

# DORCHESTER COUNTY PLANNING COMMISSION

MINUTES – February 3, 2016

The Dorchester County Planning Commission held their regular meeting on February 3, 2016, at 12:00 pm in the County Office Building, Room 110 in Cambridge MD. Members present were: Robert Hanson, Chair, Laura Layton, Vice Chair, Ralph Lewis and Mary Losty. Also present were Steve Dodd, Director, Rodney Banks, Deputy Director, Brian Soper Critical Area Planner and Christopher Drummond, Attorney. Absent were Bill Giese and Jeffrey King

Mr. Hanson called the meeting to order at 12:00 p.m.

Mr. Hanson asked for a motion to approve the minutes of January 6, 2016. Mrs. Layton made a motion to approve the minutes as submitted and Ms. Losty seconded. The motion carried with Mr. Hanson abstaining.

## **OLD BUSINESS**

### **A. Critical Area Administrative Variance Case #AV-21, continued, Martin & Donna Kibbe, owners – 5938 Horns Point Rd, Cambridge, Maryland - requesting a variance to construct a new residence within the Chesapeake Bay Critical Area Expanded Buffer.**

Mr. Dodd sworn in Alex Dolgos, Bert Cramer and any other person who would be testifying concerning this application.

Mr. Soper gave a brief overview of the case and stated that at the January meeting, the Planning Commission asked the applicant to provide an updated application, a soils map and have a representative from the Health Department attend this meeting. He also noted that the Critical Area Commission is requesting mitigation at 3:1. Mr. Drummond pointed out that with this mitigation, the Kibbes need to understand they may end up with screening in front of their house that will block the water view in 10 years or so. Mr. Cramer also was advised of this.

Alex Dolgos, 8214 Whispering Pines La., Chestertown, MD an Environmental Consultant representing the Kibbes reviewed the facts presented at the January meeting. The Kibbe's do not want to destroy the specimen trees. Between the 100 and 300 ft. buffer is an area with no trees, and this is where the Kibbes would like to build the new house. Since the adjoining property owner Mr. Cramer, complained about losing his view, the proposed house has been moved back by 70 ft. Mr. Dolgos stated that there is nowhere else on the property to build the house without disturbing the root system of the specimen trees. Mr. Dodd asked Mr. Dolgos to define "specimen tree". Mr. Dolgos stated a tree that is at least 30" in diameter.

Mr. Dolgos advised that the driveway has also been moved to accommodate the neighbor's concern. Mr. Drummond asked who owned the triangular portion of land at the curved portion of Horns Point Rd. and the property line. Mr.

Drummond stated that it appears the relocation of the driveway is now on a section of someone else's property. Mr. Dolgos was unsure of who owns this property. Martin Kibbe pointed out that there are two driveways so the new one can be moved around. Mr. Hanson asked Mr. Drummond if the Planning Commission could approve the request with this problem. Mr. Drummond advised that this is not part of the Administrative Variance.

Paul Galanek, Dorchester County Health Department, Environmental Health, spoke about the septic system. The tankage would be near the proposed house and there would be a narrow trench to reach the septic area. Mr. Dodd explained to Mr. Galanek that at the January meeting a statement was made by Mr. Dolgos that the Health Department would not allow the Kibbes to rebuild a larger house in the same location as the existing house because there would not be enough room to upgrade the septic system. Mr. Galanek was not aware of this limitation, however, he did state that if the existing footprint of the house is used, the septic system would need to be closer to the river. Mr. Hanson asked about the location of the well and whether in its present location it would serve the new house in the requested location. Mr. Dolgos stated that a new well is planned. Mr. Dodd clarified that concerning the replacement house, the new septic system and the new house can't both fit outside of the expanded buffer. Mr. Galanek stated that if the specimen trees are taken into account, and the desire is not to destroy them, Mr. Dodd's statement would be correct.

Mr. Hanson asked if there was anyone else that wanted to testify. Bert Cramer, 5936 Horns Point Rd., Cambridge, MD, home address 1138 Alleghenyville Rd., Mohton, PA came forward to speak in opposition of the variance. Mr. Dodd confirmed that written comments submitted by Mr. Cramer at the January meeting are still part of the record. Mr. Cramer recognizes that the Kibbes have moved the driveway away from his property and appreciates this. Mr. Cramer's second concern was that the new house would block the view from their house. Mr. Drummond advised that the issue of view is not something to be considered during this hearing. His third concern is that he would like assurance that the existing house will be taken down once the new house has been built, that this will not become a subdivision. Mr. Dodd stated that the zoning of this property (RCA, 1/20 acres) does not allow for two residences. Mr. Dodd also advised that a Certificate of Occupancy would not be issued for the new house until the old house is demolished.

Mr. Dodd pointed out to the Planning Commission, that if they approve this request today, none of the specimen trees can be taken down during this project as this is the central point of the argument. Mr. Drummond advised that they will need a recorded Declaration to this effect.

Mr. Dodd also reminded the Planning Commission that they make the recommendation and the Director of Planning & Zoning makes the final decision. Mr. Drummond advised the Planning Commission that their recommendation should consider the unwarranted hardship. Mr. Drummond defined unwarranted hardship - that without a variance, the owner will be denied reasonable use of their property.

Mr. Drummond suggested someone talk about the condition of the 1930's house and why it needs to be torn down.

Mr. Dodd swore in Martin and Donna Kibbe. Mrs. Kibbe advised that they bought the house "as is" and it had numerous pipe leaks, roof leaks, mold and water under the house (drainage issues). In speaking with the Health Department, it was noted that the septic system is on borrowed time and technically is not functioning now. The house is 2 bedroom, one bath and is functionally obsolete. The foundation is also cracked. In order to put new footers/foundation in, the specimen tree roots would be disturbed. The existing house is on block/piers.

Mr. Drummond suggested that reasonable use of the property could be defined as, year round use is not possible upon the evidence the Commission has. To have year round use of a residential property, will require reconstruction of that which exists. Current building code requires a foundation and the foundation is going to be almost impossible to dig without removing several specimen trees.

Mr. Hanson asked for a motion from the Planning Commission. Ms. Losty made a motion to provide the Director with a favorable recommendation with the following conditions, Critical Area mitigation 3:1, no specimen trees may be removed, the home will be no closer to the shoreline than 170 ft. Mr. Kibbe had objections to the 170 ft. but was overruled by the Planning Commission. The new location of the driveway as shown on the revised exhibit must be approved by Department of Public Works. Mrs. Layton seconded and the motion unanimously carried.

## **NEW BUSINESS**

### **A. Critical Area Administrative Variance – Case #AV-22, Bo Lu & Jiemin Xu, owners – 1202 Horse Point Rd, Fishing Creek, Maryland - requesting a variance to replace an existing dwelling and to construct a new accessory structure within the Chesapeake Bay Critical Area Tidewater (100') Buffer.**

Mr. Dodd sworn in Steve Whitten, Land Surveyor with Fink, Whitten & Associates, 108 Dorchester Ave., Cambridge MD and any other person who would be testifying concerning this application.

Mr. Soper reviewed the application and staff report. Mr. Soper pointed out that the owners are replacing an existing accessory structure as well. Surrounding property owners were notified by mail of this request.

Mr. Soper reviewed a letter from Julie Roberts, Critical Area Commission dated January 26, 2016. The Critical Area Commission does not oppose this request, provided a buffer management plan is submitted and approved before construction begins. Mitigation is 3:1. Mr. Whitten advised that he is aware of the 3:1 mitigation and net gain in coverage is 1,350 sq. ft. to include the accessory building and expansion of the driveway.

Mr. Whitten pointed out that the new dwelling is smaller than the existing dwelling and will be within the footprint of the existing residence. The owners

are not sure at this time that they will build a new accessory structure but decided to include it with this variance request.

Mr. Whitten advised that he has made the owners aware that the existing dwelling and proposed replacement area is now in the limit of moderate wave action. He has made the owners aware that the house will need to be constructed on piers with no enclosure underneath. He also noted that the accessory structure is outside the limit of moderate wave action, size excludes it being placed in this area.

Mr. Whitten spoke about the height of the property noting that the house is on high ground (about 5 ft. above MSL), however the property does fall off considerably. Ms. Losty asked if there are concerns about the SRA given the low areas of land. Mr. Whitten advised that he has spoken with Paul Galanek at the Health Department and the septic system will be relocated to an area of higher elevation than the original one.

Mr. Hanson asked if there was anyone else who would like to testify. Lynn Dean, 1204 Horse Point Road, Fishing Creek, MD and next door neighbor to this property asked about the property line. Mr. Soper advised that what he presented was a generalized description from SDAT. She stated that the drawing shows the accessory structure to be on her property. Mr. Whitten advised that there is a boundary survey on record from the previous owner and showed Ms. Dean the property markers he located. She pointed out that the original house was built in 1930, and an addition put on in 1956. She questioned why the house needs to be torn down. She does admit that the house has been neglected, citing roof leaks and some interior destruction.

Mr. Dodd asked Mr. Whitten if the house could be rebuilt on the property outside the tidewater buffer. Mr. Whitten advised that this area could be utilized however the new house would not completely fit. Mr. Whitten also stated that the issue with this property is that it rapidly drops off and anywhere else on the property is a more flood prone area. The area they are requesting to build on is the most desirable part of the property.

Mr. Hanson asked for a motion. Mr. Lewis made a motion to provide the Director of Planning & Zoning with a favorable recommendation, with the conditions that they comply with the 3:1 mitigation, the new septic and everything being built environmentally safe. Ms. Losty seconded and the motion was unanimously carried.

### **Board of Appeals Cases – Review and recommendation**

Case #2587 (**Continued**) Fraternal Order of Police, Cambridge Lodge 27, Inc. The Planning Commission's recommendation stands from the January 6, 2016 meeting.

Case # 2590 – Valley Proteins, Inc.

To request a variance from the 500 ft. setback requirement for a wastewater treatment plant. Applicant proposes to expand an existing wastewater treatment

plant by, among other things, upgrading and reconfigured the existing wastewater treatment ponds and tanks, and by constructing a new building and associated tank to be set back 285 feet from the front property line along Linkwood -East New Market Road. A 215 ft. variance is requested. The proposed construction of a building and tank will provide for controls and equipment essential to the operation of the upgrade pond and treatment system, and by necessity must be located adjacent to same. Based on the information provided, the Planning Commission has no problem with the variance.

## **II. INFORMATION**

None

With no further business, Mr. Lewis made a motion to adjourn and Mrs. Layton seconded. The motion was unanimously carried. The meeting was adjourned at 1:20 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a cursive name, possibly "H. J. Lewis", written over a horizontal line.