

DORCHESTER COUNTY PLANNING COMMISSION

MINUTES – June 7, 2017

The Dorchester County Planning Commission held their regular meeting on June 7, 2017 at 12:00 pm in the County Office Building, Room 110 in Cambridge MD. Members present were: Robert Hanson, Chair, Laura Layton, Bill Giese and Mary Losty. Also present were Rodney Banks, Deputy Director, Brian Soper Critical Area Planner and Christopher Drummond, Attorney. Absent: Ralph Lewis, Jeffrey King and Steve Dodd, Director.

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

Mr. Hanson asked for a motion to approve the minutes of April 5, 2017. Mrs. Layton made a motion to approve the minutes and Mr. Giese seconded. The motion unanimously carried.

OLD BUSINESS

A. None

NEW BUSINESS

A. Subdivision Waiver Request for a Shared Driveway to permit 3 lots to be served by a shared driveway – Brendan M. Keegan, Sr. owner, Ryan Showalter, applicant - For property identified on Tax Map 40, Grid 8, Parcel 72, and located at 1713 Town Point Road.

Mr. Banks reviewed the request. He noted that the Subdivision Regulations allow two lots to share a driveway. He advised that there is also waiver criteria in the Subdivision Regulations that allow more than two lots to share a driveway.

Ryan Showalter, applicant, Brendan Keegan, Sr., owner, and any other person who would be testifying in this case, were sworn in.

Mr. Showalter referred to the subdivision plat and noted that the driveway existed at the time of the three-lot subdivision. He pointed out that a note was placed on the subdivision plat limiting the use of the driveway to lots 2 and 3. Mr. Showalter also noted that several years ago, the prior owners brought a similar waiver request before the Planning Commission and it was denied. Mr. Keegan owns lot 1 and would like to sell it at some point.

Mr. Showalter advised that there is room for two cars to pass on this private drive with adequate room on the shoulder. He also pointed out that if a separate driveway is required to be built for lot 1, it would go through several acres of productive agricultural land and double the amount of impervious surface.

Mr. Showalter advised that there is a basic Shared Driveway Agreement between lots 2 and 3 requiring both lots to share the cost of maintaining the driveway. Mr. Showalter advised that he has submitted with the application, a more comprehensive Shared Driveway Agreement that would provide for the maintenance of the driveway by the three lot owners. This agreement would be recorded in land records and would run with the properties. He also noted that in this agreement, the County has no responsibility for the maintenance of this road unless it would be accepted into County roads.

Mr. Showalter advised that they have been working with Greg LeBlanc, Public Works concerning the waiver. Mr. Showalter noted that they met with Mr. LeBlanc on site to discuss the issue. Mr. Showalter entered into record an email from Greg LeBlanc dated May 25, 2017 that suggests the addition of a passing area midway in the driveway. This area would be widened by 2 ft. on each side for about 30 ft.

Mr. Keegan advised that he has lived in his present home since 2004 and noted his family, guests and others have never had an issue with the driveway.

Mr. Hanson advised that he had recently visited the properties. He questioned the fact that Mr. Dixon had purchased lot 3 with the note on the plat and asked Mr. Showalter to explain what if any legal implication this may have. Mr. Showalter explained that Mr. Dixon has an easement to use the driveway, the driveway being on lot 1. Allowing lot 1 to use the driveway should not infringe on Mr. Dixon's rights to use the driveway. Mr. Showalter explained that this is a regulatory note that exists because of County Subdivision Regulations. Mr. Showalter explained how they would address the original note on the plat. He advised they would record a new plat replacing the old note with a new note stating that the driveway serves lots 1, 2, and 3 and the three lots are subject to a Shared Driveway Maintenance Agreement.

Ms. Losty asked Mr. Drummond, in his opinion, is the note on the plat a regulatory note or legally binding. Mr. Drummond advised if the note was placed there because of Subdivision Regulations then it is legally binding, however, if the regulation changes or in this case, a waiver is granted because the Planning Commission is authorized to grant a waiver, it does affect the note.

David Dixon, 1715 Town Point Rd., Cambridge, MD (owner of lot 3) spoke in opposition to the waiver request. Mr. Hanson asked Mr. Dixon if the waiver is granted, what can be done to resolve the issue for all concerned. Mr. Dixon stated that the present maintenance agreement is too generalized. Mr. Dixon also stated that he has no problem with a short-term fix, however, a short-term fix would more than likely lead to long-term problems. Mr. Dixon would like to have an escrow account set up and an independent party oversee maintenance issues of the driveway.

Glenn Bramble, 5222 Heron Rd., Cambridge, MD spoke in opposition to the waiver.

Greg LeBlanc, County Engineer with Public Works stated that this driveway should be adequate for the three lots to share with a pull off area as mentioned in his May 25th email.

Bill Forelifer, Health Department had no comments concerning the waiver.

Mr. Drummond spoke about shared driveway requirements in Talbot and Queen Anne's Counties, both allow up to 10 lots to share one driveway. Mr. Giese asked about the maintenance agreements. Mr. Drummond advised that Talbot, Kent and Queen Anne's are similar. Mr. Showalter stated that the one he submitted with the waiver application is used by Talbot County.

Mr. Showalter reviewed the proposed Shared Driveway Agreement he submitted. The agreement is for the three lots, each having the right to use the road. Each owner has a 1/3 responsibility for the cost of upkeep and 1/3 interest in decision making. Any proposed maintenance to the road would require a 2/3 vote. The agreement would be recorded in Land Records and runs with the properties. He pointed out this agreement addresses two concerns (1) if one person does not comply with the contract, this would provide for recovery of attorney fees and a lien can be placed on their property. (2) there is a provision in bold that states all affected by this agreement now and in the future, acknowledge that this is not a public road and that Dorchester County has no responsibility for the maintenance, decisions or costs associated with the road.

The Planning Commission took a brief recess to discuss the waiver. When they finished, Mr. Hanson asked for a motion. Ms. Losty asked Mr. Drummond to clarify whether the note on the plat can legally be changed. Mr. Drummond advised that he believes the plat note can be changed to be consistent with a decision the Planning Commission is allowed to make.

Mr. Drummond read §140-26, A, (2) (c), and §140-46 (B) of the Subdivision Regulations into the record.

Mr. Showalter asked that the findings of fact, required to be answered at the time of application, be referenced when the Planning Commission is making their decision.

Mr. Hanson pointed out that the Planning Commission can grant the waiver, but they cannot require anyone to sign the maintenance agreement. Mr. Drummond advised that if the Planning Commission approves the waiver today, unless the maintenance agreement is signed by all, nothing has been accomplished. He suggested that a maintenance agreement be accepted and approved by the two owners and then come back to the Planning Commission for the waiver request. The Planning Commission was agreeable to this and would like to see Greg LeBlanc's comments implemented in the agreement.

Ms. Losty made a motion that this case return in thirty (30) days with an agreed upon Shared Driveway Agreement incorporating the County Engineer's comments. Mr. Giese seconded and the motion unanimously carried.

B. P&Z #1322 – Valley Proteins, Inc., owner - Site Plan Approval.

The applicant is requesting site plan approval to construct a boiler building, grinding building, loadout building, filter building and other structures and improvements. The site is located at 5420 Linkwood Road, Linkwood, Maryland and is zoned I-2, Industrial (Tax Map 32, Grid 24, Parcel 39).

Mr. Banks gave an overview of the first site plan. He noted that the site plan before the Planning Commission today is Phase II of the project.

Tim Glass, applicant, Lane Engineering, 117 Bay Street, Easton, MD and Tom Himmler, Valley Proteins, 5420 Linkwood Rd., Linkwood, MD and any other person who would be testifying in this case, were sworn in.

Mr. Glass gave a brief overview of the first phase of the project, located on the south side of the property. He noted that the plans being consideration today are on the north side of the property.

Mr. Glass advised that there are two different operations on the property. The north side will consist of the finished products, with the south side being the processing side. There is a second proposed entrance to the north side. Greg LeBlanc, Public Works, has approved the stormwater management plan. The Dorchester County Soil Conservation Office had several items that needed to be addressed and these have been corrected and resubmitted. He noted that there are a few non tidal and buffer areas on the northern side. MDE and the Corp of Engineers have been out to look at the areas and there is a permit application pending. He also advised that they are required to obtain a Maryland Transit Authority permit for the railroad crossing on the north side, this is also pending.

Mr. Glass noted that this site will utilize rainwater harvesting. Stormwater will be captured by the existing pond and utilized as makeup water for the cooling tower. Mr. Himmler gave an overview of how the system operates.

Mrs. Layton made a motion to approve the site plan subject to final edits. Ms. Losty seconded and the motion unanimously carried.

C. P&Z #1324 – Frosty Freezer, LLC, owner – Site Plan Approval.

The applicant is requesting site plan approval to construct seafood processing cold storage building. The site is located 2810 Hoopers Island Road, Church Creek, Maryland and is zoned V, Village (Tax Map 93, Grid 8, Parcel 8)

Steve Whitten, applicant, 108 Dorchester Avenue, Cambridge, MD and any other person who would be testifying in this case, were sworn in.

Mr. Banks reviewed the application. The Planning Commission granted a BEA at the March, 2017 meeting. A special exception was granted by the Board of Appeals in April. Site plan approval is the final step in the process. Steve Whitten reviewed the site plan, to include landscaping, proposed lighting, parking area, noting that three new spaces were added along the building, and proposed signage. He noted that there is an existing sign and the posts for that sign will be used for the new sign.

Mr. Whitten advised that the existing building had a 40'x 60' or (10' x 10') notch at the northeast corner for tractor trailers. Mr. Phillips, owner has decided that a 50' x 70' space will be needed. Mr. Whitten advised that the language in the Code states that any modification done after a special exception is granted, requires them to go back to the Board of Appeals for an amended ruling. This will need to be done before the site plan is recorded.

Mr. Giese made a motion to approve the site plan with the condition that an amended special exception is obtained from the Board of Appeals for the additional 100 sq. ft. modification of the building. Ms. Losty seconded and the motion unanimously carried.

D. BEA Permit Application – Robert & Ann Croom, owners, Steve Whitten, applicant, for property located at 5000 David Greene Road, Cambridge, Maryland. Requesting approval to replace an existing residence with a new frame dwelling and deck all within the 100' Critical Area Tidewater Buffer.

Steve Whitten, applicant, 108 Dorchester Avenue, Cambridge, MD and any other person who would be testifying in this case, were sworn in.

Mr. Soper, Critical Area Planner reviewed the application. Property is slightly less than 1 ½ acres, zoned RR, Rural Residential, LDA, buffer exempt area. Proposed disturbance will be no closer to the shoreline than the closest point of the existing foundation to be removed, 30.1 ft. Current lot coverage is 2,704 sq. ft. Proposed development will increase lot coverage by 188 sq. ft.

In a letter dated May 30, 2017 from Tay Harris, Critical Area Commission, they had no objection to this request as long as the lot is properly grandfathered and each BEA criteria can be met. Mr. Soper advised that all BEA criteria has been met. Mitigation will be required at a 2 to 1 ratio. The new dwelling will be moved out of the LMWA area.

Mr. Giese made a motion to approve the request and Ms. Losty seconded. The motion unanimously carried.

E. Critical Area Administrative Variance Case #AV-30, James Carder and Bruce Thomas, owners, Steve Whitten, applicant, for property located at 2134 Silver Goose Road, Cambridge, Maryland. Requesting an administrative variance to allow for the expansion of the existing dwelling by adding a screened porch within the Chesapeake Bay Critical Area 100' Buffer.

Steve Whitten, applicant, 108 Dorchester Avenue, Cambridge, MD and any other person who would be testifying in this case, were sworn in.

Mr. Soper reviewed the request. The property is zoned RC, Resource Conservation, Critical Area overlay is RCA. The applicant would like to expand the existing dwelling with a screened porch, adding 344 sq. ft. within the 100 ft. buffer. Lot was developed prior to adoption of the Critical Area law. The request adheres to the rules of the administrative variance within the Critical Area.

A letter from the Critical Area Commission date May 30, 2017 stated that the Commission does not oppose this request provided that mitigation is performed in accordance with COMAR 27-01-09-01. A buffer management plan will be required at the time of permit application.

Mrs. Layton made a motion to send a favorable recommendation to the Director. Mr. Giese seconded and the motion unanimously carried.

F. Board of Appeals Cases – Review and recommendation.

**Case # 2612 - James & Karen Harper- Owner
Steve Whitten- Applicant**

To request, as a special exception, a sum total area of accessory structure greater than the building footprint of the principal residential structure. Property is located at 4722 Lecompte Road, Rhodesdale, MD 21659. Property containing 3.51 acres, zoned AC - Agricultural Conservation.

Based on the information provided, the Planning Commission had no problem with the request since it is in keeping with the surrounding area and is a property line change only.

**Case # 2613 - Edward & Elaine Airey- Owner
Steve Whitten- Applicant**

To request, a variance of 3 ft. from the side yard setback requirement for a dwelling unit. Applicant proposes an addition to the existing dwelling unit to be located 12 ft. from the side property line. Containing 0.379 acres. Property is located at 2716 Hoopers Island Road, Fishing Creek, MD 21634. Zoned V - Village.

Based on the information provided, the Planning Commission would like the Board of Appeals to make sure the applicant demonstrates a hardship.

**Case # 2611 - Thomas Spicer- Owner
William McAllister Jr. – Applicant**

To request a variance from the Flood Protection Elevation as defined by the Dorchester County Code, permitting the elevation of the residence located at 3525 Golden Hill Road, Church Creek, to remain at an elevation of four and a half feet (4.5') above natural grade elevation, and to also request a variance from the front yard setback of Sixty feet (60'). Containing 16 acres. Zoned AC- Agricultural Conservation.

Based on the information provided, the Planning Commission suggests that the Board hear the case and act accordingly.

INFORMATION

Mr. Banks advised that money was approved in the 2017-2018 budget to update the Comprehensive Plan in stages. Mr. Banks advised that they will need to put out an RFP for bids. He also noted that the consultant will need to be aware that the update will be paid out over the course of two different budget cycles. Grants will also be explored.

Mr. Soper advised that the consolidated Critical Area Ordinance was passed by the Counsel and has been sent to the Critical Area Commission for their review and adoption. Mr. Soper stated the Critical Area Commission will give conditional approval to the majority of the ordinance so it can be implemented. If changes are required, it will only affect a small portion of the ordinance.

Mr. Soper also advised that the Critical Area Commission is beginning review of their solar panel recommendations for the critical area.

Mr. Hanson asked staff to check as to whether the County Council elected Jerry Burroughs to the Planning Commission at their June 6th, meeting.

With no further business, Mr. Giese made a motion to adjourn and Ms. Losty seconded. The motion unanimously carried. The meeting was adjourned at 2:45 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "K. Giese", written over a horizontal line.