



Comprehensive Rezoning & Update 2020-2021 Task Force

MEETING SUMMARY

Hybrid In-Person/Remote Meeting
Wednesday, September 8, 2021, at 6:00 p.m.

I. Welcome and Roll Call – Task Force Member and Chair Kim Kohl

Chair Kim Kohl opened the meeting at 6:00 pm, conducting member roll call.

The following Task Force members were in attendance: Chair Kim Kohl, Vice Chair Joe Hickman, Albert Nickerson, Bill Norris, Bill Sutton, Bryan Greenwood, Pat Langenfelder, Paul Ruge, Tyler Brown, Tom Mason, Sam Shoge, and Cindy Genter.

The following staff attended: Planning Commission Attorney Cynthia McCann, Esq; DPHZ Director William Mackey, AICP; Deputy Director, Carla Gerber, AICP; Associate Planner, Mark Carper; and Clerk, Michael Pelletier.

County staff who attended included: Jamie L. Williams, Director of Economic and Tourism Development.

Members of the public who attended in-person or remotely included: Janet Christensen-Lewis and Judy Gifford (remote). The meeting was also livestreamed, and anyone could listen to the meeting, via the County's website.

II. Approval of the Summary for the Task Force Meeting on August 11, 2021

A member voiced approval of the minutes with a request that written public comments be added to the minutes. In particular, the topic on page 5 regarding setbacks does not reference several, written public comments that were received by the Task Force. The member added that written public comments were mentioned in past minutes. In comparison, past minutes regarding Utility-Scale energy systems did discuss written public comments that were received. The member was in support of incorporating written public comments in the minutes.

Mr. Mackey indicated that the Staff could note the written public comments received in the meeting summaries.

A second member noted that anecdotal comments in general should not be addressed in the minutes unless they are specific in nature. Otherwise, these comments tend not to add anything substantive to the topics.

Chair Kohl moved for acceptance of the minutes as submitted with the addition of the first member's request that the percentage of opinions received by written public comments be incorporated in the minutes. The motion was seconded by Sam Shoge.

Adopted on September 22, 2021

III. Purpose - Fair and Open Discussion on Proposed Text Amendments

Outcome - Staff is to summarize Task Force positions in Meeting Summary

Ground Rules

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

Norms

- Participants speak ‘through Chair Kohl’. This means raising your hand if you want to speak, and waiting for Chair Kohl to call on you.
- Don’t interrupt other people.
- Don’t talk/debate amongst yourselves.
- Respect other's views.
- Keep contributions short and to the point.
- Start and end on time.
- If online or on the phone: have your video ON and mute ON. Wait for Chair Kohl to call your name before you unmute.

IV. Old Business

- A. Review elimination of the 10% Rule
- B. Review concept of a density clock reset in the AZD.

A member added they would like correspondence received in response to the first two topics under Old Business to be incorporated into the minutes.

- C. Request to add Agritourism as a permitted use in the AZD - Inclusion of Weddings as Special Exceptions within the Agricultural Zoning District

Mark Carper noted that the department has received numerous requests that weddings be allowed on farms. Mr. Carper cited nearby Counties (Queen Anne’s, Howard, and Talbot Counties) and discussed how they address weddings in their respective agricultural districts. Queen Anne’s County includes weddings under their “Special Events” definition. Howard County allows for weddings in its rural districts as a Conditional Use that has several safeguards in place to address traffic, noise, and nuisance issues. Talbot County allows for weddings under its “Farm-based recreation” which has size, use, setback, and landscaping requirements along with site plan approvals. It further limits the number of events per year.

Mr. Carper noted that Staff recommends the Task Force consider suggesting the inclusion of weddings as a Special Exception and discuss potential additional standards such as event size, frequency of events, hours of operation, nuisance control, and public safety.

A member inquired as to whether any standards associated with this topic be specific only to weddings or would they apply to all temporary events. Mr. Carper added that that would be something that would need to be decided.

A second member inquired whether the same site-plan standards would apply to family events versus for profit or non-profit property owners. As an example, whether weddings conducted on family farms by family members would be subjected to the same site plan review requirements as a for-profit property owner. Citing Queen Anne’s County as an example, Mr. Carper informed the member that the ordinance could contain an exception for property owners who do not receive any compensation.

The second member sought clarification as to the scope of the types of events that would constitute a “social engagement.” The second member raised concerns that it might be good to consider the necessity to utilize separate standards on the types of engagements and number of guests. Mr. Carper added that additional language could be added to distinguish certain types of large-scale events. Ticket sales could be restricted as well. Ms. Gerber added that in AZD the County has a permitted use for temporary events handled by means of a use permit, and the department also has had a situation in which a farm wanted to host concerts and they were able to do so as a special exception for an “exposition center or fairgrounds.”

A third member enquired whether any of the comparative Counties identified have a noise ordinance. Mr. Carper noted that he did not find any ordinances that addressed decibels. The third member added that the only negative thing about this proposed provision would be potential noise problems for neighboring properties. Mr. Carper discussed that notification of the event to neighbors providing them a telephone number to call in case of any complaints and concerns may be something to consider as a requirement.

A fourth member added that Agritourism is going to become more prevalent, and it would not be a good idea to provide various restrictions, including capacity, insofar as it might not be ascertainable the total number of people at an event. As an illustration, the member cited to a September 11 memorial event that was upcoming.

Cindy McCann asked Staff to confirm whether we were simply adding weddings as a special exception in the AZD for the moment. Mr. Carper added that this topic comes up more frequently with Agritourism in a non-commercial setting, so the overall purpose of this provision is to address weddings and does not have to be specific solely to that event type, but at this point the addition of weddings is open for discussion as to scope. Ms. Gerber added that the question of whether people could host weddings on their farm was a question raised approximately once a week during the summer, so initiating a discussion on the topic is a starting point. The department is looking to the Task Force for its recommendation on what types of events are appropriate because the land use ordinance does not specify these types of uses.

The second member suggested the possibility of utilizing a cap on the number of events for any given property. The member agreed that the County needs to be concerned about overregulating; however, the member was also concerned about protecting the non-farm businesses within the County that rely on hosting these types of events. The member suggested six events over the course of a year as a starting point.

The first member suggested Staff research the three comparative Counties to see how they have caps on the number of events.

The fourth member inquired whether these caps would apply only in the Ag zone or any of the bed and breakfast establishments. If so, it did not appear fair as opposed to free enterprise. Otherwise, it could be seen as favoritism.

The second member expressed that the use of a cap is a compromise and the issue could always be revisited at a later date.

Public Comment

Janet Christensen-Lewis, resident of Millington, asked Staff to reconfirm those neighbors would be notified of events. Mr. Carper confirmed that the potential option of a notification could allow a neighbor an option to lodge a complaint if a noise problem develops. Mr. Carper added that a history of complaints could be a tool to determine whether a permit request would be denied.

Jamie L. Williams, Director of Economic and Tourism Development, added that she has been with the County for 10 years and, over this time, there have been a number of these types of events without conflict with neighbors. She further supports Staff's recommendations on the topic.

Cindy McCann noted that she felt it might be a good idea to consider addressing these events globally, by zone for example, and that it would be difficult to address noise as a restriction because it would require a noise ordinance for enforcement purposes.

Chair Kohl noted that the Planning Commission discussed decibels as it related to events. Ms. McCann added that noise restrictions could be a standard in granting a special exception.

The second member inquired whether this should be a permitted use or special exception. Mr. Carper expressed that a special exception would be a better approach.

Janet Christensen-Lewis noted the State stopped enforcement of noise ordinances in response to a lack of funding; however, COMAR does address a minimum. Noise issues would be rare given the size of farms. If a noise ordinance is imposed, it should be at a level that does not interfere with an owner's right to use their property.

The fourth member stated they were of the opinion that enforcement would be difficult.

Chair Kohl felt there appeared to be agreement that weddings should be included as a special exception with standards and that Staff has received a good amount of feedback on the topic.

V. New Business

A. Summary of the 2020 Census Data and Tools – Jamie L. Williams, Director of Economic and Tourism Development

Ms. Williams shared statistics from the 2020 Census Data. She wanted to dispel a myth that circulated that Kent County has been stagnant for hundreds of years. The County population has been increasing slowly over time.

Ms. Williams relayed to the Task Force that Kent County's census population in 2000 was 19,197, moving to 20,197 in 2010, and 19,198 in 2020. In 2020, the town of Chestertown had a population increase of 280 residents and the population losses occurred in the remainder of towns and in Kent County.

Age population loss data notes that 485 were 18 years or older and 514 were younger than 18. The number of housing units decreased by 263. The town of Chestertown increased by 93 housing units, so the other losses occurred throughout the County. Household size decreased from 2.29 residents per household to 2.21. This decrease likely occurred as more people were having less children or opting to have no children at all. Additional data and census documents are available upon request.

Ms. Williams added that the Economic Development Strategic Plan from 2017 noted that 91 percent of County's land use was designated as agricultural and constituted 13.6 percent of the County's real property tax base. In 2020, agricultural land constituted 90 percent of land use and it represented 14 percent of the County's real property tax base.

Chair Kohl inquired as to whether there was a report that could be shared with the Task Force. Ms. Williams noted there wasn't a report, but she could forward supporting documents and hyperlinks. Chair Kohl added that she recalled hearing, as far back as 1978, that Kent County had the same population as it did from back in the American Civil War. Ms. Williams noted that in 1861 the County population was 13,267.

A member asked for clarification on whether the virtual students at Washington College were counted in the 2020 census. Ms. Williams noted that, as they were still listed as "group quarters", then they were included in the census data. Ms. Gerber pointed out that this set of data was for redistricting purposes and will shift. The member asked if that new data could be provided as even a shift of few hundred people would be important to know in a County with a population of 20,000.

The member also inquired as to whether an assessment has been made on tax districts, other than agricultural land. Ms. Williams confirmed that in addition to agricultural districts, commercial and residential districts were also assessed. Healthcare, education, and manufacturing sources are equally as important and these sectors include Kent County's top three major employers. Economic impact and valuation of these various revenue sources and industries were further discussed between the member and Ms. Williams. Chair Kohl noted it might be a good idea if they could review this data.

A second member inquired as to whether the County was moving forward or backward economically. Ms. Williams felt we were moving forward slowly. She noted there was a mix of certain businesses expanding and others were diminishing.

Ms. Williams also added that she believes that Agricultural Preservation and Economic Development can work compatibly and does not need to be in conflict.

The meeting closed for a break at 7:00 p.m. and resumed at 7:10 p.m.

B Review of S6. Consider removing the renewal requirements for sand and gravel pits

Ms. Gerber informed the task force that there was a Maryland Court of Special Appeals case, *East Star, LLC v. County Comm'r of Queen Anne's County*, 203 Md. App. 477 (2012), in which the appellate court held that certain provisions of the local ordinance were preempted by State law. Kent County's special exception provisions concerning sand and gravel pits are similar to the language that was struck down in the Court's opinion so the department desires to make some changes to be in compliance.

Ms. Gerber recommended that four sections of the current standards for sand and gravel pits be removed:

- The special exception shall be for a period not to exceed five years;
- The operation will not disturb for future use prime agricultural lands or forest and developed woodlands of more than one acre;
- The operation does not adversely affect a non-tidal wetland directly or hydrologically; and
- ...the depth of excavation, and relation to the water table or flood criteria and the slope of the sides of the excavation...

A member had a question concerning Section 52(a) pertaining to removal of the five-year expiration requirement. The member asked whether the State requires these licenses be renewed. Ms. Gerber confirmed that state mining licenses have to be renewed and that much of the proposed language is duplicative to what the State currently has in place.

Another member asked whether the County could have stronger restrictions or whether these changes are sought to protect the County from potential litigation. Ms. Gerber stated that these changes were being proposed because the County could not be more restrictive than State law on this issue. Ms. Gerber added that Kent Sand and Gravel asked that the County's provisions be revised to be in compliance with the Court's opinion. Ms. McCann also confirmed that these proposed changes were made to be in compliance with the Court's opinion. As a result, the County cannot impose more restrictive requirements insofar as the Maryland Department of the Environment oversees these practices under State law.

Public Comment

Janet Christensen-Lewis noted that there are several provisions in the Land Use Ordinance that can be more restrictive than State law, but it appears from this Court opinion that the County cannot in regard to sand and gravel pits. She wanted to know why the County does not want to incorporate the State law into the Land Use Ordinance. Ms. Gerber responded that it was her understanding there are several State laws that cannot be more restrictive on a local level; however, there are others that expressly authorize that local jurisdictions may pass regulations that are more restrictive than State law. Ms. Gerber noted that the County would not want to incorporate the language of the State law into the zoning code.

Ms. Christensen-Lewis inquired whether the Maryland Department of the Environment would notify the County if an applicant was not in compliance with State law. Ms. Gerber confirmed that it would depend on the issue. At this point, the process would be complaint driven.

C. Review of S7: Consider reviewing the definition of structures, especially considering fences

Mr. Mackey noted that the issue is that the Critical Area Commission allows for certain kinds of fences in the 100-foot buffer; due to the wording of the County's definition of structure in the Land Use Ordinance, fences have not been allowed in the 100-foot buffer by Kent County.

Critical Area Commission staff noted that the definition of "lot coverage" does not include "a fence or wall that is less than 1 foot in width that has not been constructed with a footer..." Changing the definition of structure by adding "with footers or a foundation" after the word "fences" would allow fences within the 100-foot buffer without the need for a variance.

Staff recommends that the Task Force consider adding language to the definition section, in order to make it clear that non-structural fences may be constructed within the 100-foot buffer.

A member noted this appears straight forward.

A second member agrees with the recommendation from Staff.

D. Review of S8: Consider reviewing the definition of accessory structures and accessory use

Mr. Mackey reported that the issue is that accessory structures have in the past been required to be smaller in area and height than primary structures in order to be permitted. Staff suggests elimination of interpretation and altering language to make it clearer that an accessory structure or use must be subordinate and incidental, but it need not be physically smaller in area.

Mr. Mackey added that the County's definitions for accessory structure and accessory use are in keeping with neighboring jurisdictions and recommends striking and adding certain text to/from the definitions.

A member voiced support for the proposed definitions that allowed for a larger footprint as opposed to the latter, thus giving owners more flexibility to make decisions concerning their property.

A second member was concerned that this would apply to all districts. The member noted that in the Village district, this would not necessarily be a good idea to allow accessory structures with little size restrictions. In such an instance, some issues might develop.

A third member added that in the Village district, the lots are too small to construct too many accessory structures.

The second member, offering Chesapeake Landing as an example, noted that if one allows for accessory structures to be larger in size than the principal structure, such an allowance might ruin the character of that neighborhood.

Ms. Gerber added that in every district except the Village district, the County has size limits which would trigger the need for a special exception. In that situation, the department can take footprint into account to ascertain that the principal structure is still serving its function.

The second member added that if the County addresses this definition by each district, then that would resolve this problem.

The first member inquired as to whether lot coverage would apply to all areas. Ms. Gerber responded that lot coverage would apply to all districts from a stormwater management perspective.

Public Comment

Janet Christensen-Lewis sought clarification that it appears the County is proposing to apply a definition to all zoning districts; however, not all districts are treated equally because they would have other restrictions that would prevent certain size buildings. Ms. Gerber confirmed Ms. Christensen-Lewis's understanding of Staff's position.

E. Review of S12: 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. Carper noted that the minimum setbacks for accessory residential structures in the rear yard is three (3) feet from the side and five (5) feet from the rear.

Mr. Carper noted this request suggests that the Task Force consider reviewing the side and rear setbacks of three feet and five feet, respectively, for accessory structures in rear yards which occur throughout the Land Use Ordinance.

Increasingly, County zoning enforcement officers are finding debris, lean-to's, cordwood, and other items stacked against accessory structures and encroaching within the setback space, creating unsightly views and habitat for vermin.

Cecil County restricts accessory structures to 10 feet from the rear lot line and a minimum of 10 feet to a side lot line. Queen Anne's County requires only a 3-foot setback from any property line for residential accessory structures. Talbot County's restrictions are 10 feet from the side lot lines and 25 feet from the rear lot lines in Villages.

Mr. Carper noted that Staff recommends that rear yard setbacks for residential accessory structures be uniformly set at 10 feet for the side and 10 feet for the rear, the exception being within the Intense Village and Intense Village Critical Area, where setback requirements are determined by site plan review. If a site plan review isn't required, then the Village setbacks are applied.

A member inquired if existing buildings do not meet the proposed requirements, would they be grandfathered in. Mr. Carper confirmed that the member is correct.

A second member noted his support for Staff's recommendation.

A third member believes that 10 feet excessive. Mr. Carper noted that proposed 10 feet set back was recommended by the County's enforcement officer.

A fourth member voiced the member's support for the 10 feet but did not feel it would be effective. The member also had concerns about the application of fences. Ms. Gerber clarified that this proposal would not apply to fences. Mr. Mackey noted that fences are treated differently and not subject to this type of provision.

Chair Kohl asked Staff if it could be noted in the proposal that this provision did not apply to fences. Mr. Mackey added that the County is not actively regulating fences.

Public Comment

Janet Christensen-Lewis inquired as to the effect of the proposed setback requirements in relation to the proposed definitions of accessory structure or accessory uses and was of the opinion that taller buildings should have deeper setbacks.

F. Review of Initial Proposed Draft Task Force Recommendations (up to 8/11)

Mr. Mackey noted this is an attempt to initiate a proposed draft of the Task Force Recommendations.

Chair Kohl suggested that the recommendations be more consistent and the number of members who spoke on an item be noted. Regarding comments or letters received, Chair Kohl felt it appropriate to use language such as "the majority was in support" or "not in support" and that would give more clarity to the Commissioners and a better overview of the voices in the room.

Another member noted there were no references to written public comments, and the member felt it was important to present. Mr. Mackey noted that he was trying to include only the general position of the Task Force that was expressed by the Task Force, and that there is a dialogue between the Task Force and the public (as noted in the minutes). The purpose was to establish a general direction that is helpful.

A third member and Chair Kohl were of the opinion that it is important to point out that organizations such as the Farm Bureau and Riverkeeper were speaking on behalf of many as opposed to a few. Mr. Mackey responded that the department attempts to make sure organizations are identified in the minutes.

A fourth member stated that the Task Force has a job and that the public can always have an opportunity at a public meeting to speak and several other County committees will have an opportunity to review. At this point, it is the opinion of the members of the Task Force that should carry the most weight.

A fifth member raised a question about the recommendation not to have further discussion of P9 pertaining to reviewing standards related to subdivisions accessing private roads. The member inquired as whether a 5 to 4 vote warrants further discussion, and those other recommendations contain much larger margins for yes or no than this one. Mr. Mackey clarified that if only four or fewer people voted for further discussion, it would not get discussed. In this case, nine tallies were in support of no further discussion.

Chair Kohl stated it should be clear these are not “votes”. Mr. Mackey suggested the term tallies which Chair Kohl felt was more appropriate.

The second member stated that from the minutes it appears a range from only 4 to 7 members are speaking on any given topic and there was no feedback from other members. The member inquired how could a consensus be reached given this trend. Chair Kohl noted that it was previously discussed that there was no consensus and recommended a change in wording to identify a consensus from the members who spoke so as not to make assumptions of other members. Mr. Mackey noted that these suggestions were all good input.

Public Comment

Judy Gifford added that the audio from this meeting was much better, and she could hear almost everybody clearly on the phone.

Jamie Williams, Director of Economic and Tourism Development, noted that, in previous meetings, references were made that the “2018 Comprehensive Plan states that agriculture is a permanent and preferred land use.” Ms. Williams added for clarification that the next line of that statement reads, “for the majority of the County.” Ms. Williams also wanted to address comments that were made last meeting opining on what Economic Development has or has not done. She added that no one from these meetings regularly attended Economic Development meetings with the exception of Cindy who was on the Commission.

Ms. Williams clarified what she noted were misconceptions to compare Kent County and Montgomery County insofar as their respective capabilities by discussing budget and personnel limitations. Regarding what the County has done to support agriculture within the County, Ms. Williams discussed the Economic

and Tourism Development's advocacy, favorable recommendations, and success initiating farm-based programs as well as associated funding for FY 18 and 19 within Kent County.

The second member inquired as to whether this report will be changing. Mr. Mackey confirmed that the goal of this initial report is to get members' input so by the Public Forum, the members would be satisfied with their recommendations as presented.

VI. Task Force Comments - There were no additional comments.

VII. Adjournment

Chair Kohl adjourned the meeting at 8:00 p.m.