

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, June 4, 2020, virtually in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland, with the following members attending via audio/video conference: Elizabeth Morris, Chairman; William Sutton, Vice Chairman; F. Joseph Hickman; Kim Kohl; Commissioner P. Thomas Mason; B. Douglas Megargee; James Saunders; Cynthia L. McCann, Esq., Planning Commission Attorney; Staff in attendance were Carla Gerber, GIS Specialist; Stephanie Jones, Environmental Planner; William Mackey, Director; Robert Tracey, Community Planner; and Brian Jones, Clerk.

The following attended and participated in the meeting: Mr. John Rutkowski; Christopher Drummond, Esquire; and Mr. Jack Kirby, Kirby and Associates, Inc.

Ms. Morris called the meeting to order at 1:31 p.m.

## MINUTES

The minutes of the meeting on May 7, 2020, were approved as written and distributed.

### **APPLICATIONS FOR REVIEW:**

#### **20-20 John E. and Susan M. Rutkowski - Buffer Variance**

Present and duly sworn in by Ms. Morris was the applicant, Mr. Rutkowski.

Ms. Gerber gave a brief overview of the proposal, citing relevant issues, the applicable laws and staff comments. The applicants wish to install a 50-foot long privacy fence beginning 80 feet from the shoreline. The fence will be 8-foot long panels with the end posts set in concrete. The end posts will overlap but have a 4-inch gap between them. The panels will have 6 inches of clearance off the ground.

Ms. Gerber said the applicants have applied for a variance to construct 20 feet of their proposed 50-foot fence within the buffer.

Ms. Gerber said that the applicant has tried to maintain a living fence, but due to the nature of the property, he has had to replace the plantings more than once. Ms. Gerber said some of the evergreens need to be replaced again, and the applicant would prefer to install a fence.

Ms. Gerber said the Critical Area Commission does not regulate fences without footers in the Buffer and does not oppose the variance request.

Ms. Gerber said staff recommends granting the variance with the following conditions for mitigation:

- Mitigation be set at a ratio of 1:1 for removal of the existing vegetation and that the areas of mitigation be planted with native cultivars.

- A Critical Area Forest Clearing Plan and a Buffer Management Plan shall be approved by the Department of Planning, Housing, and Zoning during building permit review.

Ms. Morris asked if any correspondence has been received.

Ms. Gerber said correspondence was received by the Critical Area Commission. She provided a summary of their letter and noted that they do not oppose the variance request. She reviewed the Commission's recommendation for mitigation.

Mr. Rutkowski said that he and his wife have owned the property for 16 years and they have done everything they can to keep the property natural. Mr. Rutkowski said they are looking for privacy and that this is the third generation of plantings that have done. Mr. Rutkowski said the plantings where the fence is being proposed keep dying. Mr. Rutkowski further noted that the area sees a large amount of traffic on a daily basis and without any kind of protection, someone could look into their dining room.

Mr. Hickman asked about the practical difficulty.

Ms. Gerber said the practical difficulty was adjacency to the public landing. Mr. Hickman questioned if location was applicable based on variance standard "d3" – "the use or development of property immediately adjacent to the property, except that this criterion shall not apply in the Critical Area." Mr. Gerber then suggested that the property had an unusual characteristic of size or shape because it is relatively narrow and the house sits close to the property line.

Mr. Hickman asked Mr. Rutkowski if the trees die because the soils are too wet. Mr. Rutkowski stated that the trees had to be planted on a raised bed because of the brackish water that regularly fills the parallel ditch. Even with watering, the trees don't survive drought conditions. Mr. Hickman determined that the soil conditions were the most significant practical difficulty.

No public input was received.

After further discussion and additional questions by the Commission, Mr. Hickman made a motion to send a favorable recommendation for the buffer variance to the Kent County Board of Appeals based on the following findings:

- The need for a variance was not caused by the applicant's actions.
- A practical difficulty exists due to the soil conditions.
- Granting a variance will not cause a substantial detriment to neighboring properties nor will it change the character of the neighborhood and district.
- The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.
- The request represents a minimal disturbance to the buffer.
- The Critical Area Commission does not oppose the granting of the variance and the application is consistent with the general spirit and intent of the Land Use Ordinance.
- The granting of the variance does not confer any special privileges that would be denied to other similar lands and uses.

- The reasonable use of the entire property was considered.

Ms. Kohl seconded the motion, and the motion passed unanimously.

**20-21 Fifth Investments, LLC, and Emily C. McCoy and Christopher A. Delahanty – Major Subdivision (Concept Review) and Road Waiver**

Present and representing the applicant were Attorney Christopher Drummond and Mr. Jack Kirby.

Ms. Morris swore in Mr. Jack Kirby.

Ms. Gerber gave a brief overview of the proposal, citing relevant issues, the applicable laws, and staff and TAC comments. The applicants are requesting a road waiver and concept review for a major subdivision of their 10.712-acre parcel into 24 lots and a common area lot. The purpose of the subdivision is to terminate the existing Delta Heights Condominium Regime and create fee-simple lots for each existing dwelling. The remainder of the property will be a common area lot owned by the Delta Village Townhouses Community Association, Inc. The property is located on Tolchester Road. It is in the Sixth Election District and is zoned “AZD,” Agricultural Zoning District.

Ms. Morris asked if any correspondence has been received.

Ms. Gerber said no correspondence has been received.

Mr. Drummond provided a brief history of the property and overview of the proposal.

Mr. Drummond said the applicant has spent a lot of money over the past several years rehabilitating the units, and Kent County extended water and sewer service replacing old infrastructure.

Mr. Drummond explained that federal loan programs are not available for condominium projects until at least fifty percent of the condominium units are sold. That prompted the applicant to move towards townhouses where the fifty percent threshold does not apply.

Mr. Drummond said the applicant requested a zoning text amendment which the County Commissioners approved, allowing this project to move forward as it relates to home ownership.

During concept review the Planning Commission recommended the following:

- Adding one parking space to the proposal to eliminate the need for a parking waiver.
- Use standard “AZD” setbacks for alterations/additions to the existing units and for accessory structures.
- A 50-foot right-of-way be established for each entrance road and that the applicant considers naming each road in order to assign unique addresses to each unit.

Ms. McCann suggested having the applicant’s attorney draft a private road agreement.

Mr. Drummond said he would draft a road maintenance agreement releasing the county from any obligations.

No public input was received.

In considering the road waiver request to allow a private road in a major subdivision, Mr. Hickman said the strict application of the ordinance would inhibit achieving goals of workforce housing. He said the reason these properties will be sold at the prices they are is because the infrastructure costs stay down to the owners.

After further discussion and additional questions, Mr. Hickman made a motion to grant a road waiver based on the following findings:

- The waiver would not cause substantial detriment to neighboring properties.
- The waiver is consistent with the Comprehensive Plan and County ordinances.
- The cost to improve the road to public road standards would inhibit the goals of the Comprehensive Plan which encourages development of workforce housing.
- The extraordinary hardship was not caused by the applicant.

Ms. Kohl seconded the motion, and the motion passed unanimously.

## **STAFF REPORTS**

Carla Gerber:

- Ms. Gerber said the Annual Report should be ready for review by the Planning Commission at the next meeting.
- Ms. Gerber said she has been working on a project in cooperation with Emergency Services to prepare the county for Next Generation 911. A consultant has been hired to assist with the project.

Mr. Tracey:

- Mr. Tracey said he has been working on building permits and various projects.

Ms. Jones:

- Ms. Jones said she attended the virtual Critical Area Commission meeting for the Campground Text Amendment and Growth Allocation Policy. She said the Critical Area Commission recommends amending the text amendment and policy that was approved by the Commissioners.

Mr. Mackey

- Mr. Mackey reported the County Commissioners adopted a modified version of the Data Center Ordinance. Mr. Mackey said the modified version removed “AZD” and “Intense Village” from the Ordinance. Mr. Mackey said the Commissioners also approved the housekeeping legislation regarding agricultural structures in “AZD.”
- Mr. Mackey reported that COVID-19 has delayed some of the processes, however the Department has been able to continue with full operations of all services to the citizens.

- Mr. Mackey said some of the aspects of the rezoning project have been placed on hold, he said the goal within the next several days is to launch the webpage that will announce to the citizens how to get involved. He said the consulting team has begun working on the project completing various tasks.

Ms. Morris and Ms. Kohl expressed concern regarding how citizens without internet accessibility could participate in the rezoning process.

Mr. Mackey said other avenues will be utilized to get the word out to those without internet accessibility about the rezoning project.

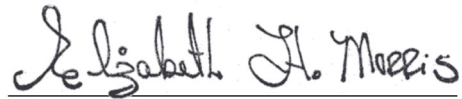
### **GENERAL DISCUSSION**

Ms. Morris thanked everyone for their cooperation, hard-work, and dedication.

Ms. Kohl thanked Ms. Morris for doing a good job at chairing the meetings.

### **ADJOURN**

There being no further business for the good of the organization, the meeting was adjourned at 2:55 p.m.



Elizabeth Morris, Chairman



Brian Jones, Clerk