

MINUTES

The Kent County Planning Commission met in regular session on Thursday, February 3, 2022, in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland. It was a hybrid meeting, and the following members were in attendance: Chair F. Joseph Hickman, Vice Chair Paul Ruge, County Commissioner P. Thomas Mason; James Saunders; William Sutton; Ray Strong; Tyler Brown (remote) and Cynthia L. McCann, Esq., Planning Commission Attorney. Staff in attendance were William Mackey, Director; Carla Gerber, Deputy Director; Mark Carper, Associate Planner; and Michael Pelletier, Clerk.

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

MINUTES

Vice Chair Ruge made a motion to accept the minutes for the January 6, 2021, meeting, as distributed.

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

PLANNING DIRECTOR UPDATE

Mr. Mackey notified the Commission that due to staff shortages, the reports and agenda they have been provided have been simplified and streamlined.

APPLICATIONS FOR REVIEW:

21-69 Rell's Auto/Durrell Jackson (Murray Partnership, LLC, property owner) – Major Site Plan

The applicant is proposing to construct a 6-foot fence in the rear yard to create a secure location to store towed vehicles in order to expand his business. The property is located at 10829 Worton Road and is zoned Village (V). The surrounding area is a mix of commercial, industrial and residential uses. The property is currently improved with a garage used to repair vehicles. A business of this nature has existed in this location since at least August 1, 1989.

Ms. Gerber cited the applicable laws as well as staff and TAC comments as outlined in the staff report.

No correspondence has been received on this application and staff recommends approval.

Owner of Rell's Auto, Durrell Jackson, 10829 Worton Road, Worton, Maryland, was sworn in to testify. Mr. Jackson responded to questions from Mr. Sutton regarding the submitted map and use of the establishment. Mr. Jackson confirmed the business provides general automotive care and the proposed expansion allows for ingress and egress of towing of both inoperable as well as operable vehicles.

Mr. Ruge asked if this application is something that the State is requiring Mr. Jackson to undertake, and Mr. Jackson responded affirmatively. He further clarified that the number of vehicles to be stored in the fenced area would be 5 to 20 vehicles at any given time and the average length of time on the property is 15 to 20 days.

Mr. Saunders expressed his support for the application because it will better enable Mr. Jackson to perform his business, and it would make the front of the business more aesthetically appealing. Chair Hickman noted that MDOT is requiring this application and granting of the application is necessary to allow this business to thrive.

Vice-Chair Ruge made a motion for approving the site plan application based on the following:

- The proposal is consistent with the strategies and goals of the Comprehensive Plan.
- The property is served by public water and sewer. The Health Department has approved this application.
- Formal stormwater management and sediment control plans are not required.
- Sufficient parking is available.
- No new lighting is proposed.
- The Department of Public Works has reviewed the fence next to the Worton Water Treatment Plant and see no issues with the application.
- No vegetation is proposed to be removed. No new landscaping is proposed.
- No additional signage is proposed at this time.
- A Citizen's Participation Plan was not necessary.

Ray Strong seconded the motion; all members were in favor and the site plan application was approved.

PUBLIC HEARING

Ms. McCann gave a synopsis of both resolutions for zoning text amendments forwarded to the Planning Commissioners by the Kent County Commissioners. Ms. McCann read into the record the Public Notices of January 20, 2022, that were issued for both proposed resolutions.

Resolution 2021-18, Resolution to Introduce a Text Amendment to Revise Chapter 222, Zoning, to Remove the Requirement Related to the Maximum Percentage of Property in Lots (10% rule) from the Agricultural Zoning District (AZD)

Ms. Gerber notified the Commission that the current Land Use Ordinance contains a requirement related to the maximum percentage of a property that can be subdivided into lots, also known as the "10% Rule." Subdivisions in the AZD require that 90% of the farm be left intact. There is a provision that subdivisions where all parcels remain over 100 acres are exempt from the 10% Rule, and those parcels do not count toward the maximum developed percentage of the property. There are no other exceptions.

Establishing a maximum percentage of a property in lots has resulted in subdivisions in AZD with smaller average lot sizes which has left large, contiguous tracts of land undeveloped. However, the 10% Rule has also limited the ability of some landowners to sell portions of their farms.

In at least one of the exempted 100-acre subdivisions, the landowner had to sell more land than desired in order to be exempt. In other instances, farms could not be divided among heirs because the desired parcels were more than 10% and less than 100 acres. The 10% rule has also prevented at least one partial sale of a farm that was split by a road. The tract on one side of the road was more than 10% of the property but less than 100 acres, and subdivision was not permitted.

Allowing greater flexibility in lot sizes will make it easier for farms to diversify and try new approaches or for new farmers to establish new enterprises. Limiting farm size is not the only approach to preserving agriculture and can be detrimental to encouraging diversity within the industry.

The Agriculture Advisory Commission met on January 25 to review this text amendment and voted against supporting the amendment as proposed. The AAC supports continuation of the 10% rule with the addition of an exemption or waiver process to provide flexibility. The letter of recommendation was attached to the Planning Commission Meeting Packet.

Mr. Mackey discussed the public need as required by the Land Use Ordinance by reciting excerpts of Resolution No. 2021-18 which states that passage of the Resolution:

- Provides flexibility in farm sizes;
- The 2018 Comp Plan makes it clear that diversification and new approaches are important elements to the Comp Plan;
- Promotes the ability of existing and future farms to diversify.

Staff recommends approval of the Resolution.

Correspondence was received from Buck Nickerson opposing the elimination of the 10% rule. Mr. Nickerson was in attendance, and the Commission indicated that correspondence would be considered and deemed part of the Record.

The Chair then opened the meeting to public comments.

John H. Myers of Worton, Maryland, opposed the Resolution stating it would be detrimental to the economy of Kent County, as a loss in agriculture would result in a loss of the hunting and seafood industry which drives a lot of revenue for the County and its citizens. Changing this rule may help on a small case basis but to eliminate this rule, the County could never go back. There is also no clear plan in this resolution to deal with population growth. Mr. Myers also indicated that he has seen the demise of agriculture throughout several Maryland Counties and towns citing Middletown, Delaware, as a prime example.

Bill Crowding of Worton, Maryland, was opposed to the Resolution but was in favor of the Planning Staff's proposed alternate plan reviewed by the Task Force to address unique situations through an administrative variance. He recommends tabling these matters back to the County Commissioners. He contended the County is in violation of a 2019 final site plan approval and felt the County Commissioners should not be able to proceed with any Resolutions insofar as a private citizen would be held to the same standard and not have their application heard.

Pat Langenfelder of Kennedyville, Maryland, was opposed to the Resolution but was in favor of expanding the Rural Character District for subdivision so as not to have to subdivide the AZD. She was also in support of the use of waivers for various exceptions that might apply as certain inequities arise.

Janet Christensen-Lewis of Millington, Maryland, opposed the Resolution as it was her position that retention of the 10% rule was necessary. She noted that USDA data demonstrated that elimination of the 10% rule would be detrimental and that small farms would not make a profit and fail. She stated the Planning Department has not demonstrated a public need and the elimination of the 10% rule will lead to residential development in the AZD as opposed to promoting diversification. She requested that the Commission adopt the recommendation made by the Agricultural Advisory Commission.

Ed Fry of Chestertown, Maryland, opposed the Resolution, and he supports the Agricultural Advisory Commission recommendation. He reported having seen many positive attributes, including but not limited to, tourism and property values, that have resulted from the imposition of this rule. He agreed with previous speakers that cite the decline of agriculture in other jurisdictions.

July Gifford of Kennedyville, Maryland, opposed the Resolution stating it would not result in diversifying the County farming community. She raised concerns that subdivisions will have a negative effect on the food industry

and the County needs to preserve its farmland or may face urbanization, citing Middletown, Delaware, as a prime example. Ms. Gifford further noted that Maryland's Eastern Shore has been designated as nationally significant land that must be preserved. She further disagreed with the concept that elimination of the 10% rule would necessarily help small farmers.

Sean Jones of Massey, Maryland, opposed the Resolution, in part, due to his family's history as dairy farmers in New Jersey. He reported having witnessed the detrimental effects of land fragmentation and discussed several challenges of small farmers who rented multiple tracks of land. He expressed deep concern of the impact that elimination of the 10% rule would have on the County and supports the Agricultural Advisory Commission recommendation.

Frank Lewis of Millington, Maryland, opposed the Resolution but was in favor of a waiver process. Mr. Lewis stated that Kent County has the highest percentage of agricultural land (75%) in the State of Maryland while the majority of other Counties are under 50% agricultural lands. He stated his belief that this is a reflection of the past efforts in Kent County to protect the AZD and the 10% rule needs to be continued. He also believes there is no demonstrated public need for the change.

Gary Miller of Kennedyville, Maryland, was opposed to the Resolution and supports changes suggested by the Planning Staff.

Jennifer Debnam, Chestertown, Maryland, opposed the Resolution but was in favor of a waiver process.

John Lysinger (remote) of Chesterville, Maryland, was opposed to the resolution but also supports a waiver process for the 10% rule.

Mr. Sutton moved to close the public hearing. The motion was seconded by Mr. Strong and all members were in favor.

Mr. Saunders pointed out that there was no favorable input from the public for the elimination of the 10 percent rule, and Mr. Sutton did not see a reason to eliminate the rule if there is nothing currently wrong with it. Mr. Brown also relayed these sentiments.

Ray Strong agreed with the Agricultural Commission's unfavorable recommendation for elimination of the 10% rule, requesting the County Commissioners explore waiver procedures for a case-by-case basis of the application of the rule.

Vice-Chair Ruge informed Staff that he would like to see a more comprehensive explanation of the 10% rule as it was difficult to understand and also raised concerns regarding the amount of land in the AZD that is already subject to preservation.

County Commissioner Mason was in favor of the elimination of the 10% rule and gave examples, including experiences of some of the challenges pertaining to young farmers and noted that the public need also consists of promoting entrepreneurship, allowing landowners to know what they have a right to do on their land, and elimination may actually decrease development. Commissioner Mason discussed an example in which a property divided amongst siblings equally would not be allowable.

He also noted, by means of example, that farmers may need to sell a portion of land to afford to retire. The elimination of the 10% rule would better provide them with this income.

Commissioner Mason opined that the text amendment promotes farming. He further stated that it is up to the farmers who want to purchase smaller parcels to decide on whether their business is profitable, not the County.

Commissioner Mason added that many of the concerns raised can be addressed by a revision of the text amendment that all the effected parcels must remain in Agriculture.

Chair Hickman raised a question to Staff on the number of requests staff has received in which the 10% rule was discussed. Ms. Gerber indicated that these types of inquiries are not tracked but she could recall about 3 or 4 inquiries.

Vice-Chair Ruge raised the motion which was seconded by Ray Strong. The Motion passed with all in favor and the matter was tabled for the next Planning Commission meeting.

Resolution 2021-19, Resolution to Introduce a Text Amendment to Revise Chapter 222, Zoning, to Amend Setbacks for Certain Animal-Related Uses from 600 Feet and 400 Feet to 200 Feet in AZD

Ms. Gerber informed the Commission that the Land Use Ordinance has multiple provisions for setbacks from property lines related to animal agricultural structures and uses. These setbacks range from 100 to 600 feet. Many are related to animal housing or feeding or waste management structures.

More intense uses, such as poultry houses or confinement dairies, have the strictest requirements. The 600-foot setback for poultry houses, feedlots, and confinement dairies has been in place since at least 1989. Commercial stables have a 400-foot setback for structures for housing and feeding horses and waste management. Many other uses have a 200-foot setback, while private stables (up to four horses or mules) have a 100-foot setback. Except backyard chickens, the minimum setback for structures related to housing animals is 100 feet.

The County Commissioners would like to simplify and standardize the regulations in the Agricultural Zoning District, where animal husbandry uses should be expected. The proposed text amendment would amend the setbacks for most animal-related uses in AZD to no more than 200 feet. However, for farms adjacent to residentially zoned properties, enclaves and existing housing developments, and town boundaries the setback would remain unchanged, 600 or 400 feet as applicable. Residentially zoned properties are those properties zoned Rural Character (RC), Rural Residential (RR), Critical Area Residential (CAR), Community Residential (CR), Village (V), Intense Village (IV), and Intense Village Critical Area (IVCA). The specific animal-related uses being amended are poultry houses, commercial stables, waste management structures, feedlot or confinement dairies, and structures for the buying, processing, and sale of animal products. The proposed changes only affect farms within the Agricultural Zoning District (AZD).

The Agriculture Advisory Commission met on January 25 to review this text amendment and voted to recommend supporting the legislation as proposed. The letter of recommendation was attached to the Commission's meeting packet.

Mr. Mackey informed the Commission of the public need and comprehensive plan. Mr. Mackey noted the purpose and public need of the text amendment is to standardize setbacks. The hearing was opened for public comment.

Janet Christensen-Lewis, of Millington, Maryland, was opposed to the proposed text amendment as a matter of equity between single residential lots adjacent to farms versus multiple residential lots that would constitute a cluster/enclave of three or more adjacent homes. In addition, she stated this amendment creates a protected

class of citizens in the AZD as opposed to those citizens in other districts who are subjected to more restrictive setbacks.

Bill Crowding, of Worton, Maryland, was opposed to the proposed text amendment. He noted that if this is approved there could be an administrative variance of up to 100 feet. He gave an example of the impact allowing these types of structures within the proposed ranges and spoke of how these structures dramatically affected property values when in similar proximity to other properties. He quoted text that the Maryland Planning Commission Association establishes a duty upon Planning Commissions to also protect property values in addition to the several other enumerated duties.

Judy Gifford, of Kennedyville, Maryland, was opposed to the proposed text amendment as she could not understand the justification or purpose for it and wasn't sure if a study was performed to determine the impact reducing these setbacks would have on property values. Ms. Gifford also raised concern that the public would not be able to comment further regarding the Commission revisiting the 10% rule Resolution at the next meeting.

John Lysinger (remote) of Chesterville, Maryland, was opposed to the proposed text amendment. He informed the Commission that approximately 30 years ago one of his neighbors had built a new home and another neighbor received a variance to build a chicken house 200 feet from the road. Eventually, the new house became worthless and needed to be destroyed.

Chair Hickman closed the public hearing and opened the floor to the members for discussion. Vice-Chair Ruge raised concerns about if a home can be built within two hundred feet of the property line adjacent to a farm with an animal use. Chair Hickman clarified that the homeowner is not subjected to this setback, as it pertains only to the use of the structure on the farm.

Chair Hickman inquired to Mr. Mackey to explain the administrative variance process in reducing setbacks. Mr. Mackey indicated that the administrative waiver is for applicants seeking a 50% reduction of the setback and anything greater must come before the Planning Commission and Board of Appeals. Vice-Chair Ruge inquired as to how often does the Planning Office receive these requests. Mr. Mackey indicated that the office does receive this request, but they are infrequent. Mr. Mackey also indicated that for administrative variances, he utilizes the same standards for a variance as the Planning Commission and Board of Appeals.

Ms. Gerber added that the attached Chart shows current setbacks and clarified that these setbacks only apply to the specified types of structures laid out in the proposed text amendment.

Chair Hickman raised concerns for a need to protect residential homes and the impact on property values, low-income communities, and the general population, insofar as these constituents are not familiar with the system or how to protect their properties in the AZD from any adverse impact these structures may cause. Mr. Mackey indicated the text could be revised to add "or any residential use".

Jim Saunders moved to table the resolution for the next Planning Commission Meeting. Ray Strong seconded the motion; all members were in favor.

Chair Hickman raised a question as to whether there will be another public hearing after the Planning Commission deliberated on the resolutions. Mr. Mackey noted that the resolutions have had a public hearing and the Commission is in the deliberating stage. Ms. McCann agreed.

Janet Christensen-Lewis was opposed to not allowing the public additional time to comment. Chair Hickman indicated the public will have an opportunity to comment based on attorney advice.

