

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, May 6, 2021, virtually in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland, with the following members attending via audio/video conference: F. Joseph Hickman, Vice Chairman; County Commissioner P. Thomas Mason; Tyler Brown, Paul J. Ruge, Jr.; James Saunders; William Sutton (attending in-person); and Cynthia L. McCann, Esq., Planning Commission Attorney; Staff in attendance were William Mackey, Director; Carla Gerber, Deputy Director; and Sandy Adams, Clerk.

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

## MINUTES

Mr. Saunders made a motion to accept the minutes of the April 1, 2021 meeting as distributed.

Mr. Ruge seconded the motion; the motion passed with all in favor.

## APPLICATIONS FOR REVIEW:

### 21-11 Strong Associates, II LP – Buffer Variance

Ms. Gerber gave a description of the proposal, cited the applicable laws, staff and TAC's comments, and staff's recommendation.

Mr. Robert Strong, representative and co-owner of Strong Associates, II L.P., is requesting a variance to the Critical Area buffer standards in order to replace and slightly expand an existing cottage. The cottage is entirely within the Critical Area buffer and sits 40.4 feet from the mean high-water line. The proposed expansion is a widening of the foundation to align the exterior walls of the northern most section with the middle section of the cottage. The cottage was placed on the property in 1967 and consists of three smaller structures that were joined together when they were relocated from Eastern Neck Island by the applicant's father.

The 107-acre property is located on Eastern Neck Road, adjacent to Church Creek in the Fifth Election District and is zoned Resource Conservation District (RCD). The parcel is predominantly devoted to agriculture but consists of a primary dwelling and accessory storage structures outside of the buffer with a driveway leading to two cottages within the 100-foot buffer. Both cottages are also in the 1-percent annual chance (100-year) floodplain. The replacement and expansion are proposed for the cottage to the north. The surrounding area is zoned Resource Conservation District and Agricultural Zoning District.

Ms. Gerber said the existing cottage is a nonconforming use and structure that the applicant is voluntarily removing. Past interpretation of Article VIII, Nonconformities, has not allowed for the in-kind replacement of nonconforming structures unless a variance is granted. However, the Critical Area Law does not require a buffer variance for in-kind replacement, which is defined as "the removal of a structure and the construction of another structure that is smaller than or identical to the original in use, footprint area, width, and length." The Critical Area Law does require a variance for the expansion of the foundation to align the exterior walls. In its letter, the Critical Area Commission staff note that in order to grant the variance, the Board of Appeals will need to make findings that the variance meets every variance standard.

Ms. Gerber read into the record the response from the Critical Area Commission.

Mr. Robert H. Strong, 105 Court Street, Chestertown, Maryland, was present (in-person) at the meeting and presented his case. Mr. Strong was sworn in.

Mr. Strong informed the Commission that he and his sister are the applicants, and they were raised on the property which was known as Overton Farm. He said they are requesting to replace a dilapidated and mold filled structure with a short extension on the northern part of the foundation so that the last two sections are in alignment.

Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals to replace the cottage in the critical area buffer. The Commission's decision was based on the following findings:

- The structure currently exists in the critical area buffer and was built prior to the current critical area law and zoning regulations.
- The Comprehensive Plan and Critical Area law restricts development activities in the buffer, but in-kind replacement is allowed by the Critical Area law.

Mr. Ruge seconded the motion; the motion passed with all in favor.

Mr. Hickman made a second motion to send a favorable recommendation to the Board of Appeals for a buffer variance to expand the footprint to allow alignment of the exterior walls. The decision was based on the following findings:

- The variance will not cause a substantial detriment to adjacent or neighboring property.
- The variance will not change the character of the neighborhood or district.
- The variance is consistent with the Comprehensive Plan and the general intent of the Ordinance.
- The practical difficulty was not caused by the applicant's own actions. The structure existed in the Critical Area buffer prior to Critical Area law and current zoning regulations; and the structure is unsafe due to flood damage from Tropical Storm Isabel in 2003.
- The granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations adopted by Kent County.
- The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.
- The application for the variance was made in writing with a copy provided to the Critical Area Commission.
- The strict application of Critical Area Law and the Ordinance produces an unwarranted hardship.
- The hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- The authorization of the variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
- The literal interpretation of the Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of Kent County.
- The granting of the variance will not confer upon the applicant any special privilege that would be denied by this Ordinance to other lands or structures.
- Due to the special features of the site, or special conditions or circumstances peculiar to the applicant's land or structure, the literal enforcement of this Ordinance would result in unwarranted hardship to the applicant.
- The Commission finds that the applicant has satisfied each one of the variance provisions.
- The Commission finds that without the 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.

Mr. Ruge seconded the motion; the motion passed with all in favor.

## **21-12 James Peary – Setback Variances (Front & Rear Yards) and Critical Area Clearing**

Ms. Gerber gave a description of the proposal, cited the relevant issues, staff and TAC's comments, and staff's recommendation.

James Peary is requesting a 2-foot variance from the 50-foot front setback requirement and 2.5-foot variance from the 30-foot rear setback requirement in order to construct a new single-family dwelling. Mr. Peary also needs a variance to clear more than 30% of the woody vegetation on the entirely wooded 12,000 square foot lot.

The parcel is located at the corner of North Bayview Drive and Vermont Avenue in Tolchester Estates in the 6<sup>th</sup> Election District and is zoned Critical Area Residential (CAR). The surrounding area is characterized by residential development.

Ms. Gerber said staff recommends approval of the setback variances and the forest clearing variance.

Mr. James Peary, 9262 N. Bayview Avenue, Chestertown, Maryland, presented his case. Mr. Peary was sworn in.

Mr. Peary informed the Commission that the parcel he is proposing to develop is across the street from the property that he owns and has lived in for the past 22 years. He said he would like to construct a small guest house on the property for family. He said the property is currently completely wooded and some areas are overgrown.

Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals for a setback variance based on the following findings:

- The variance will not cause a substantial detriment to adjacent or neighboring property.
- The variance will not change the character of the neighborhood or district.
- The variance is consistent with the Comprehensive Plan and the general intent of the Ordinance to develop areas with public water and sewer.
- The practical difficulty is caused by the small size of the property and not by the applicant's own actions.
- The Commission believes that by granting the variance, it allows Mr. Peary reasonable use of the property.
- The granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law and the regulations adopted by Kent County.
- The applicant has not commenced any development activity prior to seeking variance approvals; and the applicant's proposed plans have been designed thoughtfully for the Tolchester Estates community.

Mr. Ruge seconded the motion; the motion passed with all in favor.

Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals for a forest clearing variance based on the following findings:

- The property is entirely wooded. In order to construct a reasonable dwelling, the applicant must clear 39% of the property.
- The variance will not cause a substantial detriment to adjacent or neighboring property.
- The variance will not change the character of the neighborhood or district.
- The variance is consistent with the Comprehensive Plan and the general intent of the Ordinance to develop areas with public water and sewer.
- The practical difficulty is caused by the small size of the property and not by the applicant's own

actions.

- The Commission believes that by granting the variance, it allows Mr. Peary reasonable use of the property.
- The granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law and the regulations adopted by Kent County.
- The applicant has not commenced any development activity prior to seeking variance approvals.
- The applicant will mitigate and/or provide a fee in-lieu to the forest conservation fund where mitigation is not possible.

Mr. Sutton seconded the motion; the motion passed with all in favor.

## STAFF REPORTS

Mr. Mackey:

- On Tuesday evening, the County Commissioners instructed staff to open the buildings to the public. Mr. Mackey informed the Commission that in person meetings are now an option.
- The Task Force will meet next Wednesday, May 12th, at 6:00 p.m.

Carla Gerber:

- The department has received approximately 23-24 applications from landowners who want to sell an easement to the Maryland Agricultural Land Preservation Foundation.
- We continue to review many building permits and assist many callers.

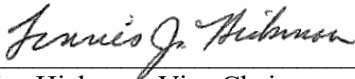
Ms. McCann:

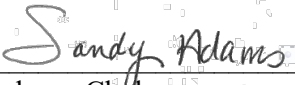
- There are no legal issues to report.

Vice Chairman Hickman welcomed Tyler Brown, the newest member on the Commission; Mr. Brown gave a brief self-introduction to the Commission.

## ADJOURN

There being no further business for the good of the organization, the meeting adjourned at 2:19 p.m.

  
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Joe Hickman, Vice Chairman

  
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Sandy Adams, Clerk