



Kent County Board of Zoning Appeals
Department of Planning, Housing, and Zoning
400 High Street, Suite 130
Chestertown, MD 21620
410-778-7423 (voice/relay)

County Commissioners Hearing Room
400 High Street
Chestertown, Maryland

AGENDA

Monday, November 15, 2021
7:00 p.m.

Members of the public are now welcome to attend meetings in person, virtually, or via conference call. You may also listen to the meeting either online at <https://www.kentcounty.com/commissioners/meeting-live-video> OR via the audio-only phone number and conference identification number listed below. If listening to the meeting online, the way for members of the public to provide verbal comments during the meeting is via the audio-only phone number.

Public participation and audio-only call-in number:

1. Dial **1-872-239-8359**
2. Enter Conference ID: **882 121 590#**

Members of the public are asked to mute their phones/devices, until the Board Chair opens the floor for comment. Please note that if you are listening to the online livestream while waiting to call in to participate, there is an approximately 45-second delay. In order to avoid audio feedback issues, please mute the livestream before calling in.

MINUTES

October 18, 2021

ITEMS FOR REVIEW:

Update of Local Rules Section XII – meeting time

Request to meet in December

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Board of Appeals meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the members. Breaks are at the call of the Chairman. Meetings are subject to audio and video recordings.

Projects will not be reviewed prior to their scheduled time. All applications will be given the time necessary to assure full public participation and a fair and complete review of all projects. Agenda items are subject to change due to cancellations.

Other business without assigned times may be discussed during the meeting.

MINUTES

Meeting: Kent County Board of Zoning Appeals
 Date: October 18, 2021
 Time: 7:00 P.M.
 Location: Virtual Meeting/County Commissioners Hearing Room, 400 High Street, Chestertown, Maryland

Agenda Item/Case	Sitting for the Board	Action Taken	Vote
<p>#21-38 Bonnie Plants, LLC (D. Drury) – Special Exception – Migrant Worker Housing</p> <p>The applicant is requesting a special exception to construct a building to house migrant laborers on its 20.39-acre property located at 12515 Augustine Herman Highway. The applicant has been growing herbs and vegetable plants in greenhouses for over 15 years and would like to house the H2A guest workers it hires onsite. The building will house up to 24 workers from February through July and will meet all Department of Labor requirements, per the applicant’s testimony.</p> <p>The property is located 12515 Augustine Herman Highway in the Second Election District and is zoned Agricultural Zoning District (AZD) and Crossroads Commercial (CC).</p> <p><u>Applicant(s)/Representative(s):</u> David Drury, proprietor of Bonnie Plants, LLC.</p> <p>Mr. Drury was sworn in and presented his case.</p> <p><u>Planning Staff:</u> Carla Gerber, Deputy Director, was sworn in.</p> <p>No correspondence was received.</p>	<p>Dr. Albert Townshend, Chairman</p> <p>Joan Horsey, Member</p> <p>John Massey, Member</p> <p>Mr. Christopher Drummond, Attorney for the Board (remote)</p> <p>Michael Pelletier, Clerk</p>	<p>Mr. Massey made a motion to approve the special exception for construction of migrant worker housing with the following conditions:</p> <ul style="list-style-type: none"> a) The applicant secure final site plan approval from the Planning Commission; b) The applicant work with Department staff to develop a landscaped screen between the dormitory and the property of the neighbor to the west; and c) The applicant actually plant the landscaped screen and maintain it as required by the Planning Commission. <p>The motion was seconded by Ms. Horsey; the motion passed with all in favor.</p>	<p>Unanimous Approval</p>

Agenda Item/Case	Sitting for the Board	Action Taken	Vote
<p>#21-25 Thomas Voshell & Chesmar Community Association – Determination of Non-Conforming Use / Appeal of Administrative Decision of the Zoning Administrator.</p> <p>Mr. Drummond provided the Board with an update on the filing of the record in the Circuit Court, that Mr. Drummond will participate in representing the Board at the judicial review proceedings and informed the Board that a Motion to Dismiss has been filed by Counsel for Minary’s Dream Alliance.</p>		No action taken.	None
<p>MINUTES: July 19, 2021; July 27, 2021; and August 2, 2021</p>		Mr. Massey made a motion to approve the minutes, and Dr. Townshend seconded the motion; the motion passed. Ms. Horsey abstained.	Approved.
<p>Adjourn</p>		Mr. Massey made a motion to adjourn the meeting, and Ms. Horsey seconded the motion; the motion passed with all in favor. The meeting adjourned at 7:25 p.m.	Unanimous Approval

Dr. Albert Townshend, Chairman

Michael Pelletier, Clerk

KENT COUNTY BOARD OF ZONING APPEALS

LOCAL RULES – Revised 2021

- I. In accordance with the Land Use Article ~~66B~~ of the Annotated Code of Maryland, the local legislative body shall provide the appointment of a Board of Appeals. The Board of Appeals consists of three members. The terms of office of the members of the Board are three years. They shall be appointed by the local executive, confirmed by the local legislative body and removable for cause, upon written charge, and after public hearing. Vacancies shall be filled for the unexpired terms of any member whose term becomes vacant. Members of the Board may receive such compensation as the local legislative body deems appropriate.
- II. The local legislative body shall designate one alternate member for the Board of Appeals who may be empowered to sit on the Board in the absence of any member of the Board, and when the alternate is absent, the local legislative body may designate a temporary alternate.
- III. Rules; meetings; administering oaths; summoning witnesses; records. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to the Land Use Article ~~66B~~. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Such chairman or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall make minutes of all proceedings, the minutes shall show the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, the minutes shall be immediately filed in the office of the Board and shall be a public record. A party who requests a copy of the transcript of a hearing shall pay the cost of preparing the transcript.
- IV. General Powers. The Board shall have the following powers:
 - a) to hear and decide Appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the Land Use Article ~~66B~~ of the Annotated Code of Maryland or the Kent County Land Use Ordinance adopted pursuant thereto.
 - b) to hear and decide special exceptions and conditional uses to the terms of the Kent County Land Use Ordinance upon which the Board of Zoning Appeals is required to pass under such ordinance.
 - c) to authorize upon appeal in specific cases a variance from the terms of the Kent County Land Use Ordinance.
 - d) to grant variances from the Kent County Floodplain Ordinance.

- V. Appeals; transmission of record. Appeal to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the jurisdiction affected by any decision of the administrative officer. Such appeals shall be taken within thirty (30) days from the date of the decision of the administrative officer, as provided by the rules of the Ordinance, by filing with the officer from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action was taken.
- VI. Stay of proceedings on appeal. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from which the appeal is taken certifies to the Board of Appeals, after notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Appeals or by a court of record on application on notice to the officer from whom the appeal is taken, and on due cause shown.
- VII. Hearing on Appeal. The Board of Appeals shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. A written decision shall be issued no later than 30 days after the hearing is concluded and a decision made. The decision and order granting or denying the appeal shall be in writing and be signed by no less than two members of the sitting Board of Zoning Appeals and shall contain a summary of the hearing, findings of fact, conclusions of law and the final order. Upon the hearing, any party may appear in person or by agent or by attorney.
- VIII. Decision of Board. In exercising the above-mentioned powers such Board may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. Upon an application of appeal to a decision of the Hearing Examiner or an appeal of the decision of the Administrator, hearing shall be de novo. In each case the Administrator or any other person deemed appropriate by the Board may be called to testify as a witness.
- IX. Regular meetings of the Board of Zoning Appeals shall be held in the County Commissioner Hearing Room, 400 High Street, Chestertown, Maryland, once a month, excepting that in December no meeting shall be scheduled, unless the Chairman decides to call an additional meeting. In the instance when there is no agenda for a given month the meeting may be canceled. The Chairman may specially set meeting of the Board at any time or at the request of the County Commissioners for such a meeting.

- X. Hearings will follow this procedure:
- a) The applicant will present their case, after which the Board and anyone present may cross examine them in regards to their testimony.
 - b) If the applicant should have any witnesses to speak on their behalf, they will each testify and the Board and anyone present may cross-examine each witness in regards to their testimony.
 - c) Anyone else present who wishes to testify on behalf of the applicant may do so and then be cross examined.
 - d) Protestants may then testify, after which each may be cross-examined in regards to their testimony by the Board and anyone present.
 - e) The Board, at its discretion, may call Staff or another person deemed appropriate to testify, after which Staff or the witness called may be cross-examined in regards to their testimony by the Board and anyone present.
 - f) After everyone has testified then the applicant and Protestants may each be allowed to present closing arguments.
- XI. The Chairman reserves the right to follow “Procedures for Testifying” as adopted on January 26, 2009, for any hearing in which it is reasonable to anticipate multiple witnesses for the Applicant and Protestant. “Procedures for Testifying” shall be available to the public in the Kent County Department of Planning, Housing and Zoning.
- XII. Scheduling of all Appeals and Applications to the Board shall be made by the Department of Planning, Housing and Zoning but no hearing shall be scheduled after 9:00 PM. All meetings shall begin at 7:00 PM. [It is suggested that this sentence be struck for flexibility.]
- XIII. To preserve public confidence in the fairness of Board of Appeals deliberations and decisions, the Board should ensure that the public and interested Persons have the opportunity to know, and respond to, all information that the Board considers in making its decisions. The Board should also ensure that all members have the same opportunity to know and consider any relevant evidence provided to any other Board member. The Board may take administrative notice of facts in common knowledge and matters falling within any member’s experience and expertise, as disclosed by that member, in reaching a decision on a matter.

When considering any matter, all interested parties need the assurance that other interested parties will not have an unfair advantage in presenting their version of the relevant facts or concerns to the Board. To that end, Board members must avoid communicating with applicants or any other persons about a pending application except at Board meetings when the application is considered.

Each Board of Appeals member and alternate must not communicate with any person, other than staff of the Kent County Department of Planning, Housing and Zoning about the merits or facts of any pending application, except during the Board meeting when the application is considered. If the Board finds that any person has intentionally communicated or attempted to communicate with a Board member, the Board may impose an appropriate sanction including the exclusion of any testimony by the person from the record of the matter to which the prohibited communication pertained.

If a Board of Appeals member receives unsolicited communications about a pending application outside of a Board meeting, the member must disclose and describe the communications at the earliest opportunity during the Commission's consideration of the proposal.

Subject only to the applicable provisions of the Maryland Open Meetings Act, nothing applies to or otherwise restricts any member of the Board from communicating with the planning and zoning staff, or Board legal counsel for the purpose of obtaining information or advice. This also does not restrict any Board member from communicating with any third party in connection with any matter other than an application considered by the Board.

- XIV. To promote confidence and trust in the conduct of public business, members of the Board of Zoning Appeals and Planning Staff must, at all times and in all respects, observe an affirmative obligation to disclose any actual, apparent or potential conflict of interest pertaining to any application that is subject to the Board of Appeals jurisdiction
- XV. The Board of Zoning Appeals may amend these local rules at any meeting of the Board provided notice of said proposed meeting is given to each member in writing at least five days prior to said meeting and posted on the door or blackboard at the entrance to the office of Kent County Department of Planning, Housing, and Zoning. A copy of these local rules will be provided to the County Commissioners of Kent County and available to the public in the Kent County Department of Planning, Housing and Zoning.

AMENDED

01/26/09

11/15/21

Additional Procedures for Testifying at Board of Appeals Hearing to be used at the discretion of the Chairman.

The meetings of the Kent County Zoning Appeals Board will follow as closely as possible the additional procedures listed below. We ask for your cooperation in complying with our request.

1. There will be two logs at the entrance of the hearing, an “attendee log” and a “testimony log”. Please sign the “testimony log” if you intend to speak during the hearing. The “testimony log” will contain two columns. Please sign in the appropriate column as to whether you are for or against the application before the board.
2. All speakers must identify themselves and use the area designated for purposes of testifying and use the microphone.
3. Attorney’s opening presentations and closing summary will be limited to 20 minutes total.
4. Expert direct testimony will be limited to 10 minutes.
5. Each person testifying will have five minutes for his/her remarks. No one wishing to speak may give their time to another person.
6. All letters received by the board have been read and will be part of the record. In order to expedite the proceedings. It is not necessary to read into the record letters submitted. Only additional information may be presented during the hearing.
7. The board may ask expert witnesses to proffer what is said in their reports.
8. We ask that testimony be limited to the issue at hand. If necessary, the Appeals Board attorney will determine what is relevant to the case.
9. If a person is represented by an attorney, the attorney will make the closing summary.
10. The Chairman will maintain order via voice commands.
11. The Appeals Board hearings will close no later than 11:00 p.m. If necessary the hearing may continue at a later date, determined by the board.

Adopted 1/26/09