

MINUTES

The Kent County Planning Commission met in regular session on Thursday, February 4, 2016, 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; Ed Birkmire; James Saunders; Kim Kohl; William Crowding; and Joe Hickman. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; Stephanie Jones, Critical Area Planner; Katrina Tucker, Community Planner; G. Mitchell Mowell, Planning Commission Attorney; and Tonya Thomas, Secretary.

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

MINUTES

The minutes of January 7, 2016, meeting, were approved as presented.

APPLICATIONS FOR REVIEW:

Oddmund & Hedvig Angell are requesting final site plan approval for a retail business on their property located at 5868 Rock Hall Road. The proposal will consist of an initial 3,200-square foot building which will house a garden center offering retail sales of landscape supplies and an antique store in the first phase. The first phase includes the associated parking lot, as well as bulk storage yard, exterior landscape material storage bins, and two outdoor display areas. The second phase will include a 450 square foot office space as well as 2,100 square feet of covered retail and storage area.

The property is located on Maryland Route 20 at the northeastern edge of the Town of Rock Hall adjacent to the Rock Hall Volunteer Fire Company, Inc. The site is in the Fifth Election District and is zoned "V" Village. The area is characterized by other retail and residential uses.

The property is currently improved with a single-family dwelling accessed by a driveway on Route 20. A companion application for a minor subdivision has been approved and the plat recorded in the County Land Records that has divided a 0.900 acre lot containing the existing dwelling from the 14.339 acre property, resulting in a 13.439 acre parcel that is the subject of this site plan. This 0.900 acre lot will continue to be served by the existing driveway and a new commercial entrance on Route 20 will be created for the retail establishment. The concept plan for this property was reviewed by the Planning Commission in June of 2013 and the Planning Commission granted conditional approval of the preliminary site plan at its meeting on October 1, 2015.

Present and duly sworn in were Oddmund Angell, applicant; Kevin Shearon of DMS & Associates; and Katrina Tucker, Community Planner of Planning, Housing, and Zoning.

Ms. Tucker gave an overview of the application and cited all of the applicable laws of the *Kent County Land Use Ordinance* to include Article V, Section 7.1 that is the Statement of Intent for the Village District; Article V, Section 7.2 which lists the permitted uses including neighborhood retail businesses, and the provision that all retail sales shall be conducted entirely within a building, except where otherwise approved by the Planning Commission; Article V, Section 7.5 of the Village District that provides the yard and height restrictions; Article V, Section 7.6 establishes the General Standards for the Village District; Article V, Section 7.6.4 that states when deemed necessary by the Planning Commission, unobstructed easements at least 10 feet wide are to be provided in order to facilitate walkways to commercial facilities, community areas, and other public areas; Article V, Section 7.7.A & B which establish the environmental standards for the Village District; Article V, Section 7.7.B.7 that sets forth the provisions for protection of a 100-foot naturally vegetated stream protection corridor, which may be modified by the Planning Commission if significant water quality

improvements can be achieved; Article VI, Section 7.3 and 7.5.6.a.b. and c. that govern development in the floodplain; Article VI, Section 10 which sets forth the stormwater management and water quality criteria; Article V, Section 7.8.A, B, & C that establish the General Design Standards, Elements, and Specific Design Standards for the Village District; and Article VI, Section 5 which outlines the procedures and requirements for site plan review.

Ms. Tucker stated that no correspondence had been received regarding this application.

Discussion ensued about the color of the building, minor disturbance and grading within the stream protection corridor for proper functioning of the submerged gravel wetland for stormwater management, and the outdoor storage areas. The applicant responded to inquiries from members of the Planning Commission with respect to the proposed project.

After much discussion Mr. Hickman made a motion to approve the final site plan based on the following facts:

- The proposal is consistent with many strategies and goals of the Comprehensive Plan.
- The property is mostly wooded and the woodlands on this parcel are part of a larger forest that is likely to contain habitat for birds identified as Forest Interior Dwelling Species (FIDS) and other wildlife habitat. Forest Conservation was addressed with the subdivision plat. However, this site plan presents that 0.50 acres of forested area will be cleared for the retail establishment; though the area being cleared is not within the recorded Forest Conservation Area.
- The retail building will be set back more than 40 feet from the front property line and about 140 feet from the edge of pavement for Route 20. It will be 20 feet from the north side property line and more than ample distance from all other property lines.
- The screening fence enclosing the trash corral will be within the 8 foot side yard setback, and the screening enclosure for the trash corral will be a four (4) foot high board on fence on a concrete pad.
- Bins for storage of landscaping material will be more than 15 feet from any property line.
- The dedicated right-of-way for Maryland Route 20 variable along the frontage of this property, as described in the staff report. Therefore, the Planning Commission determined provision of an unobstructed 10 foot wide easement to facilitate future walkways was not necessary at this location.
- A submerged gravel wetland with a forebay is proposed for addressing stormwater management. The limit of disturbance is the edge of the 100 foot stream protection corridor and the stormwater management features will not encroach into this buffer with the exception of the end of the outfall pipe and limited clearing to grade a shallow swale in order to provide drawdown below the surface of the submerged gravel wetland. Grading for the swale is to avoid damage to any existing trees within this area. The outfall and shallow swale do not create any imperviousness, minimally impact the stream protection corridor, and are necessary for the proper functioning of the submerged gravel wetland. A slight modification for his minor disturbance in the stream protection corridor for the overall improved water quality provided by the submerged gravel wetland is granted.
- The submerged gravel wetland and forebay will be located in the floodplain, as will some portions of the onsite travelway for the parking lot. Work in the floodplain complies with all requirements of Article VI, Section 7.3 and Section 7.5.6.a, b and c., of the Land Use Ordinance.

- Crossing of the stream to access the rear of the property is not proposed on the Final Site Plan, nor was it shown on the Preliminary Plan as it was on the Concept Plan. Any stream crossing will be addressed with plans for a future development. The applicant will have to obtain approval from FEMA and MDE to cross the stream and wetlands.
- The application for an access permit was submitted on January 13, 2016, to the Maryland State Highway Administration for the new commercial entrance on Maryland Route 20. A roadside tree permit will be required to clear any trees within the right-of-way.
- In compliance with the provisions of Article 5, Section 7.8.C.1.c of the Land Use Ordinance the Planning Commission specifically approved the two points of access on Route 20 as requested by the State Highway Administration (SHA) in its comments dated 25 September 2015, which directed that the existing driveway for access to the proposed Lot 2 be maintained rather than having the existing residential lot share the commercial entrance. Maintaining the existing entrance secures the residential lot from traffic associated with the commercial business.
- In accordance with the SHA comments of 25 September 2015, change in the use or expansion of the proposed development to the remainder of the parcel may constitute a reconstruction of the entrance to include closed section road design with curb and gutter, construction of acceleration and deceleration lanes along MD Route 20, possible turn lanes, and other safety improvements.
- The Final Site Plan reflects all required twenty-nine (29) parking spaces, with two of the spaces as handicap accessible. A loading area is shown at the rear of the building.
- As assessed through the Technical Advisory Committee it appears that demands placed on public services and infrastructure have been deemed reasonable by affiliated agencies.
- Of the total 13.439 acre site only 2.164 acres are being developed at this time. The required percentage of the developed acreage for landscaping equates to 14,138 square feet (15%). The Final Plan proposes that 14,200 square feet of the 2.164 acres will be landscaped, which complies with the required minimum.
- In addition to the 15% developed site area landscaping, at least 10% of all parking lot areas with more than 10 spaces shall be landscaped. The Final Plan presents 900 square feet of parking lot landscaping, which exceeds the minimum required 858 square feet.
- Lighting will not exceed 18 feet in height and will be dark sky compatible.
- The site will be served by public water and sewer.
- The outdoor display areas are expressly approved by the Planning Commission as part of this site plan. The Final Site Plan reflects two separate areas for outdoor display of lawn and garden related materials, outdoor furniture and similar items. A 3,050 square foot area will be located in the front yard, and the second, larger area, comprised of 7,100 square feet is located in the rear. Topsoil, mulch, landscaping stone, whether loose in bulk or sold in bags, as well as similar types of materials must be stored in the landscaping material storage bins rather than within display areas. Items allowed in the display area would be outdoor furniture and such items, as well as antiques.
- With the approval of Preliminary Plan the Planning Commissioner determined that the architectural design reflected on the submitted building elevations comply with Article V, Section 7.8.C.11. of the Land Use Ordinance, and were compatible with the Chesapeake Country National Scenic Byway designation.
- The hours of operation will not exceed 7 a.m. to 7 p.m.
- In accordance with the provisions of Article VI, Section 2.7 of the Land Use Ordinance the Planning Commission approves the bonus sign area as permitted in Section 2.7.A.1., 3, 4 and 5., thus allowing an increase from the nine (9) square foot area for a detached sign in the

Village District up to 15.3 square feet in area for this project. The area may not be increased without specific approval by the Planning Commission.

- Stormwater management and sediment and erosion control plans have been approved by the Kent Soil and Water Conservation District.
- Sureties for stormwater management, sediment and erosion control, and landscaping have been submitted.

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

Julie Brice-Nickerson is requesting a special exception and conceptual site plan review for a cottage industry to allow Mr. Robert “Buck” Nickerson’s land surveying and civil engineering business to operate from a portion of the 5.0 acre property located at 23680 Ricauds Branch Road in the Sixth Election District. The property is in the Agricultural Zoning District and the application also seeks a waiver to the rear yard parking requirement of Article VI, Section 1.4.B.3.

The use of the property will remain as Mrs. Brice-Nickerson’s and Mr. Nickerson’s primary residence while adding a building that will contain the cottage industry. The applicant proposes to construct a 2,100 square foot pole building, measuring 30 feet by 70 feet, of which 1,200 square feet will be used for the cottage industry and the remainder set aside for personal use as an accessory residential garage. The narrative states that it will be designed to mimic an agricultural building and will be similar in appearance to other existing buildings in the surrounding area. Though the new pole building will be located in front of the existing dwelling on the property, it will be 77 feet from the front property line, 52 feet from the eastern side property line, and more than 360 feet from the west side boundary. Orientation of the building will be such that it will face the interior of the site, so that the building side is towards the street and the rear towards the eastern side property line. A gravel parking area will be located at the building’s front.

The application does not propose any outdoor storage or signage. The narrative further states that two additional full-time employees and one part-time employee would be hired. In addition, minimal customer traffic would be generated as a result of the business activities. The narrative states that the core hours of operation are 7:30 a.m. to 5:30 p.m. from Monday to Friday and 7:30 a.m. to noon on Saturdays. The business will be closed on Sundays.

Present and duly sworn in were the applicant, Ms. Julie Brice-Nickerson; Mr. Robert Nickerson, L.S. of Extreme Measures Land Surveyors; and Ms. Tucker, Community Planner.

Ms. Tucker gave an overview of the application and cited all of the applicable laws of the *Kent County Land Use Ordinance* to include Article XI, Section 2.70 that defines a cottage industry; Article VII, Section 7.15 which authorizes the Kent County Board of Appeals to grant a special exception for a cottage industry in the Agricultural Zoning District provided the application complies with the specified standards; Article VII, Section 2 which requires that the Board of Appeals make certain findings; and Article VI, Section 5 which outlines the procedures and requirements for site plan review.

Mr. Nickerson described the nature and history of the property. Mr. Nickerson stated that his business has outgrown the current location so he decided to relocate to this property and seek the special exception for a cottage industry. The proposed rain gardens presented on the site plan for addressing stormwater management will also enhance the property landscaping and serve as a display for potential clients.

Mr. Sutton inquired about the distance between the proposed building and the existing dwelling. Mr. Nickerson advised he and Mrs. Nickerson considered other options for the location of the new building and determined that the proposed location is the most appropriate as it would be less disruptive to the current

landscaping and other features on the property. Mr. Nickerson also replied to inquiries with respect to the location of parking and the request seeking a waiver of to the rear yard parking requirement of Article VI, Section 1.4.B.3.

Ms. Morris inquired whether windows would be installed in the office area of the proposed building. Mr. Nickerson replied that there will be windows on the back side of the building facing east.

After considerable discussion of the applicable laws, Comprehensive Plan strategies, and testimony presented, Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals for a special exception for a cottage industry to allow Mr. Nickerson's land surveying and civil engineering business to be operated on the property. He based his decision on the following findings:

- The Citizen Participation Plan was conducted and report provided.
- The proposal is consistent with the Comprehensive Plan Strategies to support cottage industries and small, locally-owned businesses.
- The area of the new 2,100 square foot building designated for the cottage industry use totals 1,200 square feet. This area for the cottage industry is incidental to the 2,150 square foot area of the existing two-story dwelling and the 5-acre property.
- The new pole building will be located in front of the existing dwelling on the property, though not within the front yard setback. Orientation of the building will be such that it will face the interior of the site, so that the building side is towards the street and the rear towards the eastern side property line.
- The application with accompanying site plan clearly distinguishes the areas of business and personal use. Attached to the architectural elevations is the building layout where uses are clearly labeled, including the office and ancillary business areas as well as accessory parking for vehicles associated with the cottage industry. The personal space of the building is also distinctly labeled. One commercial truck will be parked in a designated space outside where there will be another three parking spaces allocated for the employees and customers. The personal accessory garage portion of the building will be used to store other vehicles and a welding table.
- The building will be designed to mimic an agricultural building and will be similar in appearance to other existing buildings in the surrounding area.
- The application complies with the special exception provisions of Article VII, Section 7.15 of the *Kent County Land Use Ordinance* for a cottage industry in the Agricultural Zoning District (AZD).
- The property and cottage industry area is accessed by an existing entrance and driveway.
- The business will have two full-time employees and one part-time employee in addition to the applicant. Although clients will come to the site for meetings associated with a land surveying and civil engineering business, this use should not create an unusual amount of traffic or other impacts on infrastructure.
- Four on-site gravel parking spaces will be added for employees, customers, and parking of the survey truck.
- The property is served by a private well and on-site septic system.
- Construction will have to comply with sediment and erosion control requirements.
- The nature of the work associated with land surveying and civil engineering should not be expected to generate harmful noises, odors, and otherwise noxious materials.
- The applicant, through testimony, clarified that on-site maintenance of the vehicles associated with this cottage industry would involve maintenance and minor repairs.
- The applicant does not propose to install signage.

- Exterior lighting comprised of three motion activated lights along the front of the building will be dark sky compatible.
- In addition to the existing landscaping on the property, which includes evergreen trees that provide screening along the road and eastern boundary line, the applicant proposes to install two rain gardens that will offer both landscaping and serve stormwater management purposes. Another three native understory trees will also be planted in the vicinity of the new pole building.
- The core hours of operation are 7:30 a.m. to 5:30 p.m. from Monday to Friday and 7:30 a.m. to noon on Saturdays. The business will be closed on Sundays.
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Ms. Kohl seconded the motion, and the motion passed unanimously.

The site plan was also reviewed in great detail by the Planning Commission. The Commission offered Conceptual Site Plan comments, and, in deliberating on the requested waiver to the rear yard parking requirement of Article VI, Section 1.4.B.3. it found that the existing dwelling is located toward the rear of the property, and is only 125 feet from the rear property line; and, that the new pole building has been positioned towards the front of the property so as to not interfere with the location of the septic reserve area, existing septic system, existing gardens, and the existing hay field; and, orientation of the building will be such that it will face the interior of the site; and, otherwise locating the new pole building behind the existing house along with the off-street parking would require relocation of gardens, landscaping, and result in an increase of impervious lot coverage as well as additional grading to lengthen the driveway. The waiver was granted based on the orientation of existing structures and features; the property is 5-acres in size; the surrounding area is predominately agricultural in nature; the proposed location of the building as presented is not out of character for the area; and the location of landscaping associated with the rain gardens will soften the view and provide some screening.

Staff Reports

Amy Moredock:

- The County is moving ahead with the vulnerability assessment through the Coast Smart Grant it received. The next phase has been to conduct interviews with various county and state department staff, town representatives, and other members of the community who are directly involved with climate change impacts. All interviewees are invited to a two day workshop on the 23rd and 24th of February from 8:30- 12 p.m. The purpose of the meeting is to take all information gathered during the interviews and to prioritize those vulnerabilities and generate action strategies that can be absorbed in our Comprehensive Plan and Hazard Mitigation Plan.
- The Planning Commission recommendation regarding the text amendment to the signage standards in the village districts was received by Commissioners. Dan Saunders, counsel to the applicants, wrote a letter to the County Commissioners concurring with the Planning Commission's recommended language. The Commissioners are moving forward through the public hearing process based on that language for the text amendment to the sign standards.
- She attended a recent MACo meeting and received a brief legislative update. There are not a lot of zoning initiatives going before the legislature this session; however, there are an unprecedented amount of bills. There are over 3,100 bills that have been filed. Of note are the following:
 - There appears to be a shift in Maryland Department of Environment policies relative to nitrogen removal upgrades. There is a house bill that is being introduced that would require MDE to assist with low to moderate income households that are located in the Critical areas with not just the installation cost but the ongoing maintenance efforts.

- There is also a bill that has been filed by the Chesapeake Bay Foundation requesting judicial review of land use standing rights. MACo is in opposition to this bill.
- MACO is also not supporting and did not receive a lot of favorable feedback from the planners in attendance with a bill that would enable Maryland Department of Planning to hold a public hearing meeting if there is a parking lot proposed with 50 or more parking spaces within a half of a mile of a Scenic Byway.

Stephanie Jones:

- Attended the Nutrient Trading Symposium in which MDE and MDA explained how nutrient trading would help meet pollution reduction goals.
- Attended MEMA hazard mitigation meeting regarding floodplain training. Talked about resiliency in the state and hazard mitigation training.
- Attended the quarterly Critical Area meeting discussed how different counties handle bonds for planting and fee in lieu procedures since it is hard to find areas in the county to plant in the critical areas.

Katrina Tucker:

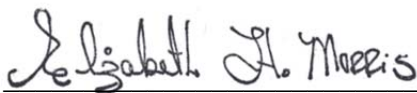
- Work sessions on the update to the Comprehensive Plan will be held on the first Wednesday of every month from 6:30 to 8:00 p.m..
- There will also be a Comprehensive Plan update work-session on February 23, 2016 at 6:30 p.m.
- Continuing to coordinate Comprehensive Plan update items with the consultant.
- A webpage on the County's website specific to the Comprehensive Plan update is being created that will contain meeting information, agendas, meeting summaries, notices, and documents for the public.

Mitch Mowell:

- Mitch and Amy Moredock Involved with the Solar Panel hearings and will be attending a meeting in Baltimore February 5th regarding the Public Service hearing for One Energy.
- Next Friday there is a teleconference with Mills Branch to address the State Law that has been construed as preempting them as exempt from any zoning rules.

General Discussion:

There being no further business for the good of the organization, the meeting was adjourned at 3:19 p.m.



Elizabeth Morris, Chairman



Tonya L. Thomas, Clerk