CPCN application was incomplete, the PSC Judge has postponed the scheduling conference until 8 March 2019.
- Staff is coordinating with ShoreRivers (Sassafras River Association) to begin the fact-finding process regarding Waterway Improvement Funding to dredge Swantown Creek and implement a community shoreline restoration project in Shorewood Estates. We are pulling together a group of local and state partners to assist.
- In addition, staff is involved in an inordinate amount of larger-scale zoning violations involving residents clearing Critical Area buffers and properties without first applying for and/or receiving building permits. There is also an uptick in site construction noncompliance with sediment control measures. The staff is being as flexible and nonpunitive as the law will allow, with a focus on compliance but they are all in very difficult positions.

Mitch Mowell:

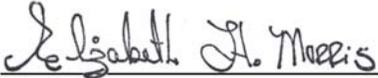
- The County Commissioners engaged in the mediation regarding the Bayshore Campground case. The mediation did not include agencies, Maryland Department of Environment or the Critical Area Commission. As a result of two days of mediation, a Consent Order was entered that was signed by the judge on January 17, 2019. A letter was received the following day from the Critical Area Commission that stated that their agency is not bound by the result of the negotiations and is reviewing the property for compliance with Critical Area law. There are also ramblings that the Maryland Department of Environment may act as well. The idea of any future contests will not involve the County and be between the property owner and those of the Maryland Department of Environment and the Critical Area Commission.

Stephanie Jones:

- Ms. Jones held a TMDL Committee Meeting on January 3<sup>rd</sup>. Possible new committee members were discussed along with an update to the WIP III process. The committee contributed to a list of future projects and local programs that can be included in the WIP III for Kent County.
- On January 4<sup>th</sup> Mr. Jones submitted Phase III WIP strategies to the Maryland Department of the Environment. This included strategies out to 2025 and more long-term strategies. Staff is currently waiting on feedback from the Maryland Department of the Environment.
- The kickoff meeting for the required Nuisance Flood Plan was held on January 9<sup>th</sup>. Those in attendance discussed the background of the state bill, as well as the definition and locations and impacts of nuisance flooding within the County. Eastern Shore Land Conservancy will be working with Kent County to complete the process and create the Nuisance Flood Plan. The next meeting will be held February 19<sup>th</sup> to review the draft plan. The Planning Commission should receive this plan for review at the March meeting.
- The Critical Area Quarterly report was sent to the Critical Area Commission for the 2<sup>nd</sup> quarter of budget year 2019.
- Ms. Jones attended the Critical Area Quarterly Meeting on January 17<sup>th</sup>. Solar and wind energy uses within the Critical Area were discussed, especially within the Resource Conservation District.
- Ms. Jones and Ms. Moredock attended the second phase of courses for the Maryland Climate Leadership Academy on January 24<sup>th</sup> and 25<sup>th</sup>. This was the second of three courses to become a Certified Climate Change Professional.

**General Discussion:**

There being no further business for the good of the organization, the meeting was adjourned at 3:19 p.m.

  
Elizabeth Morris, Chairman

  
Tonya L. Thomas, Clerk