

MINUTES

March 2, 2023

1:30 p.m.

The Kent County Planning Commission met in regular session on Thursday, March 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, 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; and Campbell Safian, Planning Specialist.

Other Kent County staff: Jamie Williams, CECD, Economic Development Director (remote); and Dawson Hunter, Housing and Transportation Coordinator

Members of the public in attendance included Mike Waal; Buck Nickerson, LS of Extreme Measures, LLC; Kevin Shearon, P.E., LEED AP, Principal of DMS & Associates; Ed Breitenbach; Michael Kent; Jeff Miller; John Lysinger; Signy Ellerton-Rich (remote); Chip MacLeod, Esquire; Patricia Langenfelder; Janet Christensen-Lewis; William White; Mary White; Eugene Aucott; William Norris; P. Thomas Mason; Darrell Morgan; Judy Tubman; Catherine Durham; Russ Richardson; Owen Bailey; Commissioner Ronald Fithian; Judy Gifford; Shari Smith (remote); Melinda Bookwalter; and Brian Aldridge (remote).

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

MINUTES

Mr. Ruge moved to accept the minutes of February 2, 2023, without correction. Ms. Reeder seconded the motion. The motion passed with all in favor.

APPLICATIONS FOR REVIEW

*22-53 Gillespie Precast, LLC – Major Site Plan (Concept & Preliminary)
27030 Morgnec Road – Second Election District – Industrial (I) and Industrial Critical
Area -- LDA (ICA-LDA)*

Gillespie Precast, LLC/Morgan Creek Land Holdings, LLC is requesting concept and preliminary site plan review for expansion of its contractor's storage yard from 4.75 acres to 12.75 acres and to construct a 60-foot by 80-foot equipment storage building. An additional entrance from Morgnec Road is also proposed. The 190.633-acre property is located at 27030 Morgnec Road in the Second Election District and is zoned Industrial (I), Industrial Critical Area (ICA), and Resource Conservation District (RCD).

Mr. Carper presented the staff report, recommending approval with conditions. The Chair swore in Kevin Shearon, P.E., LEED AP, DMS & Associates.

Mr. Shearon reported that the proposed additional entrance from Maryland Route 291 (Morgnec Road) will benefit the maneuverability of trucks entering and leaving the site, as well as the safety of the site. A Citizens

Adopted on April 6, 2023

Participation Meeting was held at the Gillespie Precast office on February 21, 2023. Two neighbors attended the meeting and expressed their concerns regarding the speed of vehicles on Maryland Route 291. No specific suggestions or complaints were raised about the proposed project.

The property is highly visible to adjacent, non-industrial zoned properties and it is on a major thoroughfare. The applicants are proposing landscaped screening along Maryland Route 291, afforestation along the eastern property line, and a deed restriction on an existing stand of forest towards the rear property line.

Ms. Reeder asked if SHA has provided any feedback regarding the proposed additional entrance.

Mr. Shearon stated that the proposed entrance from Route 291 is currently under an SHA Access Management Review and comments are expected by March 24.

Chair Hickman expressed support for the storage yard expansion and the construction of a storage building, however he expressed concerns regarding the proposed entrance. The proposed entrance is in close proximity to a hill and the speed limit is significant.

Ms. Reeder made a motion that the Planning Commission approve the proposed second access, in concurrence with the Staff's recommendation of approval based on safety considerations and ease of access on the site.

Mr. Strong seconded the motion, and the motion failed with 2 votes in favor and 4 against.

Mr. Crowding made a motion that the Planning Commission grant preliminary site plan approval conditional on the submission of all required sureties for stormwater management, sediment, erosion control, and landscaping; final approval of the stormwater management and sediment and erosion control plans; and contingent upon SHA approval of the proposed access. The proposal is consistent with the Comprehensive Plan, and it has addressed all of the comments by the Technical Advisory Committee for concept plan review.

Mr. Strong seconded the motion, and the motion passed unanimously, 6-0.

*23-10 Gillespie Precast, LLC – Major Site Plan (Concept & Preliminary)
Map 37, Parcel 490 – Fourth Election District – Industrial (I) and Industrial Critical Area -- LDA (ICA-LDA)*

Gillespie Precast, LLC/Brickyard Landing Holdings, LLC is requesting concept and preliminary site plan review for a 6.22-acre expansion of its finished product storage yard, to construct a 16,000 square foot storage building, and to construct a new entrance on to Maryland Route 291. The property is located at 101 Brickyard Road in the Fourth Election District and is zoned Industrial (I) and Industrial Critical Area (ICA).

Mr. Carper presented the staff report, recommending approval with conditions.

Mr. Shearon stated that Gillespie Precast recently purchased roughly 8-acres from the adjacent property owner, David A. Bramble. The proposed additional access from Route 291 is currently under SHA Access Management Review.

Mr. Crowding noted Staff's recommendation that a minimum of 15% of the proposed area of disturbance be mitigated through landscape screening and/or afforestation.

Mr. Crowding made a motion that Brickyard Landing Holdings, LLC, be granted preliminary site plan approval based on findings that the proposal is consistent with the Comprehensive Plan, the proposal conforms with the provisions of all applicable rules and regulations, the area of vehicular flow appear to be adequate for the proposed use, the demands on public services and infrastructure are reasonable, the standard waste from the office is discharged into the Town of Chestertown sewage system so no sewage or refuse is proposed for this project. The protection from pollution of both surface waters and groundwater is proposed through the stormwater management system. Except for the removal or disturbance of road frontage landscaping for the proposed access and the proposed submerged gravel wetlands, no other vegetation is to be removed. A citizens participation report has been received by the applicant and an in-person citizens participation meeting was held. Conditions of the approval are the submission of all required sureties for stormwater management, sediment and erosion control, and landscaping; the approval of the stormwater and sediment and erosion control plans; and SHA approval of the proposed access. The existing road frontage landscaping is to remain intact or is to be replaced in-kind if disturbed.

Mr. Sutton seconded the motion, and the motion passed unanimously, 6-0.

*23-11 Camp Fairlee – Major Site Plan (Concept & Preliminary)
22242 Bay Shore Road – Sixth Election District – Agricultural Zoning District (AZD) and Resource Conservation District (RCD)*

Camp Fairlee/ESSD-M, Inc., is proposing to construct two, single-story dwellings for full-time, permanent staff. The proposed cottages will allow staff who currently live in the Manor House, which is also used for administrative purposes, to move into single-family dwellings. The property is currently improved with other cottages and buildings associated with the use as a camp. The property is located at 22242 Bay Shore Road in the Sixth Election District and is zoned Agricultural Zoning District (AZD) and Resource Conservation District (RCD).

Ms. Gerber presented the staff report, recommending approval with conditions. The Chair swore in Eugene Aucott with ESSD-M, Inc.

Mr. Shearon noted that a citizens participation meeting was held via Zoom. Two owners of a property adjacent to Camp Fairlee expressed their support for the proposal, as it will not impact their property.

Mr. Ruge made a motion to grant preliminary site plan approval for Camp Fairlee. The proposal is consistent with the strategies and goals of the Comprehensive Plan. The property is serviced by public sewer and water. The stormwater management and sediment control plans are currently under review. The cottages will be located approximately 2,400 feet from Bay Shore Road and will not be noticeably visible from the road due to existing vegetation. The cottages will be approximately 300 feet from the closest property line. The proposed location is along the main driveway in a small field just outside of the Maryland Historic Trust easement for the Manor House. The field is screened on two sides by mature forest and by the existing trees along the driveway. The proposed cottages will be reviewed as commercial buildings for building code regulations. There are no proposed changes to site access. No trees will be removed, and forest conservation will be addressed by deed restricting an area of existing forest equal to 20% of the limits of disturbance for this project. A Forest Stand Delineation must be submitted prior to final review. A Citizen Participation letter was sent to neighboring properties. Final approval would be contingent upon approval of the Forest Stand Delineation and Forest Conservation Easement; approval

of the stormwater management and sediment control plans, including the submission of any required letters of credit; and approval of water and sewer improvements.

Mr. Strong seconded the motion, and the motion passed unanimously, 6-0.

*23-07 Darrell and Carla Morgan – Variance – Critical Area Clearing
Map 27, Parcel 481 – Third Election District – Critical Area Residential (CAR)*

Darrell and Carla Morgan are requesting a variance to clear in excess of the 30% maximum allowance for clearing in the Critical Area. The applicants propose to clear 12,845 square feet (69%) of an 18,691 square foot, fully wooded parcel to accommodate the installation of a detached single-family home, a driveway, and a septic system. The 0.42-acre property is located along Clarissa Road in the Chesapeake Landing Subdivision 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 Buck Nickerson, LS, Extreme Measures, LLC, and Darrell Morgan, property owner.

Mr. Nickerson stated that in the past, the clearing of woody vegetation to accommodate the installation of a septic system did not count towards the maximum allowable clearing on a parcel in the Critical Area. The Critical Area Commission changed their regulations and the clearing required to install a septic system now counts towards the maximum allowable clearing. To meet the required 3:1 mitigation ratio for the area cleared, the applicant will pay the fee-in-lieu of the planting requirement and plant native species of shrubs around the house.

Ms. Reeder made a motion to forward a favorable recommendation to the Board of Appeals for approval of the Critical Area forest clearing variance for the Morgan's property in Chesapeake Landing, finding that the proposal conforms with the County Comprehensive Plan. The applicant's property is within a residentially zoned district populated by single-family development. The granting of a variance will not cause a substantial detriment to adjacent or neighboring property, nor will it change the character of the neighborhood or district. The practical difficulty is that the property is small in size and is entirely wooded. Neither condition was caused by the applicant. There is a mitigation rate of 3:1 required for the proposed clearing, but there is a recommendation from the Staff to accept fee-in-lieu of completing the required mitigation. Otherwise, the granting of the 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. Strict application of the Ordinance would produce an unwarranted hardship that is not generally shared by other properties in the same zoning district and in the same vicinity. A literal interpretation of this Ordinance would deprive the applicants of rights commonly enjoyed by other properties in similar areas. Without a variance, the applicant would be deprived of a use of land or 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 a variance. This approval is subject to the applicant's ability to provide a fee-in-lieu of planting and the variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

Mr. Ruge seconded the motion, and the motion passed unanimously, 6-0.

*23-09 Scott and Shari Smith – Variance – Side Yard Setback
26933 Mallard Road – Fourth Election District – Critical Area Residential (CAR)*

Mr. Crowding recused himself from participating in the review of this application and exited the County Commissioners Hearing Room.

Scott and Shari Smith are requesting a side yard setback variance to construct an addition which would connect an existing detached garage to an existing dwelling. The owners were granted a variance for this same request in 2012 but were unable to construct the addition at that time. The property is located at 26933 Mallard Road in the Fourth Election District and is zoned Critical Area Residential (CAR).

Ms. Gerber presented the staff report, recommending approval with conditions. The Chair swore in Shari Smith, property owner.

Mrs. Smith and her husband would like to attach the detached garage to the existing dwelling to counteract the buildup of mold in the crawlspace.

Ms. Reeder moved to forward a favorable recommendation to the Board of Appeals for the variance request for 26933 Mallard Road in the Chesmar neighborhood on the condition that no further encroachment shall occur within the side yard setback beyond the proposed addition over the concrete slab. This recommendation is made in view of the fact that this same variance was already approved in 2012; and the proposal complies and is consistent with the Comprehensive Plan and the Land Use Ordinance.

Mr. Sutton seconded the motion, and the motion passed unanimously, 5-0.

Ag Preservation District Applications

Ms. Gerber presented the proposed Ag Preservation Districts. The Agricultural Preservation Advisory Board reviewed the applications at their February 21 meeting and recommended approval of all applications.

Ms. Reeder opined that several of the properties encircle the town of Kennedyville, and this will reduce the Town's ability to expand. Town residents have expressed their dissatisfaction with the high costs of sewage and water for their communities.

Ms. Reeder expressed concerns about an active Agricultural Preservation Advisory Board member submitting an Ag Preservation District application.

Ms. Gerber noted that Mr. Hill recused himself from voting on this application. If a Board member has a potential conflict of interest, they recuse themselves from participating in the discussion and decision.

Mr. Crowding made a motion to forward a favorable recommendation to the County Commissioners for the establishment of Agricultural Preservation Districts on the following farms, based on the fact that the farms comply with the MALPF criteria, the properties meet or exceed the criteria for creating an Agricultural Land Preservation District, comply with the Comprehensive Plan goals to preserve large blocks of continuous prime farmland, and that all have received a favorable recommendation from the Agricultural Preservation Advisory Board.

22-01 – John F. Coleman, Trustee

Chair Hickman seconded the motion, and the motion passed unanimously, 6-0.

22-02 – Fry Cooper Farm, LLC

Mr. Strong seconded the motion, and the motion passed, 5-1.

22-03 – Fry Cooper Farm, LLC

Chair Hickman seconded the motion, and the motion passed, 5-1.

22-04 – David A. Hill

Chair Hickman seconded the motion, and the motion passed, 4-2.

22-05 – Chris and Susan Jackman

Mr. Strong seconded the motion, and the motion passed, 5-1.

22-06 – Lester C. Jones and Sons, Inc.

Chair Hickman seconded the motion, and the motion passed unanimously, 6-0.

22-07 – Lester C. Jones and Sons, Inc.

Mr. Strong seconded the motion.

Ms. Reeder noted that the Planning Commission has received a letter from the Town of Millington, requesting a meeting to discuss the Town's future. Ms. Reeder opined that this application would constrain Millington's ability to grow. The Planning Commission owes Millington the opportunity to have a voice in the review of this application.

The motion passed, 4-2.

22-08 – Owings and Sons Business Trust

Mr. Ruge seconded the motion, and the motion passed unanimously, 6-0.

22-09 – Rich Levels at Mill Creek LLC

Mr. Strong seconded the motion, and the motion passed unanimously, 6-0.

22-10 – Thomas Wiltbank

Mr. Sutton seconded the motion, and the motion passed unanimously, 6-0.

2023 Transportation Priority Letter

Ms. Reeder requested that an addition be made to the letter. Ms. Reeder would like to add Still Pond as an area needing sidewalks, drainage improvements, and traffic calming along MD 298.

Mr. Crowding made a motion to forward a favorable recommendation to the County Commissioners for the Kent County 2023 Transportation Priority Letter adding Still Pond to the list for pedestrian sidewalks.

Mr. Strong seconded the motion, and the motion passed unanimously, 6-0.

Review of Task Force Recommendations

Mr. Mackey noted that correspondence was received from the Town of Millington, addressing P4; MacLeod Law Group, addressing P5; and Elizabeth Watson, addressing numerous items.

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. MacLeod, Esq., spoke in favor of item P4 and creating a mixed-use zoning district in the Kent County designated growth area along Route 301. The proposed mixed-use zoning district would permit industrial, commercial, and residential uses.

Mr. Richardson, spoke in favor of the mixed-use zoning district as it would create greater flexibility.

Ms. Christensen-Lewis, Mr. Kent, Mr. Nickerson, Mr. Lysinger, Ms. Durham, Mr. Aldridge, and Dr. Tubman spoke against P4.

Ms. Reeder moved that the Planning Commission make a favorable recommendation to the Commissioners to accept the 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.

The motion did not receive a second and the motion failed.

Mr. Strong moved to forward a negative recommendation for P4, as of this moment, until we hear more about the floating zone proposal and can deliberate more down the road. Mr. Strong does not feel any need to vote on something that is brand new, and the Task Force has put years into. It would do an injustice to not honor those years of service.

Mr. Ruge seconded the motion, and the motion passed unanimously, 6-0.

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

Ms. Durham, Dr. Tubman, and Mr. Breitenbach spoke against item P5.

Ms. Reeder expressed that item P5 is a request to allow resources and amenities in areas of the County that would like to experience greater employment opportunities and development in the industrial sector.

Ms. Reeder moved that the Planning Commission send a favorable recommendation to the Commissioners to allow truck stops, truck parking lots, fuel sales, convenience stores and restaurants with or without drive-through in the Industrial district.

The motion did not receive a second and the motion failed.

Chair Hickman noted that the Commercial zoning district permits the uses listed in P5. A property owner can request a change in zoning districts.

Mr. Ruge made a motion that the Planning Commission forward this Task Force recommendation “as is” to the County Commissioners.

Mr. Crowding seconded the motion, and the motion passed, 5-1.

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

Mr. Crowding made a motion that the Planning Commission recommends accepting this Task Force recommendation “as is” to the County Commissioners.

Mr. Strong seconded the motion, and the motion passed unanimously, 6-0.

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

Mr. Crowding made a motion that the Planning Commission recommends accepting this Task Force recommendation “as is” to the County Commissioners.

Mr. Strong seconded the motion, and the motion passed unanimously, 6-0.

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.

Ms. Reeder moved that the Planning Commission recommend to the County Commissioners that the existing setback requirements remain unchanged.

Mr. Sutton seconded the motion, and the motion passed unanimously, 6-0.

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

Mr. Mason introduced a petition to eliminate the 10% rule. The petition received 176 signatures. Mr. Mason proceeded to read the petition, asking the Planning Commission to send a favorable recommendation to the County Commissioners.

Ms. Christensen-Lewis noted the large number of audience members who spoke in opposition to eliminating the 10% rule during the Task Force’s review of item TF2. The Agricultural Advisory Board advised not to eliminate the 10% rule.

Ms. Langenfelder spoke against the elimination of the 10% rule, insisting that subdividing farms will create conflicts between farmers and their neighbors.

Mr. Crowding made a motion that the Planning Commission send a recommendation to the County Commissioners to leave the Land Use Ordinance as is. Chair Hickman seconded the motion, and the motion failed 3-3.

Ms. Reeder moved that the Planning Commission recommend to the County Commissioners that the 10% rule be eliminated. Mr. Ruge seconded the motion, and the motion failed 3-3.

Chair Hickman stated that the 10% rule is in the Comprehensive Plan and the Planning Commission must be consistent with the Comprehensive Plan.

Mr. Strong made a motion that the Planning Commission recommend accepting this Task Force recommendation "as is" to the County Commissioners. Mr. Ruge seconded the motion, and the motion failed 3-3.

The Planning Commission did not come to an agreement. Three motions were made. All three failed.

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

Chair Hickman moved that the Planning Commission allow the staff the latitude to make the process and definitions clear for the County Commissioners. Mr. Crowding seconded the motion, and the motion passed unanimously, 6-0.

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

Ms. Reeder recommended that the Planning Commission forward this Task Force recommendation to the County Commissioners with a favorable recommendation. Mr. Strong seconded the motion, and the motion passed, 5-1.

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

Mr. Crowding moved that the Planning Commission does not support this request and recommends "as is" to the County Commissioners. Mr. Ruge seconded the motion, and the motion passed unanimously, 6-0.

Request to amend the Forest Conservation provisions

Mr. Ruge made a motion that the Planning Commission forward the Task Force recommendation "as is" to the County Commissioners. Mr. Sutton seconded the motion, and the motion passed, 5-1.

Request to the parking regulations for parking maximums instead of parking minimums

Mr. Ruge made a motion that the Planning Commission send the recommendation that is stated, forwarding the Task Force recommendation "as is". Mr. Strong seconded the motion, and the motion passed unanimously, 6-0.

Review the concept and permitted use of an enclave in AZD as it relates to the 10% rule

Mr. Crowding made a motion to send a favorable recommendation to the County Commissioners for elimination of the enclave developments in the AZD district as it relates to the 10% rule. Chair Hickman seconded the motion, and the motion passed, 5-1.

Request to consider a general noise ordinance in the zoning code

Ms. Durham spoke in favor of adding a general noise ordinance in the zoning code. Ms. Durham expressed her concerns regarding the potential noise pollution created from the proposed warehouse project in the Route 301 corridor.

Mr. Mackey opined that Towns could adopt individual noise ordinances.

Mr. Ruge made a motion that the Planning Commission send the recommendation as it stands, the Task Force did not recommend changes to add additional noise provisions. Mr. Sutton seconded the motion, and the motion passed unanimously, 6-0.

GENERAL DISCUSSION

Mr. Mackey stated he will create a letter, for the Chairman’s signature, that summarizes the Planning Commission’s recommendations to the County Commissioners. After receiving the Chairman’s signature, the letter will be presented to the County Commissioners. The County Commissioners will direct Staff for which recommendations to create legislation. The goal would be to combine the legislation together with the consultant’s recommended changes to the LUO that were reviewed in December. That would be the basis to begin a legislative process.

STAFF REPORTS

ADJOURN

Mr. Sutton moved to adjourn the meeting. Mr. Ruge seconded. The meeting adjourned at approximately 6:04 pm.

Francis J. Hickman, Chair

/s/ Campbell Safian

Campbell Safian, Planning Specialist