

MINUTES

February 2, 2023

1:30 p.m.

The Kent County Planning Commission met in regular session on Thursday, February 2, 2023, at 1:30 p.m. in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland. The following members were in attendance: Chair F. Joseph Hickman, Vice Chair Paul Ruge, William Sutton, James Saunders, Ray Strong, Paula Reeder, and William Crowding. Cynthia L. McCann, Esquire, Planning Commission Attorney, was in attendance. Staff in attendance were William Mackey, AICP, Director; Carla Gerber, AICP, Deputy Director; Mark Carper, LEED Green Associate, Associate Planner; Jamie Williams, CEcD, Economic Development Director; Dawson Hunter, Housing and Transportation Coordinator; and Campbell Safian, Planning Specialist.

Members of the public in attendance included Raymond D'Esposito, property owner; Phillip Gray, property owner (remote); David Pines; Zack Kelleher; Annie Richards; Carole Trippe; Chip MacLeod, Esquire; Anne Stevens; Justinian Dispenza; Laurel Dispenza; Sarah Starman; Owen Bailey; John Lysinger; Cindy Genther; Jennifer Debnam; Patricia Langenfelder; Janet Christensen-Lewis; and Judy Gifford.

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

ELECTIONS

Mr. Ruge made a motion to re-elect Chair Hickman as Chair of the Planning Commission. Mr. Strong seconded the motion. The motion passed with all in favor.

Mr. Saunders moved to re-elect Mr. Ruge as Vice Chair. Mr. Crowding seconded the motion. The motion passed with all in favor.

MINUTES

Mr. Sutton moved to accept the minutes of January 5, 2023, without correction. Mr. Strong seconded the motion. The motion passed with all in favor.

APPLICATIONS FOR REVIEW

*23-06 Raymond D'Esposito – Variance – Front Yard Setback
28519 Spring Road – Second Election District – Critical Area Residential (CAR)*

Raymond D'Esposito is requesting a variance of 37.5 feet from the required 50-foot front yard setback to construct a 20-foot by 18-foot carport. The proposed 20-foot by 18-foot carport is to be placed over and at the end of the existing driveway, and it will increase the lot coverage by 60 square feet from the portions extending beyond the sides of the drive. At 1,922 square feet, the resultant lot coverage will be well below the allowable maximum. A buffer enhancement plan for the installation of 60 square feet of plantings in the buffer will be required. The property is unique in that it has a waterfront view but is without a shoreline, is irregular in shape, and is steeply sloped. This 0.451-acre property is located at 28519 Spring Road in the Second Election District and is zoned Critical Area Residential (CAR).

Adopted on March 2, 2023

Mr. Carper presented the staff report, recommending approval with conditions. The Chair swore in Raymond D'Esposito, owner of the property.

Ms. Reeder asked Mr. D'Esposito if he has completed the buffer enhancement plan.

Mr. Carper stated that the buffer enhancement plan has not yet been created. It will be required before the permit can be issued.

Ms. Reeder questioned the ability to plant enhancements to the buffer given the steep slopes of the property.

Mr. D'Esposito noted the available space on his property to plant trees and bushes.

Mr. Saunders made a motion to grant Mr. Raymond D'Esposito a favorable recommendation to the Board of Appeals for the variance of 37.5 feet from the required 50-foot front yard setback to construct a 20-foot by 18-foot carport with the conditions that staff recommended in the staff report.

Mr. Saunders amended his motion, stating that he has reviewed the staff report and cites the staff's comments as findings for sending a favorable recommendation to the Board of Appeals.

Mr. Crowding seconded the motion as amended, and the motion passed unanimously, 7-0.

*22-74 Phillip Gray – Buffer Variance
23550 Canvasback Road – Third Election District – Critical Area Residential (CAR)*

Phillip and Una Gray are requesting a buffer variance to construct 448 square feet of exterior decking attached to their dwelling and 30 square feet of stairway to this deck, all within the 100-foot Critical Area buffer. The purpose of the proposed deck is to improve access to exterior amenities of the property for one of the applicants for whom mobility is limited. The existing lot coverage is in excess of the 15% of allowable, and the property will need to come into compliance with Critical Area regulations. Mitigation of 3:1 will be required for the proposed permanent disturbance in the buffer. The 1.529-acre property is located at 23550 Canvasback Road in the Third Election District and is zoned Critical Area Residential (CAR).

Mr. Carper presented the staff report, recommending approval with conditions. The Chair swore in Phillip Gray, owner of the property.

Mr. Gray stated that the purpose of the variance application is to build a deck and stairs to relieve his wife's mobility limitations.

Ms. Reeder asked for additional information on what will be removed from the existing lot to meet the allowable amount of lot coverage.

Mr. Carper indicated that a portion of the gravel driveway will be removed to offset any increase in the lot coverage. The site plan is to be updated prior to the Board of Appeals hearing to show the removal of existing lot coverage to bring the property into compliance with the 15% lot coverage limit.

Mr. Crowding reiterated Mrs. Gray's difficulty in maneuvering on a steep sloped lot. Mr. Crowding also opined that the 3:1 mitigation will enhance the buffer.

Mr. Crowding made a motion to send a favorable recommendation to the Board of Appeals for Phillip and Una Gray for a variance in the buffer to construct a 448 square foot exterior deck attached to their dwelling and 30 square feet of stairway added to the deck, all within the 100-foot Critical Area buffer. Based on the staff comments and testimony, the Planning Commission finds that the Comprehensive Plan advocates for the maintenance, enforcement and if necessary, strengthening of existing regulations. The intent of the Ordinance is to set the standards for variances from certain enumerated provisions. The practical difficulty is that the entirety of the principal structure is within the 100-foot buffer. The proposed decking will allow for water to freely flow through. The granting of this variance will be in harmony with the general spirit and intent of the Critical Area Law and Kent County regulations. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat. Based on aerial imagery, it appears that other homes in the area also within the 100-foot buffer have attached decks that extend waterward. Authorization of the variance will not be a substantial detriment to adjacent property, and the character of the district will not be changed. Decks are a common feature of waterfront homes, and a literal interpretation of this Ordinance would deprive the applicants of the rights commonly enjoyed by other properties in similar areas. Without a variance, the applicant would be deprived of use of a structure permitted to others in accordance with the provisions of the Critical Area program. The Critical Area Commission has reviewed the application and is not opposed to the variance. The site plan is to be updated prior to the Board of Appeals hearing to show removal of existing lot coverage to bring the property into compliance with the 15% lot coverage limit. Buffer mitigation of 3:1 for the permanent disturbance to include the 30 square feet for the proposed steps and the area required for the footings to support the proposed deck. The variance will lapse after the expiration of one year, if no substantial construction in accordance with the plans herein presented occurs.

The motion was seconded by Mr. Strong, and the motion passed unanimously, 7-0.

Chair Hickman made a motion that the Planning Commission go into a closed session in order to consider a letter of concern regarding matters that the Planning Commission may or may not consider.

The motion was seconded by Mr. Crowding, and the motion passed unanimously, 7-0.

The Planning Commission went into a closed session on February 2, 2023, at 1:59 p.m.

The Planning Commission resumed the open meeting on February 2, 2023, at 2:19 p.m.

Ms. McCann stated that no action was taken in the closed session. Ms. McCann had received a letter from a member of the public who was concerned about the views and opinions that Ms. Reeder expressed in a Letter to the Editor of the Kent County News in March 2022. Ms. Reeder's viewpoints were regarding the Comprehensive Plan and the 10% rule. Ms. McCann advised the Planning Commission that Ms. Reeder's views, which she expressed prior to her appointment to the Planning Commission in December 2022, would not preclude her from participating in the review of the Task Force recommendations. The Planning Commission is making recommendations on a legislative matter to the County Commissioners. The recommendations are not quasi-judicial applications regarding findings of fact, thus allowing Ms. Reeder to participate.

Chair Hickman noted that a second letter from a member of the public was received. The letter declared that the Task Force recommendation “TF2. Review elimination of the 10% rule (related to new agricultural subdivisions),” should be removed from the list of recommendations to be reviewed. The citizen cited the fact that the former County Commissioners relieved the Task Force of the responsibility to further discuss the 10% rule as a reason why this recommendation should not be reviewed. Counsel advised that members of the Planning Commission can make recommendations to add items to the agenda at any point in time.

Ms. McCann stated there is no legal basis to relieve the Planning Commission from considering TF2, as the legislation was reintroduced in March 2022. The Planning Commission has the power to introduce new text amendments and make recommendations on existing text amendments sent to the Planning Commission by the County Commissioners.

GENERAL DISCUSSION

The Planning Commission reviewed the Task Force Recommendations document, version 6, as requested by the Board of County Commissioners at the County Commissioners’ work session meeting held on January 10, 2023.

P4. Request to create two, new floating zones to allow for (a) planned mixed-use development and (b) planned neighborhoods, including specific criteria for such designations, as well as (c) to combine the Commercial and Employment Center districts and (d) to allow residential uses in the newly combined district.

Mr. Ruge expressed interest in tabling P4 in anticipation of receiving correspondence from the Town of Millington regarding the matter.

Ms. Reeder spoke in agreement with Mr. Ruge.

Chair Hickman noted that the County Commissioners will hold a public hearing on the item before making a final decision. Chair Hickman spoke in favor of receiving updated correspondence from the Town of Millington, however, he wishes to send the current recommendation to the County Commissioners.

Mr. Crowding spoke in agreement with Chair Hickman, noting that Millington has had an ample amount of time to update their opinion on P4.

Mr. MacLeod reiterated the importance of Millington’s opinion on the matter and noted that the opinion is outdated. Mr. MacLeod also spoke against the idea of allowing Millington’s opinion to be the only factor taken into consideration when making the recommendation on P4 to the County Commissioners.

Mr. Crowding asked for clarification whether P4 will create two, new floating zones in the designated growth areas or whether it affects particular parcels.

Mr. Mackey replied stating that a parcel could potentially be rezoned if the designated eligibility requirements were met. These could be limited to a specific geographic area, such as near US 301 and MD 291, or the size of the property, and other factors as well.

No motion was offered.

P5. Request to allow truck stops, truck parking lots, gas sales, convenience stores and restaurants with or without drive-through in the Industrial district.

Ms. Reeder anticipates that the Town of Millington's opinion on this item has changed. Ms. Reeder spoke in favor of this recommendation.

Chair Hickman noted that the recommendation would allow the additional uses in the entire Industrial zoning district. Chair Hickman opined that the uses would be more suitable for the Commercial zoning district.

Mr. Crowding spoke in agreement with Chair Hickman and expressed concerns with allowing truck stops to occupy substantial acreage in the Industrial district. Allowing the additional use would limit the opportunities and lots available for a new industrial business that is interested in expanding to Kent County.

No motion was offered.

Request to amend the Forest Conservation provisions of the Land Use Ordinance (Article VI. Special Provisions, Section 8. Forest Conservation, beginning on page 373 of the current Land Use Ordinance under Part 8).

Ms. Richards noted the written testimony and the petition signed by 412 ShoreRivers members in support of the text amendment. In December 2022, a comprehensive study of forest and canopy cover across the State of Maryland was completed. The study shows that the Upper Eastern Shore is the least forested region in the State of Maryland. Kent County has the lowest percentage of forest among counties in Maryland. Ms. Richards asks that Kent County be a leader in forest conservation efforts on the Eastern Shore and adopt the text amendment.

Mr. Bailey expressed the Eastern Shore Land Conservancy's support for the text amendment.

Mr. Dispenza, Ms. Dispenza, Ms. Starman, and Ms. Stevens spoke in support of the text amendment. They would like Kent County to invest in the future for the younger generations.

Ms. Gifford opined there is a lack of evidence that increasing the Forest Conservation provisions of the Land Use Ordinance would hurt development. Ms. Gifford noted that Montgomery County has adopted strict Forest Conservation measures and it has not impacted their development.

Ms. Reeder spoke in disagreement by stating that the additional cost and burden of reforestation will have an effect on development.

Mr. Mackey referenced the staff report which says that the impact of the amendment to the Forest Conservation provisions will have on development cannot be predicted. The amendment would increase the amount of required afforestation; however, it is inconclusive whether the amendments would achieve the Comprehensive Plan's goal of zero net loss in forest.

Chair Hickman opined that the County could benefit from stricter Forest Conservation policies. Many younger residents choose to live in Kent County because of the forested lands and natural landscapes.

Ms. Richards stated that agricultural lands have a greater potential for forestation. Agricultural lands can establish easements and conservation buffers. Forests cannot be established in subdivisions due to the presence of septic systems.

No motion was offered.

TF2. Review elimination of the 10% rule (related to new agricultural subdivisions).

Mr. Bailey expressed the Eastern Shore Land Conservancy's support for keeping the 10% rule in place. The 10% rule has been a contributing factor in maintaining a successful agricultural economy in the County. Development should be focused in and around the town centers.

Ms. Langenfelder opposed the elimination of the 10% rule, noting that the rule helps to prevent the subdivision of agricultural land.

Ms. Christensen-Lewis opposed the elimination of the 10% rule. Ms. Christensen-Lewis noted that at least 15 members of the public opposed removing the 10% rule at previous Task Force meetings.

Ms. Reeder spoke in favor of eliminating or revising the 10% rule. Ms. Reeder noted that two letters were received from Task Force members requesting the 10% rule be eliminated. Ms. Reeder is aware of three other farmers who oppose the 10% rule.

Mr. Crowding stated that he is against the elimination of the 10% rule. The 10% rule is built into the Comprehensive Plan.

Chair Hickman noted that he has business relationships with 21 different farmers and none of them have spoken in favor of eliminating the 10% rule.

No motion was offered.

In lieu of reviewing Task Force recommendations that required more discussion, Mr. Crowding made a motion that the Planning Commission move through the proposed Task Force recommendations and identify those that could be recommended "as is" to the Kent County Commissioners by the Planning Commission. The Planning Commission then worked through the following:

TF13. Review streamlining the Cottage Industry process.

Planning Commission recommends presenting this Task Force recommendation "as is" to County Commissioners.

TF18. Review timelines. Currently, projects scheduled before Planning Commission and Board of Appeals must be submitted 20 days before meetings. For projects that require concept, preliminary and final review, this allows only a week for applicants to address comments and resubmit for the following meeting. // S4. Consider standardizing 10-day, 15-day, and 20-day notices to one standard.

Planning Commission recommends presenting this Task Force recommendation "as is" to County Commissioners.

TF3. Review landscaping to reduce the requirements for trees (for example, one business site was required to have 185 trees and bushes on a 1.3-acre site)

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners and to consider using buffer yards (Queen Anne’s County was cited as the model) and standardizing the landscaping with consistency in mind.

TF7. Review setbacks and required rights-of-way for roads, so the County, State or utilities do not have to maintain vegetation planted along rights-of-way.

Planning Commission recommends eliminating this Task Force recommendation from any further consideration.

S2. Consider re-evaluating 25-foot setbacks for recreational uses such as pools in Village.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

S3. Consider clarifying how accessory structures can be located in front yards.

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

P9. Request to review standards related to subdivisions accessing private roads.

Planning Commission passed over this item, as no further action was needed.

S1. Consider adding accessory dwelling units to the Village zoning district.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

S9. Consider reviewing demolition process as it relates to age of structure.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

S13. Consider discussing an overall approach to short-term vacation rentals (STVR).

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

P7. Request to review lot coverage standards and other Critical Area provisions, lot line adjustments on parcels under 5 acres, and wastewater treatment.

Planning Commission passed over this Task Force Recommendation, as no action was needed.

P10. Request for modified buffer in RCD for campgrounds, as defined in § 2.2 (18).

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

TF9. Review elimination of the County’s maximum pier length of 150 feet.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

S10. Consider reviewing the definition of waterway width versus State approach.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

S14. Consider discussing climate change, resilience, and the floodplain regulations by potentially requiring Base Flood Elevation plus three feet for new projects.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

P1. Request to change farm definition so a shed could be built without a dwelling.

Chair Hickman spoke against reducing the definition of a farm to five acres.

Ms. Reeder expressed support for the creation of a special exception to allow non-farms under 20 acres in the AZD the ability to apply for accessory sheds.

Chair Hickman voiced concerns that small parcels will be purchased for the sole purpose of building storage sheds.

Mr. Crowding spoke in agreement with Chair Hickman.

Planning Commission tabled item P1 for review at a later date.

P2. Request to allow utility-scale energy systems in the Agricultural Zoning District.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

P3/TF8. Request to continue to exclude data centers from Agricultural Zoning District // TF8. Review allowing data centers on land in AZD at 0.5% of total land (about 630 acres) in order to let the landowners decide if they want to look at this option.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

TF1/TF17. Review the concept of reducing setbacks for agricultural structures to 200 feet except near current housing developments, incorporated towns, and villages. // TF17. Review setbacks for buildings containing animals. Currently, this is 600 feet. Review for more flexibility. Maybe 600 feet from residential zoning districts or provide for an administrative variance process to reduce the required setback.

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

TF2. Review elimination of the 10% rule (related to new agricultural subdivisions).

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

TF5. Review concept of a reset to allow building sites up to 1 unit per 30 acres as of the approval of new zoning regardless of what has been subdivided previously.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

TF6. Review allowing sustainable agricultural operations for production for farmers markets, personal use, or commercial sale on homesites in ag zoning districts where such homesites do not meet the current requirements for 20 acres.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

P17. A. Request to add Agritourism, as defined by the State of Maryland, as a permitted use in AZD.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

P.17 B. Inclusion of Weddings as Special Exceptions within the Agricultural Zoning District.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

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

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

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

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

S8. Consider reviewing the definition of accessory structure and accessory use.

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

S11. Consider reviewing the conditions related to hunting trailers on farms.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

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.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

P6. Request to consider adjacent lots under same ownership in order to meet the minimum requirements related to rules for the keeping of backyard chickens.

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

P18. (NEW) Request to consider allowing backyard goats with provisions similar to backyard chickens.

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

TF4. Review allowing nonconforming structures that were conforming when built (to be granted a fully legal status as conforming vs. as legal, nonconforming).

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

TF14. Review waterfront regulations. Waterfront is now considered the Front Yard. This causes issues such as pools are not allowed in the front yard and since the road is now considered the rear yard, accessory sheds can be 5' from the road.

Planning Commission recommends presenting this Task Force recommendation "as is" to County Commissioners.

TF15. Review size limitations on accessory structures currently limited to 1,200 ft² in most properties under five acres. This could be enlarged to at least 2,000 ft² as long as stormwater management and screening regulations are met.

Planning Commission recommends presenting this Task Force recommendation "as is" to County Commissioners.

TF16. Review Front Yard definition on corner lots; currently, it's the side with the smallest dimension. Review of the side where the driveway entrance is located is a better option. If there are two driveways, one could then be removed.

Planning Commission recommends that the current text in the code stay the same.

S5. Consider removing renewal language for telecommunications.

Planning Commission recommends presenting this Task Force recommendation "as is" to County Commissioners.

TF10. Review how to better define establishing a Modified Buffer, keeping in mind that not all waterfront properties are in a straight line.

Planning Commission recommends presenting this Task Force recommendation "as is" to County Commissioners.

TF11/12. Review how to better define an Expanded Buffer. // TF12. Review how to better define the term Structure (in the definitions section), as it applies to the establishment of the aforementioned Buffers.

Planning Commission recommends presenting this Task Force recommendation "as is" to County Commissioners.

New Requests

Request to amend the Forest Conservation provisions of the Land Use Ordinance (Article VI. Special Provisions, Section 8. Forest Conservation, beginning on page 373 of the current Land Use Ordinance under Part 8 here)

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

Request to revise Marine zoning district provisions (Article V. District Regulations, Section 13. Marine District, beginning on page 219 under Part 4 and Article VII. Special Exceptions, beginning on page 413 under Part 9.

Planning Commission recommends presenting this Task Force recommendation "as is" to County Commissioners.

Request to the parking regulations for parking maximums instead of parking minimums (Article VI. Special Provisions, Section 1. Parking and Loading Requirements, beginning on page 309 under Part 6.

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

Request to amend setbacks in the Village District for agricultural uses on Village zoned land (Article V. District Regulations, Section 7. Village District, beginning on page 109 under Part 3).

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

Request to amend setbacks in the Village District for accessory structures in the front yard to be closer to the street than the house and to allow for small farms within Village District (Article V. District Regulations, Section 7. Village District, beginning on page 109 under Part 3).

Planning Commission recommends presenting this Task Force recommendation “as is” to County Commissioners.

Review the concept and permitted use of an enclave in AZD as it relates to the 10% rule (Article V. District Regulations, Section 1. Agriculture Zoning District, beginning on page 18 under Part 1).

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

Request to consider a general noise ordinance in the zoning code.

Planning Commission passed over this item; discussion is expected at another Planning Commission meeting.

Mr. Crowding moved that the recommendations be made ready to be forwarded to the County Commissioners.

The motion was seconded by Mr. Strong, and the motion passed unanimously, 7-0.

Chair Hickman made a motion that the Planning Commission go into a closed session to review a third letter received and consult with counsel.

Mr. Crowding seconded the motion. The motion passed with all in favor.

The Planning Commission went into a closed session on February 2, 2023, at 5:10 p.m.

The Planning Commission resumed the open meeting on February 2, 2023, at 5:24 p.m.

STAFF REPORTS

ADJOURN

Mr. Saunders moved to adjourn the open meeting. Mr. Ruge seconded. The meeting adjourned at approximately 5:24 pm.

Francis J. Hickman, Chair

/s/ Campbell Safian
Campbell Safian, Planning Specialist