

DORCHESTER COUNTY PLANNING COMMISSION

MINUTES – November 7, 2018

The Dorchester County Planning Commission held their regular meeting on November 7, 2018 at 12:00 pm in the County Office Building, Room 110 in Cambridge, MD. Members present were: Robert Hanson, Chair, Bill Giese, Mary Losty, Ralph Lewis, Jerry Burroughs and Jeffrey King. Also present were, Steve Dodd, Director, Rodney Banks, Deputy Director, Brian Soper, Planner and Christopher Drummond, Attorney. Absent: Laura Layton

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

Mr. Hanson asked for a motion to approve the minutes of October 3, 2018. Mr. Giese made a motion to approve the minutes and Ms. Losty seconded. The motion unanimously carried.

OLD BUSINESS

A. None

NEW BUSINESS

A. **Critical Area Administrative Variance Request – Case #AV-46, John & Mary Fogarty, owners, for property located at 6016 Corners Wharf Road, Cambridge, Maryland. Requesting an administrative variance approval to allow the expansion of a dwelling within the 100' Critical Area buffer.**

William Craig, agent for applicant, P.O. Box 614, Cambridge, MD, and any other person who would be testifying in this case, were sworn in.

Mr. Soper reviewed the Staff Report. Size of property is 54.6 acres. Zoning is RC, Resource Conservation and the Critical Area Overlay is RCA.

Mr. Soper reviewed a letter dated October 22, 2018, from Alexandra DeWeese, Critical Area Commission, stating the Commission does not oppose the request. A Buffer Management Plan will be required at the time of permit application.

Mr. Craig advised the primary addition, which will be in the buffer, is an ADA compliant master bedroom and bath for the owner. There will also be a 48 sq. ft. addition within the buffer. The other two small additions will be outside the buffer.

Mr. Hanson asked for a motion. Mr. Burroughs made a motion to send a favorable recommendation to the Director and Ms. Losty seconded. The motion unanimously carried.

B. Critical Area Administrative Variance Request – Case #AV-47, Richard & Kara Gabries, owners, for property located at 5609 Condon Road, Cambridge, Maryland. Requesting an administrative variance approval to allow the expansion of a dwelling and the construction of a deck within the 100’ Critical Area buffer.

Steve Whitten, agent for applicant, 504 Maryland Avenue, Cambridge, MD, and any other person who would be testifying in this case, were sworn in.

Mr. Soper reviewed the Staff Report. Size of property is 24.998 acres. Zoning is RC, Resource Conservation and the Critical Area Overlay is RCA.

Mr. Soper reviewed a letter dated October 29, 2018, from Alexandra DeWeese, Critical Area Commission, stating the Commission does not oppose the request. A Buffer Management Plan will be required at the time of permit application.

Mr. Whitten reviewed the request. Applicant is in the process of raising the house to comply with flood protection requirements. Mr. Whitten noted on the site plan the location of the proposed addition and deck. Mr. Soper advised that because the owners are elevating the house to meet the flood plain requirements, changes to landings or steps that would place them within the buffer are allowed, and does not require a variance.

Mr. Hanson asked for a motion. Mr. Lewis made a motion to send a favorable recommendation to the Director and Mr. Giese seconded. The motion unanimously carried.

C. P & Z #1345 – Site Plan Approval, Richfield Solar, c/o Ryan D. Showalter, applicant, Richfield Farms, LLC, Greenfield Farms, LLC, Adam & Kimberly Kral, owners. The applicant is requesting site plan approval for a utility scale solar energy project. The site is located on Osborne Road, and is shown on Tax Map 22, Parcels 23, 24, 258 & 259. Property is zoned AC, Agricultural Conservation.

Ryan Showalter, applicant, 300 Academy Street, Cambridge, MD, and any other person who would be testifying in this case, were sworn in.

Mr. Dodd reviewed the Board of Appeals decision and five conditions from the May 31, 2018 meeting. He also reviewed the applicant’s amended case #2617-A, the variance requested and decision from the Board of Appeals meeting, July 19, 2018.

Mr. Dodd advised that comments have been received from Lane Engineering on behalf of Department of Public Works; comments from the Health Department have not been received as of this date. Mr. Dodd also noted that he and Mr. Banks have reviewed the plan and submitted 17 comments to Mr. Showalter and, Mr. Showalter has addressed them. Comments were also received from Mr. Drummond.

Mr. Dodd noted the project will have little traffic once construction is completed. Access of construction traffic to the project will be from Maryland Route 331 only. There are two access points to the project from this highway, one is a farm lane accessing the Greenfield parcel and the other is the existing haul road from the Richfield sand and gravel facility.

Mr. Showalter handed out a packet entitled “Richfield Buffer Placement Exhibit” and “Viewpoints”, existing, at planting, 2 years and 8 years. He reviewed the buffer placement exhibits. Mr. Showalter explained the three types of buffers. He noted the three yellow highlighted areas on the aerial site plan, these are residential areas that will be screened from the project with 10 ft. white pines before construction begins. He noted a correction under Type 3 Buffer on the Landscape Buffer Tables, the Eastern White Pine height at planting should be 10 ft., not 6 ft.

The Type 2 buffer will be used where agricultural fields abut the project. The Type 2 buffer has similar plants to the Type 3 buffer but is less dense. The Type 1 buffer is proposed adjacent to the Richfield Sand and Gravel facility. Mr. Showalter noted that the County requires a 50 ft. setback; this project will have a 150 ft. setback. He referred to the handout entitled “Seedling Buffer”. He advised the seedling buffer will be planted around the project, inside the fence to the landscape buffer outside the fence.

Mr. Drummond asked about parcel 170 (Faulkner) and why it did not have the same screening as the other residences. Mr. Showalter advised that the dwelling is not occupied; he has been in touch with the owner’s children and they are aware and submitted a letter to the Board of Appeals stating they have no objection to the project. Mr. Dodd read §155-50, LL, (1) (e) of the Zoning Code which states, “The Planning Commission can waive or reduce the buffer requirement at their discretion”.

Mr. Showalter reviewed the handouts entitled “Viewpoints” pages 1-5.

Mr. Drummond asked if there were three irrigation systems on the property. Mr. Showalter advised there are two on the Richfield property and one on the Greenfield property, all on the project properties. Mr. Drummond noted that these systems could be used to irrigate the buffer plantings. Mr. Showalter advised that the applicant would prefer to water the plantings with an irrigation truck, noting that this is a more cost effective method. There was a lengthy discussion on the best method to irrigate the plantings for their survival.

Mr. Drummond asked if Richfield Solar, LLC intends to divest itself once the project is built. Representatives from Invenergy stated that at this time there are no plans to sell the project. Mr. Drummond spoke about problems the counties are incurring with trying to locate the operators after the solar projects are sold. Mr. Lewis asked if there is a way to tie the landowner to this. Mr. Drummond advised this could be done. Mr. Drummond suggested reducing the

120% surety by 10% and, making this cash readily available for the County's use to address any landscape problems until the principle is located.

There was a discussion on the decommissioning bond. Mr. Showalter advised that the Public Service Commission requires reevaluation of the bond every five years to adjust for inflation and cost increases. Mr. Drummond asked if the applicant would be agreeable with the County having a part in the enforcement of the decommissioning bond. Mr. Showalter stated the applicant would have no problem with this. Mr. Banks noted that he has had discussions with the PPRP and they have no problem with including the County in the actual bond document.

Mr. Hanson asked if there was anyone in the audience that would like to speak about the site plan.

Donna Todd, 6036 Shiloh Camp Rd., Hurlock, MD advised that her residence is in front of the project. She stated that the residents on this street have requested the project be pushed back 150 ft. She also suggested a berm be placed in front of the homes to help block the view.

Janet Rash, 4272-2 Osborne Rd. and Dorothy Ewing, 4272 Osborne Rd., Hurlock, MD, advised that their family farm is next to the proposed solar project. They are also requesting the trees be planted on a berm.

Mr. Showalter addressed the suggestion of using berms in front of the residences, pointing out that at eye level when the trees have matured, the space between the berm and the trees will be thinned out and will no longer act as a buffer. Mr. Giese also noted that irrigation of the berm would be difficult because of the type of soils in this area.

There was a discussion on the type of buffer plantings that would be used to screen the project from the Todd, Rash and Ewing residences. All agreed the berms are not necessary.

Mr. Banks referred to item #14 of his comments concerning the shrub height of 18 inches. Mr. Banks suggested the height be increased to 24 or 36 inches. Mr. Casey, Landscape Architect for the project advised that because of the size of this project, 18-inch nursery stock will be easier to obtain and will be more cost effective. He also advised the smaller nursery stock adapts better once planted since there is not as much root disturbed. Mr. Banks clarified that the 18-inch plant is measured from grade once planted. Mr. Casey stated that was correct.

Mr. Lewis suggested a timeframe be set for opening the cemetery and the landowner be responsible for the opening. Mr. Showalter advised they have no problem with imposing a timeframe for opening the cemetery. He added that State law requires the cemetery be opened for family, persons with cultural affiliations, and persons with appropriate interests. Mr. Hanson asked if 48

hours' notice to the landowner to open the cemetery would be acceptable. Mr. Showalter was agreeable to this.

Mr. Drummond suggested a third-party inspector be hired to oversee that the planting materials are consistent with the final approved site plan. Applicant will select the inspector and the Planning Office will approve. Mr. Showalter advised that they would be comfortable with a third-party inspector and the applicant will pay all inspection fees. After a discussion, it was agreed that the inspector would inspect the project after installation has been completed, the second full year after installation and the end of the bond period.

Mr. Giese suggested that six red cedars be substituted for the American Holly in the Type 3 plantings and, one additional red cedar totaling 10, to replace the American Holly in the Type 2 plantings.

The Planning Commission had an open discussion with the applicant's attorney and the Planning staff concerning stipulations for tentative approval of the site plan.

Mr. Hanson advised that this would be a conditional approval. The applicant will need to address the stipulations and return for final site plan approval.

1. Applicant will propose an independent third-party inspector to oversee the installation and inspection of the plantings. Applicant will be responsible for inspector's fees. Inspector is to be approved by the Planning and Zoning Office. The landscaping will be inspected after installation is completed, after two growing seasons, not including the season in which they are planted, and at the end of the bond period of three or possibly four years.
2. Irrigation will be required for all Type 2 and 3 landscape buffers for at least two growing seasons, (not to include the season they are planted). Irrigation may be discontinued after evaluation by the independent third-party inspector and approval by the Planning Office.
3. Cemetery to be accessible for family, persons with cultural affiliations, and persons with appropriate interests within 48 hours' notification to the landowners.
4. Ten percent of the landscaping surety to be provided in cash. The cash to be readily available for the County's use to address any landscape problems. This will reduce the surety to 110% of the total landscape cost. The cash to be returned after two growing seasons, if the independent third-party inspector reports that the terms of the Planting Agreement have been satisfied, i.e., growth and survival of landscape buffers.

5. Six red cedars will be substituted for the American Holly in the Type 3 plantings.
6. The number of red cedars in the Type 2 buffer plan will be increased from nine to ten and the one American Holly will be removed from plan.
7. Lighting details and security of gate/openings to be added to the final site plan.
8. Local vendors/contractors will be offered the opportunity to bid on the project.
9. The applicant and County will work with appropriate State agencies to assure that the County may enforce the decommissioning plan in the event the owner or the State does not enforce the plan.
10. As a condition of site plan approval, applicant shall provide the Planning Office, within 30 days of change, contact information, to include names, addresses, phone numbers and email addresses for the owner and or entity responsible for the operation of the facility.
11. Construction traffic will enter/exit the project site from Maryland Rt. 331, using the farm lane to the Greenfield property or the haul road from the Richfield sand and gravel operation. They may not use Shiloh Camp or Osborne Rds. during construction of this project.
12. The Planting Plan Maintenance and Management Agreement shall be among the County, applicant and its successors and assigns and the landowners.
13. Extend the Type 2 buffer along the east side of Greenfield Farms to the edge of the woods.
14. The Planting Plan Maintenance and Management Agreement must be approved and recorded.
15. Forest Conservation will need to be done as a condition of the grading permit.

D. Board of Appeals Cases – Review and Recommendation

Case #2636 - James Tucker, applicant

Roman Coale, et al (owners of property subject to appeal)

Decision on allegation of error. Applicant believes that Chapter 155-50, Supplementary Use Regulation II, Waterfront Structure, which was relied on to establish the lateral line and subsequent pier layout was incorrectly evaluated with respect to the two properties. Property located at 3810 West Haven Court,

East New Market, MD 21631 containing 4.48 acres. Zoned RR- Rural Residential District.

Based on the information provided, the Planning Commission supports the Director's decision.

Case #2638 - Sandra H. Dodson and Susan H. Creighton

To request a variance, to reduce the width of a lot at the front lot line on a Major Collector road. Reduction requested from the required 200' = 66.03' (proposed frontage of a lot = 136.94'). Property located at east side of Mt. Holly Road, East New Market, MD 21613 containing 14 acres. Zoned AC, Agricultural Conservation District.

Based on the information provided, the Planning Commission has no problem with the request.

Case #2639-Robert S. Collison & Cami L. Collison

To request, as a Special Exception, to permit an existing barn measuring 40' x 70' to be located as an accessory prior to principal structure. Applicant plans to relocate the line of division between the following parcels so as to create a building lot: (1) Map 30, Parcel 345, (address: 1418 School St) (2) Map 30, Parcel 346, (address "Barn Lot"). Property located at 1418 School St., Cambridge, MD 21613 containing 1.64 acres. Zoned SR- Suburban Residential.00

Based on the information provided, the Planning Commission has no problem with the request.

C. Comprehensive Plan Update

Mr. Soper reminded everyone of the Comp Plan meeting on Tuesday, November 13th at 12:00 pm. They will be reviewing background information with representatives from AECOM.

INFORMATION

- A. Mr. Dodd advised that the December meeting will be his last meeting as he has turned in his notice for retirement.

With no further business, Mr. Burroughs made a motion to adjourn and Mr. Giese seconded. The motion unanimously carried. The meeting was adjourned at 3:00 pm.

Respectfully submitted,

