



Comprehensive Rezoning & Update 2020-2021 Task Force

MEETING SUMMARY

Hybrid In-Person/Remote Meeting
Wednesday, May 12, 2021, at 6:00 p.m.

I. Welcome and Roll Call – Task Force Member, and Acting Chair, Joe Hickman

Vice Chair Joe Hickman opened the meeting at 6:00 pm, conducting member roll call.

The following Task Force members were in attendance: Vice Chair Joe Hickman, Bill Sutton, Jim Saunders, Paul Ruge, Tom Mason, Tyler Brown, Albert Nickerson, Bill Norris, Bryan Greenwood, Buck Nickerson, Chikki Shajwani, Cindy Genther, Pat Lagenfelder, and Sam Shoge.

The following staff attended: Planning Commission Attorney Cynthia McCann, Esq; DPHZ Director William Mackey, AICP; Deputy Director Carla Gerber, AICP; and Acting Clerk, Sandy Adams.

Members of the public who attended in-person or remotely included: County Commissioner Ron Fithian; Elizabeth Watson, FAICP; Kyle Kirby, Esq. of McLeod Law Group; Janet Christensen-Lewis; and Bill Crowding. The meeting was also livestreamed on YouTube, and anyone could listen to the meeting via the County's website.

II. Approval of Summary for the Task Force Meeting on April 28, 2021

Per correction noted at the meeting, President Tom Mason and County Commissioner Ron Fithian were both in attendance at the April 28 meeting. The minutes were approved with these corrections.

III. Purpose and Ground Rules

- A. Everyone is encouraged to share ideas openly and freely.
- B. There are no right or wrong inputs for discussion purposes.

IV. Old Business

A. Public Forum

Mr. Mackey conveyed that Task Force members could address any items from the Public Forum. As requested by Task Force members, each new agenda includes the previous agenda's items under Old Business, so any outstanding items or reflections by any Task Force member may be discussed.

Vice Chair Joe Hickman stated the need to clarify the ground rules for a Public Forum versus those for a Public Hearing, before the next Public Forum, as there was shared concern by the members regarding rebuttal and surrebuttal during the Public Forum discussions on April 28.

B. Review of Task Force Members' requests for text changes to Zoning Code

No items were brought forward from the previous meeting.

V. New Business

A. Continued Review of Task Force Members' requests, beginning with #16 [corrected from #18 on agenda]

16. Review Front Yard definition on corner lots

Mr. Mackey provided a summary of the definition.

A member conveyed that the ordinance defined the front yard of a corner lot as the side with the least amount of road frontage. There are cases where the front of the house is faced toward the side where there is the most road frontage, but it is not considered the front yard. This should be better defined. Additionally, there is a lot that is three-sided. This also needs clarification, which is the premise behind this request.

17. Review Setbacks for buildings containing animals

Mr. Mackey noted there has been previous discussion on these setbacks.

A member reiterated that there has been a lot of discussion on these setbacks, and many opinions have been shared, and controversial items in the ordinance are what need to be clarified or changed.

Another member responded that the setbacks should be determined during larger meetings.

18. Review timelines

Ms. Gerber provided a timeline schedule of the various projects addressing the Task Force member's inquiry as to how things are scheduled and advertised from one meeting to the next.

A member questioned if the 20-day requirement could be reduced to 10 days and expressed the belief that as long as staff could get the information packet to the various boards, then a timelier review, including comments and questions might be realized.

Ms. Gerber responded that the purpose of the 20-day timeline is to provide adequate notice to adjoining property owners, but it might be able to be reduced to 15 days.

The member cautioned that a lengthy process could ensue, if there is field work required and there may be no time to address comments and meet the deadline set forth.

B. Review of Staff recommended items for consideration by the Task Force

Mr. Mackey introduced the staff suggested topics section, explaining that staff would introduce items for consideration for which the Task Force could request further review. Staff would also be preparing context documents related to the 2018 Comp Plan, as well as staff reports related to the 12 public items and 18

Task Force items, in addition to other staff suggested items, with the latter part of the meeting dedicated to scheduling future meeting dates and discussion topics.

1. Consider adding accessory dwelling units to the Village zoning district

Ms. Gerber shared that this use was inadvertently left out of the current land use ordinance and could be added so this zoning district would be consistent with all the other residential zoning districts.

A member asked for clarification on the definition of an accessory dwelling unit.

Ms. Gerber responded that accessory dwellings are considered two dwellings with a smaller one secondary to the larger, principal dwelling or, for example, two-story dwellings with a business on the first floor with the dwelling above.

Another member questioned if a minimum lot size applies.

Ms. Gerber responded there is no minimum lot size that applies in any district. However, the lot and dwelling must meet health department regulations, and, in some cases, a private septic may have to be enlarged and the public sewer would need allocation.

A third member conveyed strong support of accessory dwelling units in the Village district, in that, they would offer a solution for the elderly population with downsizing, multi-generational housing, adding property value, and providing affordable rental housing in the Village district.

A fourth member agreed that accessory dwellings in Village should be made to be consistent with other zoning districts and is a great idea for folks with businesses on their properties.

A fifth member asked for more clarification on two accessory dwellings on one lot in the Village zoning district and expressed concern with having two dwellings sharing the same sewage connection as being against Health Department regulations.

Staff responded that the matter is for the Health Department to determine.

The third member concurred with the fifth member that it is logic that two residential dwellings cannot share the same septic system, but clarified that it is not a primary residence, but rather an accessory use to a primary residence, and is still considered one lot. The member further clarified there are Health Department's regulations for drainage fields and the size of the septic tank.

Ms. Gerber stated accessory dwellings are present throughout the county, except in the village district, and it is up to the homeowner to expand their existing septic tanks or drain field, or install an auxiliary tank, if needed, to follow Health Department regulations.

A sixth member requested clarification on the size of zoning in Village and questioned the placement of eight houses on one acre, with four houses as accessory dwellings being able to fit, and further shared that they personally would not want to share the same septic with another dwelling.

Ms. Gerber conveyed accessory dwelling units can be a part of the main house and not necessarily a separate dwelling.

A seventh member questioned how much Village zoned ground exists in the County, which is not serviced by public sewer, and stressed concern that there would not be enough space for the septic reserve area with eight houses on one-acre of ground.

Ms. Gerber responded that some are on public sewer, and some are not and that every property would not be able to accommodate an accessory dwelling unit because of the restrictions that apply.

The second member clarified that an accessory dwelling unit in RCD must be no more than 900 square feet in area and located no further than 100 feet from the main dwelling, and many restrictions do apply, such as sewage disposal and size limitations, which have not been mentioned.

The Vice Chair expressed that most of the issues mentioned would be governed by either the Health Department or the water and sewer service districts.

2. Consider re-evaluating 25-foot setbacks for recreational uses such as pools in Village

Ms. Gerber reported increased setbacks were set forth to protect neighbors in locations where houses are closer together, but the 25-foot setbacks would be impossible to meet with a standard permitted lot, which would be 50 feet wide, not offering enough space for a pool, if desired.

A member inquired what other recreational uses are considered besides pools.

Ms. Gerber responded tennis courts, horseshoe setups, etc. are also considered recreational uses. Another member suggested only considering permanent structures and not temporary ones like badminton, bocce, etc.

Ms. Gerber conveyed a submitted application for a building permit would clarify whether a recreational use is intended to be permanent or temporary.

A third member asked for clarification as to what areas in the county are considered Village districts. Ms. Gerber responded Village districts allow four dwelling units per acre in the community, generally a cluster of houses, which also has public services such as a post office, church, etc.

Another member questioned the existence of fencing requirements in the village for pools.

Ms. Gerber reported the building code allows for a couple of different fencing options, including a retractable cover, fence, etc.

3. Consider clarifying how accessory structures can be located in front yards

Ms. Gerber stated it needs to be determined whether to prohibit accessory dwellings in any front yard, or to re-evaluate all waterfront allowances.

4. Consider standardizing 10-day, 15-day, and 20-day notices to one standard

A member asked for staff recommendations.

Ms. Gerber recommended a 15-day requirement instead of 20 days, which would allow for notice letters to be sent to adjacent property owners of upcoming meetings and thought a reduction to 10 days could hamper public participation.

5. Consider removing renewal language for telecommunications

Ms. Gerber reported that a provision for special exceptions for towers requires renewal every five years and only one tower is approved under this provision. In this instance, staff encouraged the tower's owner to apply for a text amendment; it is an impractical provision of the ordinance.

6. Consider removing the renewal requirements for sand and gravel pits

Ms. Gerber noted certain renewals are preempted by State law referring to a similar case decided in 2012 by the MD Court of Special Appeals.

A member raised the question of how the State accounts for public complaints.

Ms. Gerber reported DPHZ would enforce conditions, depending on the nature of the complaint.

7. Consider reviewing the definition of structures, especially considering fences

8. Consider reviewing the definition of accessory structure and accessory use

Mr. Mackey described these items as a group. Staff's item raises different issues than the prior item on this matter. The definition of *structure* is very similar to Cecil County's that was suggested as a model to consider. Staff's concern is since fencing is considered a structure and structures are regulated in the Critical Area, fencing is subject to a stricter standard in Kent County than other jurisdictions. Fencing without footers would not be considered a structure.

The definition of *accessory structure* is nearly identical to Cecil County's definition, with additions from Queen Anne's County's definition. Staff's questions include whether accessory structures must be smaller than the primary structure to be considered an accessory.

Accessory use is almost identical to Queen Anne's County with the idea that size is a factor. The term customarily incidental has too many interpretations; it needs to be clarified or removed.

A member agreed and reported that the definition of structure is very ambiguous. A conversation ensued between members of the Task Force that structures could be more clearly defined.

9. Consider reviewing demolition process as it relates to age of structure

Mr. Mackey described the demolition process in the Land Use Ordinance. The LUO states that structures in Kent County that are older than 75 years are considered historic and subject to the three-tiered provisions before demolition occurs. The national standard starts at 50 years. Mr. Mackey questioned keeping it the same or reconsidering 50 years versus 75 years.

A member questioned whether the process applies only to houses or any structure.

Mr. Mackey stated it is a historic structure review, which includes more than just houses.

A member conveyed that demolition should be at the discretion of the owner and cited an example of the desire of a property owner to demolish a barn on his property and build a new one.

Ms. Gerber reported the historic review process goal is not to prevent demolition, but rather to document the structures photographically.

A third member requested clarification of the timeline process.

Mr. Mackey conveyed that a tier two review is 30 days; a tier three review is 45 days; and the process could take as long as two and one-half months, depending on the age of the structure.

10. Consider reviewing the definition of waterway width versus State approach:

Mr. Mackey conveyed this is another staff concern, in which Kent County measures the waterway different than the State and questioned the need for consistency.

A member agreed that it needs to be better defined and the State does not measure down the shoreline. Another member also agreed waterways should be better defined.

Ms. Gerber clarified that currently for the County, measurement is made at the shoreline location of the pier, and at the narrowest width of the waterway from that point.

11. Consider reviewing the conditions related to hunting trailers on farms

Mr. Mackey read the provisions for hunting trailers from the Agricultural Zoning District and described the conditions which only allows hunting until February, and hunting season extends beyond February.

A member expressed that they had more concern about hunting trailers that are not out of view, and how close to the line they are to property lines, rather than the duration of their placement.

Another member stated it may be difficult to keep hunting trailers out of view, since some hunting trailers are not movable. The member cautioned this could deter hunting and voiced concern that the regulations should not discourage hunters, as hunting is a major economic driver in the County.

A third member expressed the need to take a closer look, while considering location, season, structure of farm, the kind of farming being undertaken, etc. A discussion ensued on enforcement of the provision.

The meeting recessed for a 15-minute break at 7:05 pm.

12. Consider reviewing the side setbacks and rear setbacks of three feet and five feet, respectively, for accessory structures in rear yards, which occur throughout the LUO.

Mr. Mackey conveyed the setbacks are very close to property lines. This is the case in many zoning districts and staff would like to consider increasing these setbacks.

A member stated that building size, especially height, could be considered when determining the setbacks.

13. Consider discussing an overall approach to short-term vacation rentals (STVR)

Mr. Mackey reported the current code does not address vacation rentals and questioned discussing a new approach, or leaving it as is.

A member questioned if feedback had been solicited and received from the Department of Economic and Tourism Development.

Mr. Mackey noted he is waiting on a return call from the State liaison to determine status of State law and will check with the Department of Economic and Tourism Development for their feedback.

A second member questioned if short term rentals have caused any problems.

Mr. Mackey responded that they are not regulated, and it is uncertain if they are a large-scale problem.

The second member stressed the concern and extent of regulation on short term rentals which should apply is if the accommodation taxes are not paid.

A third member agreed with the second member, further noting many people who rent property become permanent residents or second homeowners in the County.

A fourth member agreed with the above members in favor of not regulating short term rentals beyond ensuring the accommodation taxes are paid, unless further problems arise, as they are a major economic driver in the County.

14. Consider discussing climate change, resilience, and the floodplain regulations by potentially requiring Base Flood Elevation plus three feet for new projects

Mr. Mackey discussed raising the current requirement an additional three feet, even though it is an aggressive approach. Since it is being considered nationally, it may be a good approach in Kent County.

A member questioned how following the national approach would affect the County overall and if it could be illustrated on a map.

Mr. Mackey and Ms. Gerber responded they will look for maps.

Another member expressed concern over negatively impacting the velocity zone if the requirements were increased three additional feet, but believes it is worth considering. The member further stated that Queen Anne's County has an in-depth section in their ordinance relative to climate change, and it may be a good idea to consider mirroring their ordinance.

C. Discussion of Next Steps for Task Force and draft Schedule 2021-2022

Mr. Mackey suggested receiving dates from the Task Force on which specific topics will be discussed, so staff can prepare reports, and so topics and dates can be published in advance of future meetings. He also noted that the timing of AZD topics should allow for the schedule of farmers who wish to be involved.

A member agreed with Mr. Mackey, as timely consideration for contentious issues and topics that affect many people in the AZD need to be realized, because it takes time to discuss and provide feedback on these discussions. The member proposed a timeframe beginning in mid-July to the third week in August for AZD matters. The member strongly opposed waiting to discuss AZD matters until next December.

Another member stressed there have been no illustrations provided thus far of the analyses involving the AZD, the 10% rule, the density clock, etc., and these need to be studied before moving forward.

Mr. Mackey conveyed the goal is to create a schedule for when the topics are to be discussed, so staff will have ample time to provide research for each topic while prioritizing them accordingly.

A third member agreed with the second that AZD issues are time sensitive, but also believes advance notice of topics, starting with the less involved topics and progressing to the more involved ones, while including farmers during down time, would be sufficient for staff to prepare research and staff reports.

A fourth member conveyed the need for staff to determine how much time is needed for each topic, while continuing to move forward with the agenda.

A fifth member agreed with the fourth member to have staff set forth an itinerary for review.

VI. Public Comments

Telephone:

Mr. Bill Crowding expressed the following:

1. Accessory dwelling structures – The application of a minimum lot size in the village zoning district would clarify and eliminate some of the newer smaller created lots and the lack of parking space, which otherwise would cause an influx in street parking.
2. Accessory structures in the front yard - Should move forward with front yard accessory structures, as long as the requirements are met for the side and front yard setbacks. Problems usually arise during the renewal process.
3. Sand and Gravel pits – Concerned with not meeting the conditions of the permit.
4. Age of historical structures - Should be around 150 years and should not deviate from the recommendations made by the historical commission without their approval.
5. Waterways – Are navigable water and not waterways on farms.
6. Short term vacation rentals - Have caused neighbors to complain, because the owners are not present during the renters stay to monitor problems that may arise. Without enforcement, problems will escalate.
7. Mr. Crowding also cautioned against moving too quickly to eliminate or change the ordinances that have been in place for 15 years.

Kyle Kirby reported there are several residential neighborhoods that have problems with short-term vacation rentals, whose guidelines have not been addressed in private covenants and should be addressed in the zoning code. Many other municipalities have addressed this issue by qualifying the rentals as a commercial use. The presence of VRBO'S and Airbnb's, hurt hotel and bed and breakfast revenue in the County. Residential use with a commercial benefit should be addressed, despite the probability of appeal.

In-person:

Elizabeth Watson, FAICP expressed the following:

1. Short-term vacation rentals are an important part of our economic development. However, payment of the applicable lodging tax should be monitored and enforced. Rules should be applied that address the issues that may arise in the community, and those rules should be enforced.
2. Accessory dwelling units are dwellings and not for accessory office use.
3. Zoning - The Employment Center zone is not being utilized and should be more desirable and beneficial to the County by bringing in revenue from new businesses.

Janet Christensen- Lewis expressed the following:

1. Short term rentals – Ms. Christensen-Lewis is in support of short-term vacation rentals paying the lodging taxes, cautioning that there can be parking woes, loud parties, and the inability to monitor and enforce rules, if the County has no system in place that identifies their existence and location.
2. Hunting trailers – Regulations and inspections will continue to be difficult, as they are now, and there is always a danger that they might be used as permanent dwellings without enforcement.

VII. Task Force Comments

There were no further comments by Task Force members.

VIII. Requests for Research by Task Force Members for the Department Team

There were no requests for research from Task Force members.

IX. Readings for Next Meeting suggested for Task Force Members

Mr. Mackey suggested pages 1-20 from the 2018 Comprehensive Plan and reported context information will be provided later in the week.

A member asked where the zoning maps can be found.

Ms. Gerber conveyed they are part of the online parcel viewer and invited any Task Force member wanting to view instructions on how to access the zoning layer to meet with her after the meeting.

Mr. Mackey thanked everyone for their patience with discussions relating to the topics and conveyed his eagerness in moving forward with more detailed future discussions. Meanwhile, he said he will continue working with the consultant and presenting more graphics of the proposed changes.

X. Adjournment

With no further business to discuss, Vice Chair Hickman motioned to adjourn the meeting, and the motion carried with all in favor. The meeting adjourned at 7:50 pm.