

MINUTES

The Kent County Planning Commission met in regular session on Thursday, April 4, 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; William Crowding; Joe Hickman; and Commissioner, P. Thomas Mason. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; Carla Gerber, GIS Specialist; 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 March 7, 2019, meeting, were approved as presented.

AGRICULTURAL PRESERVATION DISTRICT APPLICATIONS FOR REVIEW

ALP 19-3 Thornton Farm, LLC – Mr. Hoon, sole member of Thornton Farm, LLC, wishes to create an Agricultural Preservation District on his 20.04-acre parcel located on Perkins Hill Road in the Second Election District (Lot 1). The farm consists of 12 acres of crop land and 2 acres of woodland. Approximately 67% of the soils are considered Class II or III or Woodland Group 2. There is no dwelling. It is zoned "RCD", Resource Conservation District, and is outside the 10-year water and sewer plan.

Present and duly sworn in were Phil Hoon, Counsel and land owner, and Ms. Carla Gerber, GIS Specialist.

Ms. Gerber provided background information and applicable laws 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 that the Agricultural Preservation Advisory Board has reviewed and recommended approval of this application.

Mr. Hoon stated his parents originally put the farm in MALPF except for three twenty-acre parcels for family planning. Time and circumstances have changed, Mr. Hoon now owns the farm along with the three lots and wishes to return the lots back to the farm.

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:

- At least 50% of the land consists of Soil Capability Classes I, II, or 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 for 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 19-4 Thornton Farm, LLC– Mr. Hoon, sole member of Thornton Farm, LLC, wishes to create an Agricultural Preservation District on his 6.635-acre tract located on Perkins Hill Road in the Second Election District (Lot 5). The tract consists of 5 acres of crop land and 1.635 acres of woodland. Approximately 73.5% of the soils are considered Class II or III. There is no dwelling. It is zoned “RCD”, Resource Conservation District, and is outside the 10-year water and sewer plan.

Present and duly sworn in were Phil Hoon, Counsel and land owner, and Ms. Carla Gerber, GIS Specialist.

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

Mr. Hoon stated this was a twenty-acre parcel that had been conveyed to David Hoon, who is now deceased. Mr. David Hoon’s estate sold fifteen-acres to the adjacent property owner, Harefield Farm. The 6.635-acre parcel was retained by Mr. Hoon, who added it back into the original farm.

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:

- At least 50% of the land consists of Soil Capability Classes I, II, or 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 for 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 19-5 Strong Associates II, LP – Represented by Robert H. Strong, wishes to create an Agricultural Preservation District on its 111.485-acre farm located at 2959 Eastern Neck Road in the Fifth Election. The farm consists of 84.2 acres of crop land and 8.3 acres of woodland. Over 84% of the soils are considered Class II or III. There are three dwellings on the parcel. The farm is zoned “RCD”, Resource Conservation District, and is outside the 10-year water and sewer plan.

This farm is not adjacent to any other protected lands. It is generally surrounded by farmland and is located within the Agricultural Priority Area.

Present and duly sworn in was Ms. Carla Gerber, GIS Specialist.

Mr. Crowding stated he has conducted professional business with Mr. Strong and therefore, recused himself from the dais.

Ms. Gerber provided background information and applicable laws 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 that the Agricultural Preservation Advisory Board has reviewed and recommended approval of this application.

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, or 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 for 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:

19-08 King's Grant Farm, Inc., requests a variance from the 150-foot pier length limit in order to construct a 200-foot pier. The pier will consist of four boat lifts, two personal watercraft lifts, two 3'x30' finger piers, and a 10' by 20' "L" head to be used by two waterfront properties under the ownership of Kings Grant Farm, Inc.

Present and duly sworn in were Lance Young, Counsel; Tyler Johnson and Webb Johnson, applicants; Robert Nickerson, Extreme Measure Surveyors; 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 which 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. Young gave an overview of the topography and the location that is best-suited for the pier location with a map presentation. Mr. Young stated that the erosion of Millers Island, now under water, likely caused siltation along the applicants' shoreline. Millers Island was clearly visible on maps dated 1936-1972 and now can only be seen on an extremely low tide.

Mr. Nickerson gave an overview of the time, equipment, and research that went into determining the water depths along the shore to illustrate Mr. Young's point.

Mr. Tyler Johnson stated that the farm was bought in 1957/1958 by the Johnson family. He testified that as of the early 1980's Miller's Island no longer existed, and that the shoreline has become more shallow over time.

Mr. Tyler Johnson and Webb Johnson stated the two parcels are owned by the same property owners; therefore, a shared permit agreement should not be required as put forth by staff. Planning Attorney Mitch Mowell clarified that if the Planning Commission was not inclined to concur with staff's interpretation, then a lot line adjustment to consolidate Parcel 67, Tract 1, Parcel 2 (location of pier) with Parcel 60 Tract 1, Parcel 1 should be completed, as the applicants do not reside on the parcel on which the pier is proposed.

After much discussion and consideration of the testimony and all applicable laws, Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals for a variance of 50 feet from the 150-foot pier length limit to construct a 200-foot pier based on the following findings of fact:

- A variance of 50 feet is needed in order to construct a pier at a total pier length of 200 feet.
- The granting of the variance will neither cause a substantial detriment to adjacent properties nor change the character of the neighborhood which consists of large, waterfront properties in agricultural production.
- 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 unusual siltation and shallow water depths likely caused by the erosion of Millers Island.
- Historical anecdotal testimony from the land owner has been provided in place of scientific evidence. Testimony included that the disappearance of Millers Island in the early 1980's occurred as the depths of the shoreline decreased over time.
- The shallow water depths have not been caused by the applicants' own actions.
- The proposed pier meets all setback requirements.
- The 200-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.

The following conditions were added to the motion and are recommended before a permit is approved:

- The applicant must comply with all shared pier provisions outlined in the Kent County Land Use Ordinance; or
- A lot line adjustment to consolidate Parcel 67, Tract 1, Parcel 2 (location of pier) with Parcel 60, Tract 1, Parcel 1 be completed.

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

18-68 Remanded for further consideration: Zoning Text Amendment – Animal Shelters as Defined by the County Code of Public Laws – Amend Article V, Section 15 to add “animal shelters” to permitted uses and structures in the Industrial District (I) in addition to the Agricultural (AZD) and Crossroads Commercial (CC) Districts (per PC Public Hearing held on 6 December 2018)

The County Commissioners of Kent, at their 5 March 2019 meeting, unanimously agreed to add industrial zoned land to the proposed amendment thus remanding the application back to the Planning Commission for their consideration. General testimony was offered by Casey Hurd, Kent County resident. Mr. Casey read the letter he had presented to the Planning Commission members at their March meeting. Mr. Hurd requested that the Planning Commission remove the Crossroads Commercial District from the proposed text amendment.

The members discussed the statements of intent of both the Industrial and the Crossroad Commercial zoning districts and opined that adding “animal shelters as defined by the County Code of Public Laws” is consistent with the Industrial District. The member further agreed by consensus opinion that the County Commissioners may favorably consider removing the proposed use from the Crossroads Commercial District.

After much discussion and consideration of the testimony and based on previous findings made at the 6 December 2018 meeting, Mr. Hickman made a motion to send a favorable recommendation to the County Commissioners to add the Industrial Zoning District to the motion made 6 December 2018. He based his recommendation on the fact that adding “animal shelters as defined by the County Code of Public Laws” is consistent with the Kent County Comprehensive Plan and the Kent County Land Use Ordinance. Mr. Hickman further noted the consensus opinion of the Planning Commission in support of the County Commissioners to act as they see fit in determining the applicability of the Crossroads Commercial District to the proposal considered in December 2006.

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

Staff Reports

Amy Moredock:

Five amendments were conveyed to the County Commissioners in 2019 (sediment control mandated updates, country inn provision updates, animal shelter clarification, utility scale solar systems in residential districts as special exception uses, and 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 50,000 square feet as a special exception use).

The updates on that hearing schedule on each case are as follows:

- CHR Bill No. 1-2019 – Country inn special exception provision updates
 - ✓ 1st reading/introduction: 5 February 2019
 - ✓ 2nd reading/public hearing: 5 March 2019
 - ✓ 3rd reading/vote: 19 March 2019 – Approved
 - CHR Bill No. 2-2019 – Utility scale solar systems in residential districts as special exception uses
 - ✓ 1st reading/introduction: 19 February 2019
 - ✓ 2nd reading/public hearing: 19 March 2019
 - ✓ 3rd reading/vote: 2 April 2019 – Denied
 - CHR Bill No. 3-2019 – Animal shelter use: TBD – Remanded
 - CHR Bill No. 4-2019 – Sediment control mandated updates
 - ✓ 1st reading/introduction: 16 April 2019
 - ✓ 2nd reading/public hearing: 7 May 2019
 - ✓ 3rd reading/vote: 21 May 2019
 - CHR Bill No. 5-2019 – Increase in size of on agricultural structures to 50,000sf: TBD
- Certificate of Public Convenience and Necessity (Urban Grid/Morgnec Solar, LLC): The scheduling conference was held in Baltimore on 8 March 2019. County and Chestertown staff, as well as

members of Kent Conservation and Preservation Alliance attended the hearing. The schedule has been set in accordance with the applicant's request, though the interveners placed their concerns on the regard regarding the local process. The PSC Public Hearing will be held on 24 April 2019 at 7pm at Washington College in the Norman James Theater.

- On 18 March, Critical Area Commission met with the Commissioners and staff to discuss the Consent Order in the Bayshore Campground case as it relates to the implantation of the Critical Area laws. County staff will pursue the following CAC program enhancements: zoning text amendment to allow for the expansion/intensification of a legal nonconforming use in the RCD through growth allocation; a growth allocation policy amendment which allow for growth allocation to be utilized on properties which are not adjacent to existing Limited and/or Intense Development Areas; and a County growth allocation application for the area of use sanctified in accordance with the consent order and affiliated site plan.
- The Bay Bridge Monitoring Committee met on 27 March at 10am and were addressed by Queen Anne's County Commissioner Jim Moran and public works staff Steve Cohoon. It was a very valuable conversation. The committee was briefed on important QA County traffic studies and plans. QA and Kent staff will further coordinate as participating agents.
- Chief Enforcement Officer Mike Bitting hosted an Environmental Site Design forum with MDE staff at the Public Works building on the morning of 28 March.
- The County and Towns' Forest Conservation Act annual reports were submitted to DNR on 29 March. The County submits this report annually on behalf of the Towns.
- Ms. Moredock held a hearing regarding an administrative setback variance case on 1 April. The applicant is seeking setback variances in order to replace a dwelling onsite. The case was approved with Health Department conditions.
- County Department Budget Sessions were held on 2 April 2019.
- Community Planner interviews are scheduled on 11 and 15 April. Six candidates will be interviewed.
- FYI: A farmer has begun construction of a waste management structure without first obtaining a permit. While staff has not seen anything formal, it would appear that the structure is to be constructed about 125 feet from the front property line and directly on the side lot line between two parcels. While it is a very unfortunate situation, it not any one party's fault. The farmer consulted with a soil conservation district planner to design and locate the structure. That planner did so in accordance with state standards and referred the farmer to the Planning Department to obtain a permit. In an effort to avoid this scenario from recurring, staff from the Planning Department and Soil and Water Conservation District has communicated and will meet to identify a clear review process moving forward.

Stephanie Jones:

- The Nuisance Flooding Plan was reviewed and approved by the County Commissioners on March 19, 2019. The approved plan has been posted on the Planning and Zoning website, submitted to the Maryland Department of Planning, and will become part of the Hazard Mitigation Plan.
- On March 19 the County Commissioners approved Code Home Rule Bill No. 1-2019 to allow for the expansion of Country Inns.
- Ms. Jones attended the March 19 bi-monthly ESCAP meeting with Ginger Gregg from Emergency Services and discussed the Kent County Nuisance Flooding Plan process with the regional group.
- Ms. Jones attended the ShoreRiver Restoration Project Tour on April 3 which included showcasing the ravine restoration project that was completed within the Swantown Creek watershed of the Sassafras. Other stops included a wetland creation at Starkey Farms, and Worton Park wetland.

- Ms. Jones and Ms. Moredock will be attending the last series of classes to prepare for the Climate Change Professional certification being held April 9th through 10th at Chesapeake College for the Maryland Climate Leadership Academy. In order to earn the certificate a series of test will need to be passed.
- A TMDL Committee meeting will be scheduled for April. Greg Sandi, from MDE will go over the State Watershed Implementation Plan process with the local committee.
- The draft of the state wide Watershed Implementation Plan will be released April 12th. Public comment can be submitted to Maryland Department of the Environment until June 7th.
- The quarterly report for the Critical Area Commission will be due mid-month along with the statewide quarterly meeting that will be held April 18th.

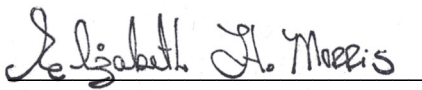
General Discussion:


At its 6 September 2018 meeting, the Kent County Planning Commission reviewed a combined concept and preliminary site plan to construct a new 16,000 square-foot production building near an existing concrete production building and storage yard on the lands of Brickyard Land Holdings, LLC (Gillespie Precast). The applicant is now proposing to construct a 17,371 square foot addition to the existing 40,300 square foot resulting in a 57,670 square foot concrete production building with affiliated gravel storage yard exceeding 3 acres in size.

As a general discussion point, staff seeks input from the Planning Commission to discern whether they are comfortable reviewing the updated plan as a final plan with an amendment to the preliminary approval or if they would like to see the amended plans as a preliminary site plan.

The Planning Commission members stated more screening needed to be added to the site plan and that they will review the changes as an amendment to the preliminary approval with the addition of a final site plan review at the applicant's own risk.

There being no further business for the good of the organization, the meeting was adjourned at 3:50 p.m.


Elizabeth Morris, Chairman


Tonya L. Thomas, Clerk