

MINUTES

The Kent County Planning Commission met in regular session on Thursday, January 2, 2020, 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; Joe Hickman; William Crowding; and Commissioner, P. Thomas Mason. Staff in attendance were Stephanie Jones, Environmental Planner; Robert Tracey, Community Planner; G. Mitchell Mowell, Planning Commission Attorney; and Sandy Adams, Clerk.

Ms. Morris called the meeting to order at 1:30 pm.

MINUTES – December 5, 2019 minutes were approved as written and distributed.

PUBLIC HEARING

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

19-72 County Commissioners of Kent – Zoning Text Amendment (Campgrounds)

Ms. Jones, describing the proposal, said the Board of County Commissioners of Kent County have proposed an amendment to the *Kent County Land Use Ordinance* Article III, Section 1 (Establishment of Districts, Intense Development Area), Article V, Section 2.2.17 (Resource Conservation District, Permitted Uses and Structures), and Article XI, Section 2.46 (Definitions) of the *Kent County Land Use Ordinance* to allow expansion of campgrounds in existence before August 1, 1989, within the Resource Conservation District.

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

APPLICATIONS FOR REVIEW:

19-59 Robert Fry and Judy Gifford – Setback Variance (Waste Management Structure)

Present and duly sworn in were Planning staff member Robert Tracey, and applicant Robert Fry, 12246 Locust Grove Road, Kennedyville, Maryland.

Mr. Tracey gave a brief overview of the proposal, cited relevant issues, and staff comments. Robert Fry and Judy Gifford are requesting a variance from the setback requirements in the Land Use Ordinance to enable the construction of a covered, animal-waste-storage structure on their 61.73-acre dairy farm located on Locust Grove Road in the Second Election District. The 48-foot by 124-foot waste management structure will be 237 feet from the rear property line and 373 feet from the front property line. It will be used for the storage of manure to comply with dairy farm best management practices and to meet the requirements associated with Maryland's nutrient management guidelines. The farm is zoned "AZD," Agricultural Zoning District.

The proposed waste management structure is intended by the applicant to blend into the surrounding agricultural landscape. Other farms in the area have similar structures. According to the applicant's narrative, the building's proposed location is in between existing buildings and the proposed building would not be visible to adjacent property owners. The applicant has stated that the proposed structure would not change the character of the neighborhood.

The requested new structure is consistent with the Comprehensive Plan, which promotes Kent County as an agriculturally friendly county and promotes the use of best management practices.

The approximately 61.73-acre property is uniquely elongated from the north to south (see site plan). Consequently, the distance between the front and rear property lines, in other words, the depth of the property, is shallow. The farm is also encumbered by a deed of conservation easement by the Maryland Environmental Trust (MET) and the Eastern Shore Land Conservancy (ESLC). The terms of the easement allow for “nonresidential structures designed, constructed, and utilized in connection with the agricultural practices of the property.” The deed also establishes a no-construction zone along the majority of the eastern or front property line. The proposed location of the structure is outside of this area, and no objections from MET or ESLC Staff were raised, when County staff contacted them for their input. It would appear that the practical difficulty test may be met due to the unique shape of the parcel, combined with the building restrictions from the deed of conservation easement.

Mr. Tracey said based on the information currently available prior to the presentation of evidence and testimony to the public, staff recommends sending a favorable recommendation to the Board of Appeals.

Ms. Morris wanted to know if any correspondence has been received. Mr. Tracey said no correspondence has been received.

Ms. Morris asked Mr. Fry to describe his proposal.

Mr. Fry said Mr. Tracey summarized the application clearly, and there is not much more to add. He said this management change that they have decided to do will enable them to store animal waste for up to six months. He said it is a benefit to the Morgan Creek, Chester River, and Chesapeake Bay. He said they do not have to do it but would very much like to do it for those reasons.

Ms. Morris asked the Commission if they have any questions.

Mr. Crowding commented that there isn't anywhere else the proposed structure can go and putting it anywhere other than the proposed site would be more obtrusive.

Mr. Sutton said he believes the proposed site for the structure fits right in with everything that is currently there.

Ms. Morris wanted to know if the structure will look like the chicken manure structures. Mr. Fry said yes but that the structure is punched into the ground more, approximately 5-6 feet, and will be covered with sidewalls.

Mr. Sutton wanted to know how the bottom portion of the structure will be made. Mr. Fry said the bottom will be made of concrete.

Mr. Sutton wanted to know what method will be used for transporting from the cow barn to the storage structure. Mr. Fry said via barn cleaner.

Ms. Morris asked for public comments and/or questions and there were none.

Commissioner Mason, speaking to Chairman Morris, said this is the third application of this type within six months. He said we need to reassess the requirements for this process so that these types of projects do not need to continue to go through this process.

Ms. Morris commented that the Land Use Ordinance needs to be updated.

Ms. Morris asked for a motion.

Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals based on the following findings:

- The Comprehensive Plan promotes the use of agricultural best management practices, and the proposal is consistent with the intent of the Land use Ordinance.
- Granting a variance will not cause a substantial detriment to neighboring properties, nor will it change the character of the neighborhood and district.
- The practical difficulty was not caused by the applicant's own actions and is due to the unique configuration of the property.
- The applicant has not started construction before issuance of a permit.

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

19-63 Mary Morris Holdings, LLC – Site Plan (Building Addition)

Prior to considering the applicant's proposal, Chairman Morris disclosed that she lives on Mary Morris Road, but she does not believe it will affect her ability to be objective and impartial.

Present and duly sworn in was Robert Jacob, 25498 Mary Morris Road, Chestertown, Maryland.

Mr. Tracey describing the proposal said Robert Jacob, representing Mary Morris Holdings, LLC, is requesting concept, preliminary, and final site plan approval to construct a 320-square-foot, concrete pad and a 2,808-square-foot addition to an existing manufacturing building located at 25498 Mary Morris Road in the Third Election District. The property is zoned Industrial (I) and is currently developed with two industrial buildings with a gross floor area of approximately 11,500 square feet. In 2013, a minor site plan was submitted and approved to construct a 448-square-foot, storage addition onto the existing manufacturing building. The currently proposed addition exceeds the limits for a minor site plan, necessitating a major site plan review before the Planning Commission.

Mr. Tracey said the applicant has sufficiently addressed all the site plan and all industrial zoning standards as prescribed by the Kent County Land Use Ordinance. Mr. Tracey said staff recommends granting combined concept, preliminary, and final site plan approval.

Ms. Morris wanted to know if any correspondence has been received. Mr. Tracey said no correspondence has been received.

Ms. Morris asked the applicant to describe his proposal.

Mr. Jacob said his application is for the purpose of expanding his current business.

Mr. Sutton wanted to know if there will be further expansion requests and if there will be vacant space left after this expansion.

Mr. Jacob said he does not know what the future holds with regards to where the business will take him. He said the property consists of two acres, and there will be a lot of property left in addition to what is currently being proposed. He said his current proposal will cover an existing concrete pad.

Ms. Morris wanted to know if the existing pad will be expanded upon. Mr. Jacob said he will have to level the pad, but not expand it.

Mr. Sutton wanted to know about the employee shifts. Mr. Jacob said they do not operate on Saturday and Sunday nights.

Ms. Morris wanted to know if the proposed addition will help expand employment. Mr. Jacob said he is looking to add 2-3 more employees this year.

Ms. Morris wanted to know if Mr. Green continues to store equipment on his property. Mr. Jacob said he still allows Mr. Green to store four or five pieces of equipment on the back of the property.

Ms. Morris asked the Commission if they have any questions and there were none.

Ms. Morris asked for public comments and/or questions and there were none.

Ms. Morris asked for a motion.

Mr. Hickman made a motion to approve concept, preliminary, and final site plan based on the following findings:

- The proposal is consistent with many Comprehensive Plan goals and strategies relative to retention and promotion of existing businesses.
- Per testimony, the business plan is consistent with the plan submitted at prior site plan review.
- Architectural renderings have been provided. The addition will match the existing building.
- The applicant has adequately addressed the performance standards and has submitted a certified engineer's report.
- The proposal meets bulk standards and industrial standards in the Kent County *Land Use Ordinance*.
- With respect to traffic, the applicant noted traffic patterns will not be altered by the construction of the building addition.
- Parking standards have been met.
- No additional signage is proposed.
- A fence exists around the perimeter of the property.
- The building and other new construction will not be visible from Mary Morris Road.
- Site access will be unaltered by project construction.
- The Health Department has approved this application.
- The applicant did not receive any response to a Citizen Participation letter that was mailed to surrounding property owners.

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

19-72 County Commissioners of Kent County – Zoning Text Amendment (Campgrounds)

Mr. Mackey, Director of Planning, Housing, and Zoning, was duly sworn in.

Mr. Mackey summarized the following Bayshore Land Holdings, LLC applications that were before the Commission: He said one is for Growth Allocation and the other is for Site Plan Review. Bayshore Campground is seeking improvements and Kent County has entered into agreement with them. One of the duties within the Planning department is to work with Bayshore towards implementation of that agreement. He said this is a four-part package being proposed, and the goal is to keep them together.

He said the Bayshore Land Holdings Growth Allocation application is for the purpose of expanding the campground and if favorably approved by the Commission, the Campground use will be a legal use, and the policy change would allow for the kind of growth allocation that Bayshore seeks to be permitted under the County's policy.

He said the goal for the Zoning Text Amendment is to add *Campgrounds* to the Land Use Ordinance text, and the proposal amends the text in three places. The amendment would not allow for new campgrounds to be added in the County but would allow for the expansion of those already in existence. There will only be two properties within Kent County where this amendment would be applicable to. The approval of the Zoning Text Amendment would also allow for *recreational vehicles* to be added in the Definitions under Campgrounds. The addition of recreational vehicles reflects the modern condition of today. The text amendment is a refinement of the Critical Area program, and this along with the growth allocation proposal will be sent to the Critical Area Commission after adoption for their review.

Mr. Mackey said the other two parts of this four-part package are two applications, one is for site plan review and the other is the application itself. Mr. Mackey said by approving the Zoning Text Amendment, it makes the Land Use Ordinance clearer for campgrounds. Mr. Mackey said staff recommends a favorable recommendation to the County Commissioners.

Mr. Sutton wanted to know if there is a time limit imposed on growth allocation proposals. Ms. Jones said every three years applicants must request an extension of their growth allocation if nothing is completed.

Ms. Morris asked the Commission if they have further questions. A discussion ensued about the amount of time recreational vehicles can remain in the campground.

Ms. Morris asked for public questions and/or comments and there were none.

Ms. Morris asked for a motion.

Mr. Hickman made a motion to send a favorable recommendation to the County Commissioners based on the following findings:

- Adding campgrounds to the list of legally non-conforming uses that can continue to operate and be extended addresses a public need which was anticipated in the Resource Conservation District during the adoption of the initial Critical Area provisions in allowing for the expansion of conference centers, resorts, retreats, hotels, and motels existing and in use as of August 1, 1989.
- The proposed changes are consistent with the Critical Area Law as noted above and the following Comprehensive Plan goals and strategies:
 - Support existing businesses.
 - Enhance and expand locally based tourism that is rooted in the unique natural, cultural, and

- historical features and qualities of Kent County.
- Retain and promote existing businesses.
- Promote and expand facilities, services, and activities that support natural resource-based economic development.
- The proposed amendment will only affect two existing properties.
- A similar text amendment was proposed in 2016 and received a favorable recommendation from the Planning Commission.

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

16-58 Bayshore Land Holdings, LLC/Frederick J. Wick – Growth Allocation (Campground Expansion)

Ms. Morris asked for a description of the proposal.

Mr. Mackey said the Growth Allocation and Site Plan applications are two partner applications that go together, and the package is being put together to implement moving forward.

Mr. Mowell, attorney for the Commission, informed the Commission of the consent order and stated the following: The County Commissioners entered into a consent order and pursuant to the consent order, the idea was to allow the campground to expand and continue and to have a septic system installed over time. Within six weeks of the signing of the consent order, the Critical Area Commission met with the County Commissioners because of concerns and as a result of that meeting, there was a roadmap for meeting requirements of the Critical Area Commission and the Maryland Department of the Environment. The reason for the Zoning Text Amendment, Growth Allocation, and Site Plan application, is to allow growth allocation so there is not a density problem. In closing, Mr. Mowell informed the Commission that the three applications need to be done and are necessary in order to comply with the terms of the consent order.

Present and duly sworn in was Daniel C. Saunders, Counsel for Bayshore Land Holdings, LLC.

Mr. Saunders said this request is not unlike what the County Commissioners did a few years ago in order to bring the marinas into code. He said to be out of code is very problematic for a business owner, and the idea back in 2016 was to try and make the campground a conforming use so they could grow and expand without bumping into issues. He said it may sound simple, but it is not because of the critical area overlay to the zoning. He said the County Commissioners growth allocation policy stood in the way of granting growth allocation and he said that policy needs to be changed. He said four years from now will be the soonest there will be any addition of campsites but at present, this will allow for the construction a new bathhouse and for the old one to be removed from the buffer.

Ms. Morris asked the Commission for questions and/or comments and there were none.

Ms. Morris asked for public questions and/or comments and there were none.

Ms. Morris asked for a motion.

Joe Hickman made a motion to send a favorable recommendation to the County Commissioners for the Growth Allocation application of Bayshore Land Holdings, LLC, Tax Map 51, Parcel 229, Lots 1 and 2 with 42.377 in the Critical Area and zoned Resource Conservation District and that it be changed to the Intense Development Area. This recommendation is based on the Concept Site Plan presented by DMS

dated January 4, 2018 and marked as Exhibit # 1. The Commission bases their findings on the following findings:

- The proposed growth allocation request to Intense Development Area is based on an updated concept site plan reviewed by the Planning Commission at the January 2, 2020 meeting. The site plan was last dated January 4, 2018 submitted at the time of the Planning Commission meeting by DMS for Bayshore Land Holdings Expansion on behalf of Bayshore Land Holdings, LLC.
- The Kent County Comprehensive Plan states, “Promote and expand facilities, services, and activities that support natural resource-based economic development” as a strategy. Campgrounds are listed within these facilities. A goal within the Tourism subsection of the Economy section of the Comprehensive Plan states, “Enhance and expand locally based tourism that is rooted in the unique natural, cultural and historic features and qualities of Kent County.
- The proposed project is suitable for the location and proposes minimal risks to the environment and minimizes impacts to habitat protection areas. The Environmental Report that was provided indicates that no habitat protection areas are located at this site.
- The site development will use innovative design to minimize negative impacts on water quality, habitat protection areas, woodlands, and forest. The site plan indicates a habitat enhancement area adjacent to a forest interior dwelling bird habitat that is located directly east of the property. The site plan also indicates a stormwater management pond installed within the existing campground to improve water quality.
- This proposal is consistent with the goals and intent of the Comprehensive Plan due to the fact it supports existing businesses in the County. The proposal is also consistent with the *Land Use Ordinance* and Critical Area Program.
- The proposed project accomplishes two standards to mitigate the negative effects caused by higher intensity development. This application will provide for creation of wetlands within the existing campground area and habitat for forest interior dwelling birds, expanding the wooded area the is located directly to the east across Eastern Neck Island Road.
- The application will comply with the proposed Kent County Growth Allocation Policy once amended.
- The proposed plan and growth allocation application were submitted in 2016 and 2017 to the Department of Planning, Housing, and Zoning for multiple reviews by the Technical Advisory Committee. The site plan and application may not address comments from the most recent Technical Advisory Committee review.
- This application is consistent with the Consent Order between County Commissioners of Kent County and Bayshore Land Holdings, LLC signed January 17, 2019.

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

Kent County Growth Allocation Policy Amendment

Mr. Mackey and Mr. Saunders previously explained the importance of the amendment to the current Growth Allocation Policy in previous applications. The updated changes will allow for growth allocation to be granted for tourism, heritage development, and marine use that will expand or intensify a lawfully existing intensive use of August 1, 1989 and not located in a growth area.

Discussion took place with the previous application in regard to the amendment.

Ms. Morris asked for a motion pertaining to the Growth Allocation Policy.

Joe Hickman made a motion to send a favorable recommendation to the County Commissioners pertaining to the Growth Allocation Policy as provided in the packet and as staff reported.

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

16-57 Bayshore Land Holdings, LLC/Frederick J. Wick – Concept/Preliminary Site Plan Review

Present and duly sworn in was Kevin Shearon, DMS & Associates, P.O. Box 80, Centreville, Maryland.

Mr. Shearon displayed a concept site plan dated January 4, 2018 which shows the existing, proposed, and future site with the approved septic area; this exhibit was marked as Applicants Exhibit #1 and was admitted into evidence. Mr. Shearon said the campground currently has 168 existing sites but with the growth allocation, there will be 248 sites.

Exhibit 1, revised January 4, 2018 was entered into the record as an update to the submitted site plan. This included supporting documents such as planting plans, habitat enhancement areas, and environmental characteristics.

Ms. Morris asked staff if they have had the chance to look at the January 4, 2018 site plan and if so, they would care to comment. Ms. Jones said the last TAC comments that were received for the site plan were on December 8, 2017 therefore, the January 2018 site plan would have been revised since then.

A discussion ensued with regards to conceptual site plan review.

Staff Reports

Rob Tracey:

- Mr. Tracey attended the 2019 World Maryland Councils Summit in Annapolis on December 12, 2019.
- Mr. Tracey conducted a Demolition site visit for a property in Worton on Clark Road.
- Mr. Tracey attended the Board of Appeals Meeting on December 16, 2019.

Stephanie Jones:

- Mr. Tracey, Ms. Gerber, and Ms. Jones spoke with Jason Dubow and Daniel Rosen of Maryland Department of Planning (MDP) on December 13, 2019 regarding small scale and utility scale solar and wind in Kent County, text amendments, and the role of the Renewable Energy Task Force. MDP is working with the Governor's Task Force on siting of renewable energy and was looking to Kent County as a case study.
- Ms. Jones will be drafting the bi-annual Critical Area Status Report for July 1, 2019 through December 31, 2019.
- Ms. Jones has been corresponding with the Critical Area Commission on all Bayshore applications.

William Mackey:

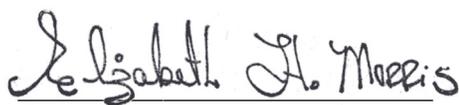
- Mr. Mackey thanked Ms. Morris for attending and representing the Commission at the farewell for Tonya Thomas.

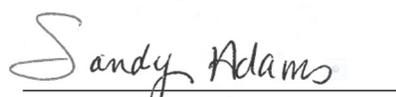
- Mr. Mackey thanked Sandy Adams for clerking the meeting today.
- Mr. Mackey thanked Mitch Mowell for the great job presenting the consent order to the Commission.

General Discussion:

- On behalf of Planning staff, Ms. Morris asked the Commission members to take their binders with them at the end of each meeting. She announced that moving forward, staff will either be mailing the packets, or couriering them to the Committee in an envelope.
- Ms. Morris announced that the Planning Commission By-laws require an Election of Officers be held in March.

There being no further business for the good of the organization, the meeting was adjourned at 3:08 p.m.


Elizabeth Morris, Chairman


Sandy Adams, Clerk