

**MINUTES**

September 1, 2022

1:30 p.m.

The Kent County Planning Commission met in regular session on Thursday, September 1, 2022, at 1:30 p.m. 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, William Sutton, Ray Strong, and County Commissioner P. Thomas Mason. Cynthia L. McCann, Esq., Planning Commission Attorney was in attendance. Staff in attendance were William Mackey, AICP, Director; Carla Gerber, AICP, Deputy Director; Mark Carper, LEED Green Associate, Associate Planner; and Campbell Safian, Planning Specialist.

Members of the public in attendance included Buck Nickerson, LS of Extreme Measures, LLC; John Hutchison, AIA, NCARB of John Hutchison Architecture; Bruce M. Wilson, Project Developer of Pivot Energy; Mark Vansant; Jean Taylor; Mary Hurtt Tazewell; Margaret Hurtt; John W. Hickey; Bob Payne; and Andy Simmons.

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

**MINUTES**

Mr. Sutton moved to accept the minutes of August 4, 2022, without correction. Mr. Ruge seconded the motion. The motion passed with all in favor.

**APPLICATIONS FOR REVIEW**

*#22-08 25809a Still Pond Neck, LLC – Major Site Plan (Preliminary)*

*26001 Still Pond Neck Road – Third Election District – Agricultural Zoning District (AZD)*

The applicant is requesting preliminary site plan review to construct and operate a utility-scale solar energy system in the Agricultural Zoning District (AZD) on an 85-acre farm owned by Raymond and Joyce Stoltzfus. The property is located on the southwest corner of the intersection of Still Pond Neck Road and Still Pond Road in the Third Election District, and it has been assigned the street address of 26001 Still Pond Neck Road.

The area is predominantly farmland with scattered residential properties. The proposed 1 MW array of panels will be enclosed within a perimeter fence with an area of 5 acres on the northwestern corner of the property, and the entrance will be from Still Pond Neck Road. All setback, landscaping, and structural requirements have been addressed in the site plan. The proposal is not inconsistent with the Comprehensive Plan, and there will be no adverse impacts to adjacent properties or the surrounding area.

Mr. Carper presented the staff report, recommending approval with conditions. The Chair swore in Mr. Bruce Wilson, Project Developer of Pivot Energy.

Mr. Wilson stated that the Kent County Land Use Ordinance was amended to define the permitted area of a solar energy system to be no greater than five acres inside the fence line. The landscape buffer is not included in the five-acre area of use calculated for the solar energy system.

Mr. Ruge inquired about the plan in place to maintain the buffer surrounding the solar energy system's fence line.

Mr. Wilson stated that a maintenance plan has yet to be defined; however, one will be put into place.

Mr. Payne, adjacent property owner, expressed his concern over the solar energy project. Mr. Payne is in favor of the land being used for agricultural purposes.

Mr. Simmons, adjacent property owner, agreed with Mr. Payne's dissatisfaction with losing agricultural land. Secondly, Mr. Simmons expressed his concern over the solar panel's potential for creating glare from the sun.

Chair Hickman asked about what steps can be taken to mitigate glare for surrounding properties. Mr. Wilson responded by stating that the solar panels are lined with an anti-glare coating. The glare study report does not account for the tree height or density buffering the solar panels. The report simply measured the potential for glare resulting from the angle of the sun reflecting off of the solar panels.

Chair Hickman made a motion to approve the preliminary site plan application for a utility-scale solar array in the AZD. It is found that the proposal meets the setback requirements, it will not adversely affect traffic patterns, and there are no historic structures within view of this site. The proposal is consistent with the Comprehensive Plan, which allows community solar projects in the AZD. Additionally, traffic, noise, and demands on public services will be minimal. No sewage activities are proposed, and no existing vegetation will be removed. Final site plan approval will be contingent upon the applicant obtaining state and federal permits, and approval of the stormwater management plan. Final site plan approval is also contingent upon receiving a landscaping plan to address potential glare issues, and how the size of the landscaping will mitigate glare.

The motion was seconded by Mr. Ruge, and the motion passed unanimously, 4-0.

*22-42 25809a Still Pond Neck, LLC – Special Exception*

*26001 Still Pond Neck Road – Third Election District – Agricultural Zoning District (AZD)*

The applicant is requesting a special exception to construct and operate a utility-scale solar energy system in the Agricultural Zoning District (AZD) on an 85-acre farm owned by Raymond and Joyce Stoltzfus. The property is located on the southwest corner of the intersection of Still Pond Neck Road and Still Pond Road in the Third Election District, and it has been assigned the street address of 26001 Still Pond Neck Road.

The area is predominantly farmland with scattered residential properties. The proposed 1 MW array of panels will be enclosed within a perimeter fence with an area of 5 acres on the northwestern corner of the property, and the entrance will be from Still Pond Neck Road. All setback, landscaping, and structural requirements have been addressed in the site plan. The proposal is not inconsistent with the Comprehensive Plan, and there will be no adverse impacts to adjacent properties or the surrounding area.

Mr. Carper presented the staff report, recommending approval with conditions. Mr. Wilson, who was previously sworn in, presented his case as to the need for the special exception.

Mr. Wilson noted that the solar panel project helps the environment and the surrounding properties. The neighbors can buy energy at a discounted rate, and the project alleviates the strain on the power supply.

Mr. Ruge inquired about the Community Solar program.

Mr. Wilson explained that Community Solar is a program in which the four major utility companies reserve a certain amount of energy to be generated by solar. Utility-scale solar energy customers generally receive a 10% discount from the energy rate.

Chair Hickman moved to send a favorable recommendation to the Board of Appeals based on the fact that community solar is allowed in the AZD with a special exception. It is found that the proposal will not impact traffic patterns, the nature of the surrounding areas, houses of worship, noise or vibration. Additionally, there will not be a negative impact on water quality, fish, wildlife, plant habitats, or community facilities. The proposal is consistent with the Comprehensive Plan. The solar project will not disperse odors or obnoxious materials. If the site is properly screened, it is not expected to have an impact on property values. The 60-foot buffer area will provide a barrier that will be consistent with the Comprehensive Plan. The Community Solar program will benefit the surrounding neighbors. The proposal is consistent with the use, design and standards in the Land Use Ordinance. The approval will lapse after one year if no substantial construction takes place.

The motion was seconded by Mr. Strong, and the motion passed unanimously, 4-0.

*22-51 Mark Vansant – Variance – Front Yard Setback  
21542 East Sharp Street – Fifth Election District – Critical Area Residential (CAR)*

The applicants are requesting a 30-foot variance from the 50-foot front setback requirement in order to construct a new sunroom on the front of their house. The property is located at 21542 East Sharp Street near Rock Hall in the 5th Election District and is subject to the standards of the Critical Area Residential (CAR) district following the adoption of the new Critical Area Line in 2021. The underlying zoning is Village. The surrounding area is characterized by residential development.

Ms. Gerber presented the staff report, recommending approval with conditions. The Chair swore in Mr. Mark Vansant, property owner.

Mr. Vansant presented his case as to the need for the front yard setback variance. He stated that the sunroom addition will pose the least amount of impact to the Critical Area if it is constructed in the front of the house, rather than the rear.

Chair Hickman asked Ms. Gerber for confirmation that the Critical Area line changed and affected this property.

Ms. Gerber responded, noting that the Critical Area line was expanded and now the property falls completely within the Critical Area.

Mr. Strong made a motion to forward a favorable recommendation to the Board of Appeals finding that the application will not cause a substantial detriment to adjacent properties or change the character of the district. The variance is consistent with the Comprehensive Plan and the general intent of this Ordinance. Lastly, a majority of the neighboring properties are located closer to the road than the applicant's home.

Mr. Sutton seconded the motion, and the motion passed unanimously, 4-0.

*22-54 Mary Lou Hurtt – Special Exception – Adaptive Reuse of Historic Structure/Site Plan (Concept)  
32762 Galena Sassafras Road – First Election District – Resource Conservation District (RCD) and Rural Residential (RR)*

The applicant is requesting a special exception and concept site plan review for the adaptive reuse of a historic structure on Federal Hill Farm. The structures for adaptive reuse are a historic barn and granary to be utilized for the sale of pre-cut Christmas trees and other holiday items.

The property is located at 32762 Galena Sassafras Road in the First Election District and is zoned Rural Residential (RR) and Resource Conservation District (RCD). The barn and granary, as well as the principal structure, are listed in the Maryland Inventory of Historic Properties. No more than 6,200 square feet of the structures will be used for sales or storage. Operating hours will be approximately 15 days over three-day weekends during the winter holiday season. Inventory for the first season will be 300 trees, but an annual growth of 200 additional trees is anticipated with a maximum annual production of 1,500 trees. An estimated high average of 22 vehicles at a time will require parking, and 31 spaces are provided for along with 5 spaces for employees. Two porta-potties will be on site during hours of operation.

Mr. Carper presented the staff report, recommending approval with conditions. The Chair swore in Buck Nickerson, LS, owner of Extreme Measures, LLC, and John Hickey, applicant representing the property.

Mr. Ruge inquired about the Christmas tree loading zones and traffic patterns.

Mr. Nickerson explained the parking outline.

Ms. Taylor expressed her concern that the construction and traffic will upset her mother, the property owner, Mary Lou Hurtt. Secondly, Ms. Taylor expressed her concern regarding children wandering around the large property.

Mr. Hickey responded by stating that he shares Ms. Taylor's concerns. He noted that Ms. Hurtt is in favor of the application; however, communication with Ms. Hurtt on a daily basis about traffic will be an important part of the process. Mr. Hickey explained that employees will be on-site to direct traffic.

Chair Hickman moved to send a favorable recommendation to the Board of Appeals finding that the standards do allow for a special exception for the adaptive reuse of buildings in the Rural Residential District. This application will not impact traffic patterns, except during the business' hours of operation. The nature of the surrounding area, places of worship, and community facilities will not be negatively impacted. The proposal will positively impact the cultural area because the barns will be updated. Unusual noise or vibrations will not be a result of the proposal. Additionally, the proposal will not negatively impact property values, water quality, fish, or wildlife habitats. The application is consistent with the Comprehensive Plan and the Land Use Ordinance. This favorable recommendation will be contingent upon final site plan approval.

Mr. Strong seconded the motion.

Mr. Ruge asked whether updates and improvements will be made to the barns.

Mr. Hickey responded by stating that the barn's siding will be improved.

The motion passed unanimously, 4-0.

22-55 *Andrew and Emily Kaiser – Buffer Variance*

*24212 Comegys Bight Lane – Seventh Election District – Resource Conservation District (RCD)*

The applicants are requesting a buffer variance to partially renovate an existing residential dwelling. The applicants propose to remove a stoop, stairs, and part of a walkway in order to add a mudroom, stoop, and stairs on to the landward side of the residential structure, resulting in 26.75 square feet of permanent impact to the buffer. In addition, an existing one-story screened porch on the waterfront side will be rebuilt and a second story will be added to it. The renovation will not encroach further into the buffer. Lot coverage allowed for this property is 17,420 square feet. Current lot coverage is 17,153 square feet. The proposed project would increase lot coverage to 17,180 square feet. The 2.66-acre property is located at 24212 Comegys Bight Lane in the Seventh Election District and is zoned Resource Conservation District (RCD).

Mr. Carper presented the staff report, recommending approval with conditions. Mr. Carper noted that he received a phone call from an adjacent neighbor, who expressed their support of the application.

The Chair swore in John Hutchison, AIA, NCARB of John Hutchison Architecture. Mr. Hutchison stated that the floorplan does not allow for the construction of a mudroom without a major interruption to the current use of the living room or the kitchen. Constructing a mudroom, stoop, and stairs on the side of the house will create the most minimal impact to the buffer, as well as not impacting the living room or kitchen.

Chair Hickman made a motion to forward a favorable recommendation to the Board of Appeals for the applicant's buffer variance. The applicant will be required to complete a 3:1 buffer mitigation plan. The proposal will not cause substantial detriment to the neighborhood. The proposal aligns with the character of the neighborhood and is consistent with the Comprehensive Plan. The house was built entirely in the buffer, resulting in a practical difficulty. The granting of the variance supports the intent of the Critical Area law. The application will not adversely affect water quality, fish, or wildlife habitats. Additionally, the application will not cause detriment to adjacent properties. The denial of a buffer variance would create a hardship that is not shared by others in the neighborhood. The denial of a buffer variance would also deprive the applicants of the rights commonly enjoyed by other properties in the Critical Area. Granting of the variance will not create any special privileges for this applicant. The buffer mitigation plan must be implemented within 2 years, and the variance's approval will lapse after one year if no substantial construction has taken place.

Mr. Ruge seconded the motion, and the motion passed unanimously, 4-0.

## **GENERAL DISCUSSION**

Mr. Mackey reported on the review of the Town of Galena's proposed new Comprehensive Plan. Mr. Mackey summarized a staff memorandum.

The members of the Planning Commission agreed that the Plan was well done. It was also noted in the discussion that it was a good Plan for Galena as presented, noting the points in the staff memorandum that may need to be further addressed. The Commission requested that the staff memorandum be forwarded to the Galena Planning Commission for informational purposes.

Chair Hickman made a motion to forward the memorandum and the staff's recommendations to the Town of Galena's Planning Commission in support of the Comprehensive Plan updates.

Mr. Strong seconded the motion, and the motion passed unanimously, 4-0.

**STAFF REPORTS**

Mr. Mackey noted the upcoming Task Force meeting on September 28.

**ADJOURN**

Chair Hickman moved to adjourn. Mr. Strong seconded. The meeting adjourned at approximately 3:23 pm.

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Francis J. Hickman, Chair

/s/ Campbell Safian  
Campbell Safian, Planning Specialist