

MINUTES

The Kent County Planning Commission met in regular session on Thursday, March 3, 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 F. Joseph Hickman, Vice Chair Paul Ruge, County Commissioner P. Thomas Mason; James Saunders; William Sutton; Ray Strong; and Cynthia L. McCann, Esq., Planning Commission Attorney. Tyler Brown was absent. Staff in attendance were William Mackey, Director; Carla Gerber, Deputy Director; Mark Carper, Associate Planner; and Michael Pelletier, Clerk.

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

MINUTES, February 3, 2022

Ms. McCann noted a correction to page 3, third paragraph should read: Correspondence was received "from" and not "by". Ms. McCann recommended deleting the first sentence on page 5, fourth paragraph and leaving the following language, "Vice Chair Ruge moved to table the discussion...". Chair Hickman requested on page 7, first paragraph that "based on attorney advice" be added to the end of the sentence which begins with "Chair Hickman indicated the public will have an opportunity to comment...". Ms. McCann requested under the Staff Report section that her report be revised to read "Ms. McCann, not having received comments from Mr. Yeager, suggested the Forest Conservation Easement be forwarded to the County Commissioners." Mr. Sutton moved to accept the minutes as corrected, Mr. Strong seconded the motion; the motion passed with all in favor.

APPLICATIONS FOR REVIEW:

21-69 Zebulon Blyman – Zoning Text Amendment

Adding home and business services as a permitted use in the Village district

Chair Hickman noted that he has a business relationship with Mr. Blyman but stated he can be fair with this application.

Ms. McCann noted the Commission has two citizen sponsored text amendment requests and read for the record the Public Notice which was published in the Kent County News on February 24, 2022.

Zebulon Blyman, of Worton, Maryland, was sworn in.

Ms. Gerber noted that Mr. Blyman has submitted an application to amend Article V, Section 7.2 of the Village District, Permitted Uses, to include home and business services such as grounds care, janitorial, exterminators, landscaping, and other repair and maintenance services, but not septic tank maintenance, subject to site plan review. Ms. Gerber noted that before acting on a proposed amendment, the Planning Commission shall address the public need for the amendment and the extent to which the proposed amendment complies with or deviates from the Comprehensive Plan and the Critical Area law. Ms. Gerber added that the proposed text amendment is consistent with the Comprehensive Plan. Ms. Gerber noted that the public need for the amendment is to allow for development of neighborhood service businesses within the Village District which will expand opportunities for small businesses to open or expand, and the requirement for site plan review will ensure the proposed business is of an appropriate scale with the Village District. Ms. Gerber noted that Staff recommends sending a favorable recommendation to the Kent County Commissioners. Ms. Gerber added the department received a letter of support from Nick Mouldsdale on this zoning text amendment in the Commission's packet.

Mr. Blyman stated he desires to do some improvements on his property as some of the structures are in bad shape and having this text amendment passed would make it easier so he would not have to go through the special exception process again.

Chair Hickman inquired as to the number of employees employed by Mr. Blyman. Mr. Blyman responded he currently had three. Ms. Gerber added that Mr. Blyman's zoning text amendment would apply to the entire Village district.

Vice-Chair Ruge inquired as to whether this would require a Site Plan Review. Ms. Gerber responded that it would. Vice-Chair Ruge asked Mr. Blyman how this amendment would help him versus the process he had to undertake in the past. Mr. Blyman responded that he had to go to the Planning Commission and Board of Appeals, and this amendment would allow him to be more flexible with making changes to his property.

Ms. Gerber added this zoning text amendment would give Mr. Blyman more certainty with the use of his property in the future. She added that another owner had come to the Department with a similar need for their property. Ms. Gerber pointed out that the changes Mr. Blyman proposes to make would still go to the Technical Advisory Committee for minor site plan review, or if the changes were more extensive and require a major site plan review, then it would go to the Planning Commission.

Vice-Chair Ruge inquired as to the difference between Minor or Major Site Plan Review. Ms. Gerber turned to the Land Use Ordinance and provided examples from the Ordinance.

Mr. Saunders noted that Mr. Blyman was trying to improve his business which will benefit the County. Chair Hickman was in agreement.

Vice-Chair Ruge noted this amendment will affect a large portion of the County and the scope of the proposed uses might raise concerns, such as pesticides. He was concerned with some uses dealing with pesticides and janitorial supplies. Mr. Blyman noted that the pesticides are regulated by the State and have rules he must follow. Ms. Gerber gave some examples of the types of uses already allowed in the Village District. She added that having site plan review will ensure that these types of businesses are sited in compliance with the design standards.

Mr. Blyman added that he would be required to hold a state license and the property is subject to State inspections to ensure compliance.

Mr. Hickman noted that Staff indicated the public need supports existing businesses, expands businesses, and adds more diversity as to the types of businesses in the Village District.

Mr. Sutton moved to forward a favorable recommendation based on the fact that the public need is that it expands businesses in the Village District, and it is consistent with the Comprehensive Plan. The Motion was seconded by Mr. Strong. All were in favor and the motion carried unanimously (5-0).

**21-69 Kenah One Health Care Services – Zoning Text Amendment
Adding hospital, rehabilitation facility, or other similar institution as a special exception in the Village district**

The applicant, Latonya Cotton, of 308 N. Crain Highway, Glen Burnie, Md 21061, was present online and was sworn in to testify.

Mr. Carper noted the applicant proposes to amend Article V, Section 7.3 of the Village District, Special Exceptions, to include "Hospital, rehabilitation facility, or other similar institutions for human care, but not including animal hospitals." The proposed amendment would extend to the Village district by special exception a health-related service use that is currently permitted by special exception within the Intense Village and Intense Village Critical Area districts. This amendment reinforces a strong economic base and meets community needs, diversifying the health care industry, which is supported by the Comprehensive Plan. Mr. Carper noted that before acting on a proposed amendment, the Planning Commission shall address the public need for the amendment and the extent to which the proposed amendment complies or deviates from the Comprehensive Plan and the Critical Area law. The proposed text amendment is consistent with the Kent County Comprehensive Plan and the public need for the amendment is to allow for development of health-related services within a populated district. Staff recommends sending a favorable recommendation to the Kent County Commissioners.

Vice-Chair Ruge inquired as to why the applicant is requesting the change in use.

Ms. Cotton noted Kenah One intends to transition from assisted living to mental health. There are currently ten residents in the assisted living facility. Kenah One also operates two other homes like this for outpatient counseling and group meetings.

Bret Sullivan of Worton inquired whether this would affect the current residents, and Ms. Cotton confirmed that the current residents would continue to reside in the facility.

Vice-Chair Ruge expressed concern about this intense use and was not sure where districts will be impacted in the Comprehensive Rezoning process. It should be done by special exception and is not in favor of the proposed text amendment. This should wait until the Comprehensive Rezoning Process is complete.

Mr. Saunders raised a point that the applicant should not have to wait for the County to do its job, and Chair Hickman added there is a public need for mental health services.

Mr. Saunders made a motion to forward a favorable recommendation to the County Commissioners which was seconded by Mr. Sutton. Vice-Chair Ruge voted against the motion. The remainder of members voted in the affirmative, and the motion for a favorable recommendation carried (4-1).

CONTINUED DISCUSSION FROM FEBRUARY 3, 2022, MEETING

Resolution 2021-18, Resolution to Introduce a Text Amendment to Revise Chapter 222, Zoning, to Remove the Requirement Related to the Maximum Percentage of Property in Lots (10% rule) from the Agricultural Zoning District (AZD)

Ms. McCann noted that the following correspondence was entered into the record: Chris Drummond on behalf of Frank Lewis and Janet Christensen-Lewis; Buck Nickerson; Smart Growth Maryland; ShoreRivers; the American Farmland Trust; and Linda Roy Walls. Ms. Gerber indicated they were all distributed to the Planning Commission.

Mr. Mackey stated that at the last meeting the Commission requested additional information and the Department created packets related to the 10% rule and the animal-related setbacks proposed text amendment.

Turning to the first page of the packet, Ms. Gerber identified three main elements of subdivision in the AZD. The first is density. The second is lot size. The third is the maximum percentage of property in lots, or 10% rule.

The second page provided scenarios of subdivisions pertaining to the 10% rule. Ms. Gerber then discussed two hypothetical maps of a theoretical subdivision with the 10% rule and without the rule.

Ms. Gerber then discussed statistics about preserved land that is within the Agricultural Zoning District (AZD) or the Resource Conservation District (RCD). Ms. Gerber noted that there are almost 44,500 acres under some type of easement which represents 25.5 % of the unincorporated area of the County. There is an additional 4.4% that is in public lands. There is roughly 28% of the AZD and RCD under permanent easement.

Vice Chair Ruge inquired about what can be done with permanently protected lands and the preservation districts. Ms. Gerber confirmed that they are solely for farming. The easements are perpetual, except there are provisions which allow earlier easements to apply to purchase their development rights back, but the request has to be approved by the County Commissioners and the Maryland Agricultural Land Preservation Foundation Board of Trustees. This approval would not be easily achieved, and to date no farms have been approved for such purchase.

A discussion ensued on scenarios and how properties could extinguish their development rights and limited ways in which subdivisions could still be approved.

Jennifer Debman, Kennedyville, Maryland, Chair of the Ag Advisory Committee, commented that despite statements at the last Planning Commission meeting suggesting that the Agriculture Advisory Committee was confused, she affirmed that they were not in fact confused at all.

Albert Nickerson testified that he was opposed to changing the 10% rule.

Michael Pugh testified that he lives on agricultural land, and he would love to subdivide his land or dismantle his 18th century house and sell the bricks for money, but if looking at Middletown, Delaware, it's clear that removing the 10% rule would be a mistake.

Pat Langenfelder, of Kennedyville, Maryland, was opposed to the text amendment and believes in keeping the 10% rule. She discussed the deterioration of agricultural lands in Howard County and its continued development.

Bill Crowding, of Worton Maryland, testified and recited a definition of "public need," stating that this amendment falls short of that definition.

Judy Gifford opined that there is a conflict of interest by Commissioner Mason and contended that he should have recused himself. Ms. Gifford stated that 30-acre farms are a fiction. She also stated the proposed text amendment contradicts the intent of the Comprehensive Plan

Elizabeth Watson, of Chestertown, Maryland, testified that she is opposed to elimination of the 10% rule and asked the citizens in the room who are in favor of keeping the 10% rule to stand. A majority of them stood, and Ms. Watson stated that this should send a message that keeping the 10% rule is what the citizens want.

Doug West, of Chestertown, Maryland, is opposed to the elimination of the 10% rule and stated that it is a fallacy to conclude that divided land is going to stay in agriculture in some way and that a farmer could survive.

Janet Christensen-Lewis, of Millington, Maryland, testified that she is opposed to the elimination of the 10% rule. She inquired if Commissioner Mason should have recused himself due to a conflict of interest. Ms. McCann noted that Mr. Mason does not have a vote and that he is an ex-officio member. Ms. Christensen-Lewis also questioned the difference between the Staff's latest recommendation at the last meeting and its original recommendation

before the Task Force. She noted the original recommendation was that it be retained with waiver provisions. Ms. Christensen-Lewis stated that she believed this plan was unsound and was born of individual motives and urged the Commission to send an unfavorable recommendation to the County Commissioners.

Public comment was closed.

Mr. Saunders was opposed to elimination of the 10% rule as not a single person came before the Commission to support the elimination of the rule.

Commissioner Mason stated that those who support elimination are intimidated to come forward and some of his constituents fear losing clients. They will likely come to the Commissioners' hearing and testify. Commissioner Mason noted on the record that he has no intention of splitting his farms up. He noted that agriculture has changed, and the County needs to change, and elimination of the 10% rule is consistent with the times. Commissioner Mason provided several examples of the benefits of having small farms.

Chair Hickman stated the Planning Commission needed to address public need and consistency with the Comprehensive Plan and the recommendation from the Ag Advisory Commission.

Vice-Chair Ruge indicated he is not willing to change the 10% rule but thinks it needs to be discussed further and then a solid solution could be determined.

Mr. Strong moved to send an unfavorable recommendation to the County Commissioners as the amendment does not meet a public need due to lack of public support, is not consistent with the Comprehensive Plan as it specifically contains the 10% rule, and it was not supported by the Agricultural Advisory Commission. Mr. Sutton seconded the motion. The motion for an unfavorable recommendation carried unanimously (5-0)

The Planning Commission recessed at 3:45 pm for ten minutes, reconvening at 3:55 pm.

Resolution 2021-19, Resolution to Introduce a Text Amendment to Revise Chapter 222, Zoning, to Amend Setbacks for Certain Animal-Related Uses from 600 Feet and 400 Feet to 200 Feet in AZD

Mr. Mackey noted that when the Planning Commission met last, the members were discussing the effect of the proposed setbacks on an individual parcel in AZD versus an enclave. Mr. Mackey had suggested amending the text to add "and any residential uses" related to maintaining the 600- and 400-foot setbacks as a way to address the issue. The Planning Commission had asked at that time how much land would be affected. Ms. Gerber performed an analysis using GIS and concluded there are many farms with property lines that are not adjacent to residential uses. A map was provided in the packet showing the extent of the buffering affect when applied to non-farm-sized lots.

Vice-Chair Ruge asked whether the Planning Director has the authority to reduce the setback by 50%. Ms. Gerber confirmed that landowners may seek an administrative variance from the Director. A variance request of more than 50% of the requirement must go to the Board of Appeals.

Vice-Chair Ruge suggested a 400-foot setback rather than 200 feet. Ms. Gerber indicated the variance process has several specific reasons why a variance should be granted. Vice-Chair Ruge noted that if the elimination of the 10% rule were approved, then there would be less of a need for this amendment.

Janet Christensen-Lewis, of Millington, Maryland, noted that she is raising the same issues she raised at the last meeting about this amendment proposal. She asserted this amendment does not protect individual houses. She also stated that the Commission should not review this until they see a map of the carved-out lots in AZD which would be affected.

Judy Gifford, of Kennedyville, Maryland, was opposed, citing a lack of public need, and it goes against the Comprehensive Plan. She stated that it also seems unclear as to why the amendment is needed.

Sean Jones, of Massey, Maryland, member of the Agricultural Advisory Committee (AAC) noted that some items of information provided to the Planning Commission were not provided to the AAC, and that their recommendation did not include this information. Mr. Jones stated his opinion that there is merit in protecting individual houses.

Commissioner Mason asked why the AAC's recommendation was considered in the previous amendment and now the recommendation is not being considered.

Chair Hickman noted this was but one factor, and public need and consistency with the Comprehensive Plan are the two legal requirements.

Chair Hickman moved to forward an unfavorable recommendation to the County Commissioners, based on a lack of public need and that the proposed amendment conflicts with the Comprehensive Plan despite a favorable recommendation from the Agriculture Advisory Commission. Vice-Chair Ruge seconded the motion. The motion for an unfavorable recommendation carried unanimously (5-0).

STAFF REPORTS

Ms. Gerber noted that the Department has more building permits in process than this time last year, and the Department has been very busy.

Mr. Mackey noted that there are still challenges with staffing shortages, and the team is trying to move forward with the Task Force and are working on some materials with the consultant but do not yet have a schedule.

Mr. Carper stated that there was a training on Floodplain Management and Mitigation held. Twenty people were in attendance including colleagues from Queen Anne's and Cecil counties. Mr. Carper, and his new colleague, Michael O'Neill, will be attending a Floodplain Management training at Chesapeake College as well.

Ms. Gerber added that Mr. O'Neill is the Department's new Code Enforcement Officer.

ADJOURN

Chair Hickman made a motion to adjourn, seconded by Mr. Ruge. The meeting adjourned at 4:08 pm.



Joe Hickman, Chair

/s/ Michael Pelletier

Michael Pelletier, Clerk