

MINUTES

The Kent County Planning Commission met in regular session on Thursday, January 6, 2022, in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland. It was a hybrid meeting, and the following members were in attendance: Chair Kim Kohl; Vice Chair F. Joseph Hickman; County Commissioner P. Thomas Mason; Paul J. Ruge, Jr.; James Saunders; William Sutton; and Cynthia L. McCann, Esq., Planning Commission Attorney. Staff in attendance were William Mackey, Director, participating remotely; Carla Gerber, Deputy Director; Mark Carper, Associate Planner; and Michael Pelletier, Clerk.

Chair Kohl called the meeting to order at 1:30 p.m.

ELECTION OF OFFICERS

Chair Kohl announced to the Commission that she was stepping down from her position after this meeting.

Mr. Ruge nominated Vice-Chair Hickman to be the next Chair of the Planning Commission. Chair Kohl seconded. The Commission approved the nomination unanimously and Vice-Chair Hickman was elected the next Chair of the Planning Commission. Vice-Chair Hickman abstained from the vote.

Vice-Chair Hickman nominated Mr. Ruge to become the new Vice-Chair of the Planning Commission. Mr. Saunders seconded the nomination, and the Commission members approved the nomination unanimously. Mr. Ruge was elected the next Vice-Chair of the Planning Commission. Mr. Ruge abstained from the vote.

MINUTES

Mr. Sutton made a motion to accept the minutes for the December 2, 2021, meeting, as distributed.

Mr. Saunders seconded the motion; the motion passed with all in favor.

APPLICATIONS FOR REVIEW:

21-37 Bonnie Plants LLC – Site Plan Review (Final)

Bonnie Plants LLC is proposing to construct a 30-foot by 84-foot one-story structure to house up to twenty-four H2A guest workers from February through July. The dormitory is proposed to have two independent units that will house up to twelve workers in each unit.

The property is located at 12515 Augustine Herman Highway and is zoned Agricultural Zoning District (AZD) and Crossroads Commercial (CC). The dormitory will be located on the rear of the property within the AZD portion. The surrounding area is a mix of commercial uses and farmland. The property is currently improved with many greenhouses and associated structures which are used to grow herbs and vegetables.

The Board of Appeals granted a special exception for migrant housing in October 2021. The approval was conditioned upon adding a landscape screen behind the proposed structure and obtaining final site plan approval.

Ms. Gerber cited the applicable laws as well as staff and TAC comments as outlined in the staff report.

No correspondence was received on this application and staff recommended approval.

David Drury, representing Bonnie Plants LLC and who resides at 29215 Glencoe Road, Kennedyville, Maryland, was sworn in to testify. Mr. Drury informed the Commission that they have already planted the screen of white pines. He contended that staff did an accurate job in relaying the facts.

Mr. Hickman appreciated Mr. Drury working with the community regarding their concerns. Mr. Drury indicated they will continue to work with the community.

Chair Kohl inquired as to what would happen with the structure if Bonnie Plants was not using it for migrant housing. Mr. Drury indicated that if the structure was not used then it would remain dormant, and he confirmed they would not use the structure for any other purpose now or in the future.

Mr. Sutton stated he felt that everything appears to be covered very well. Chair Kohl agreed.

Mr. Hickman moved to grant final site plan approval on this application based on the following findings of facts:

- The proposal is consistent with the strategies and goals of the Comprehensive Plan.
- The property is served by private well and septic. The Health Department has approved the septic reserve area.
- Formal stormwater management and sediment control plans are not required.
- The proposed building will be located approximately 70 feet from the closest property line.
- The proposed building will meet all Federal Department of Labor Standards for H2A workers.
- There are no proposed changes to site access.
- A Forest Conservation Agricultural Declaration of Intent has been submitted.
- Individual cars for workers will not be parked onsite.
- A Citizens Participation letter was sent to neighboring properties.
- A landscape screen of white pines has been planted.

Mr. Ruge seconded the motion. All members were in favor.

21-65 The Bungalow, LLC – Variance (Side Yard Setback)

The Bungalow, LLC is requesting a 14-foot variance from the required 15-foot side yard setback in order to demolish an existing dwelling and replace it with a small, single-family residence that will be one (1) foot from the side property line. They are also requesting a 12-foot variance from the required 15-foot side yard setback to remove a portion of an existing patio and replace it with a small swimming pool that will be three (3) feet from the opposite side property line. The property is located at 25171 Wymont Park Road in the Third Election District and is zoned Critical Area Residential.

Mr Carper provided background information and noted the applicable laws as outlined in the staff report. Staff recommends forwarding a favorable recommendation to the Board of Appeals.

Mr. Bill Crowding, on behalf of the applicant, 25237 Porters Grove Road, Worton, Maryland, was sworn in to testify.

Mr. Crowding noted that the property was purchased in 2021 by the neighbors to the east and west who formed The Bungalow, LLC. It has primarily been used as a vacation home and has been subject to mildew and a substandard foundation. It was determined the best course of action was to demolish the old structure and replace it. The proposed pool is more of a reflection pool than a swimming pool in nature. The proposed structure

has fewer square feet than the original dwelling. He informed the Commission that they will do the minimum amount of disturbance on this site. A new BAT septic system will be installed. He added it will simply be used as a guest house for both families.

Vice-Chair Hickman asked if there would be any work performed in the buffer. Mr. Crowding indicated they would not, and the property would actually be accessed from the West by a private road that comes within 10 feet of the lot.

Mr. Crowding informed Chair Kohl that the property will not be used as a rental and its only purpose will be as a guesthouse.

Mr. Ruge inquired as to whether the pool will have a cover. Mr. Crowding indicated it will have a retractable cover.

Mr. Ruge inquired whether there was access to a road or is it accessible only by the neighbors who co-own the property. In the event the property is sold, would it be landlocked. Mr. Crowding indicated that there were steps that lead to a parking area.

In response to an inquiry by Vice-Chair Hickman, Mr. Crowding noted that he met with the Health Department, and they will be putting a BAT system on the premises. Chair Kohl asked whether they could make a BAT system a condition on the variance. Mr. Crowding noted that pursuant to Maryland Law, if you replace a septic system in the Critical Area, it has to be a BAT system. Mr. Saunders agreed and added that based on his conversations with the Health Department, that any septic system replacements in the state have to be a BAT system. Mr. Saunders noted that what Mr. Crowding is proposing is a much more efficient system than what is currently in place.

Ms. McCann confirmed they can make a recommendation on both variances with one motion.

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

- There will be no detriment to the neighboring properties.
- The swimming pool will not be closer to existing property lines.
- The variance is in harmony with the neighborhood.
- The side yard setback is consistent with neighboring properties.
- The variance is consistent with the Comprehensive Plan which encourages replacing substandard structures with sound structures.
- It is assumed pursuant to Maryland law that the Kent County Health Department will require the applicant to install a BAT septic system.
- The practical difficulties are that the property is on a steep slope along the entire property and the property is only 47 feet wide. The septic reserve area is in the open area to the top of the lot.
- The lot coverage will not be increased.
- The variance is in harmony with Kent County law.
- The variance will not cause adverse water quality or effect wildlife or forestry.
- The practical difficulties were not caused by the applicants.
- The variance request is a reasonable use of the entire property.

Mr. Sutton seconded the motion. All members approved and the Commission issued a favorable recommendation to the Board of Appeals on both variance applications.

21-66 Beechwood Glen HOA – Variance (Pier and Side Yard Setback)

Beechwood Glen, Inc., aka, Beechwood Glen Homeowners Association, is requesting a variance from the 150-foot pier length limit and side setback requirements in order to construct a replacement pier. The applicant proposes to remove and replace the existing 187-foot pier with a 256-foot pier. The number of slips will not change, but the slips will be wider. The property is zoned Critical Area Residential, and the surrounding area is characterized by a residential neighborhood and the Greg Neck Boat Yard just to the north. The property is at the mouth of Swantown Creek on the Upper Sassafra River.

Ms. Gerber provided background information and noted the applicable laws as outlined in the staff report. Staff recommends sending a favorable recommendation to the Board of Appeals for the side setback and pier length variances.

No correspondence was received on the application.

Corey Downer, Dockmaster, 14022 East Beechwood Road, Galena, Maryland, was sworn in to testify. Lori Sample, with Riptide Marine Construction, LLC, was also sworn in to testify.

Mr. Downer informed the Commission that the dock was built in 1968 and in recent years, new, younger residents have moved into the neighborhood. These newer residents are interested in having new boats. Currently the dock can only accommodate 2 boats of 21 feet in length, with current average beam. The remaining slips can only accommodate smaller vessels such as john boats and fishing boats. The HOA is currently working with Riptide Marine Construction to come up with a solution to address the shallowness of the water that has happened over the past several decades.

Ms. Sample testified that their goal is not to gain anything better but to return to the community water access which they already enjoyed prior to the receding of the water depth.

Vice-Chair Hickman asked whether there was a pumphouse station on the premises. Mr. Downer noted there was not one currently. Mr. Hickman raised this was a significant increase in distance of the pier and that it shouldn't be a practical difficulty that they cannot get bigger boats in there or that it is too shallow because that effectively would mean you could move the dock anywhere. A better rationale would be safety issues, neighbors, and putting less impact on the SAVs because you are getting boats out of the shallow area. Vice-Chair Hickman is concerned about creating a precedent. Chair Kohl agreed.

A member asked if the neighbors to the east and west were members of the HOA. Mr. Downer indicated they are not members. Ms. Sample indicated they would make accommodations if there were any other suggestions such as additional lighting, and they will most likely do that anyway.

Mr. Ruge inquired about swimming from the pier and potential liability. Mr. Downer indicated it is only available to the twenty HOA members. Ms. Sample indicated that signs could be posted concerning swimming and they do not want kids swimming from the end of the pier.

Vice-Chair Hickman inquired about whether DNR does an inspection on SAVS. Ms. Gerber was unaware if they do a site inspection, but they do monitor aerial photography and consult with the Riverkeepers. Ms. Sample indicated there is a specific website that does yearly maps of SAV, and it clearly labels where piers cannot be built. MDE,

DNR and Army Corps of Engineers monitor this information. Ms. Gerber indicated that SAVs appear one year and disappear the next in some cases.

Ms. Sample added that all material will be brought in by water so there will be no disturbance to the buffer area, and the disturbance to the floor only consists of driving pilings.

Ms. Sample noted the plan was not reviewed by the Riverkeeper.

Mr. Ruge raised concerns whether there is road access. Mr. Downer indicated there was from the stairs of the properties and a road from a neighboring property. This access could be utilized in the event of an emergency. The cloudiness of liability was also a discussion that could not be cleared up during this meeting. Mr. Downing would discuss this issue with the HOA about getting something formal so they could use the road in an emergency.

Mr. Hickman moved to send a favorable recommendation to the Board of Appeals on the variance application based on the following findings:

- The variance seeks to replace an existing pier.
- The current pier is in poor condition and needs replacement.
- The variance would allow the pier to better comply with the Land Use Ordinance by not crossing property lines.
- The character of the neighborhood would not change.
- The proposal matches the existing angles of the neighboring piers.
- The proposal seeks to serve 20 single family homes and to provide safe access to the water.
- The proposal is not inconsistent with the Comprehensive Plan.
- Practical difficulties exist for safe access to the water and to protect SAVs.
- The practical difficulties were not caused by the current owners but existing natural conditions.
- The proposal provides an environmental benefit.
- The proposal would provide a pump out station.

Mr. Ruge seconded the motion. All members voted unanimously for a favorable recommendation.

GENERAL DISCUSSION:

Ms. McCann provided a proposed Draft Forest Conservation Easement Template. Ms. McCann indicated that typically, an applicant's lawyer would present such an agreement. These agreements were not always drafted the same and are typically generic. The draft was compiled from a review of several existing Forest Conservation Easements from neighboring counties. The template was forwarded to Tom Yeager, Esq. since the easement rights would be granted to the County Commissioners. Ms. McCann is awaiting a response and comments from his review.

Chair Kohl asked if the Planning Commission needed to vote on this document. Ms. McCann indicated the Planning Commission could vote to make a recommendation to the County Commissioners. Ms. McCann confirmed this template could streamline the process.

Vice-Chair Hickman asked if this would be a required document or could applicants provide their own. Ms. McCann noted it would be suggested for them to use it, and it would be more cost effective to the applicant.

Vice-Chair Hickman moved to forward a favorable recommendation to the County Commissioners to approve the proposed County Forest Conservation Easement template. Mr. Saunders seconded the motion. The motion passed with all members in favor.

STAFF REPORTS

Mr. Carper indicated that staff would be working to initiate staff training for Floodplain Management with the State of Maryland.

Ms. Gerber indicated that Myra Butler with Parks and Recreation had submitted the 2022 Land Preservation, Parks and Recreation Plan for review by DNR and that will probably come before the Commission in March to make a recommendation to the County Commissioners for adoption. A consultant had been retained for the update to this plan and it went smoothly. Ms. Gerber extended her thanks to Ms. Butler and the consultant for their hard work on this project.

Ms. Gerber noted she attended the MACo Winter Conference which included sessions on the Open Meetings Act, Diversity, Equity and Inclusion, Agritourism, Parks and Recreation and Broadband Infrastructure.

She also noted the Board of Appeals granted the Pavon variance for the remodeling of their house on Macs Lane.

Mr. Mackey wanted to extend his thanks to Chair Kohl for her 10 years of service and noted she has been a wonderful Chair to work with. The remaining members of the Commission extended their thanks to Chair Kohl for her service to the County.

ADJOURN


Mr. Ruge made a Motion to Adjourn which was seconded by Mr. Sutton. The meeting adjourned at 2:50 pm.



Kim Kohl, Chair

/s/ Michael Pelletier

Michael Pelletier, Clerk



Joe Hickman, Vice-Chair