

# DORCHESTER COUNTY PLANNING COMMISSION

MINUTES – January 6, 2016

The Dorchester County Planning Commission held their regular meeting on January 6, 2016, at 12:00 pm in the County Office Building, Room 110 in Cambridge MD. Members present were: Laura Layton, Vice Chair, Bill Giese, Jeffrey King, and Mary Losty. Also present were Steve Dodd, Director, Rodney Banks, Deputy Director, Brian Soper Critical Area Planner and Christopher Drummond, Attorney. Absent were Robert Hanson and Ralph Lewis.

Mrs. Layton called the meeting to order at 12:00 p.m.

Mrs. Layton asked for a motion to approve the minutes of December 2, 2015. Mr. Giese made a motion to approve the minutes as submitted and Ms. Losty seconded. The motion was unanimously carried.

## **OLD BUSINESS**

None

## **NEW BUSINESS**

- A. P&Z #804E – OneEnergy Dorchester, LLC, applicant - Site Plan Approval. The applicant is requesting site plan approval to develop a Solar Energy System, Utility Scale project located at 3714 Linkwood Drive and containing 107 acres. AC, Agricultural Conservation Zoning District (Tax Map 43, Grid 10, Parcel 64).**

Mr. Dodd swore in Kevin Shearon, Robert Collier, and any other person who would be testifying concerning this application.

Kevin Shearon of Davis, Moore, Shearon, & Associates, LLC, P O Box 80, Centreville, MD, representing OneEnergy Dorchester, LLC and Robert **Collier**, Project Manager, OneEnergy Renewables, 2003 Western Ave., Ste. 225, Seattle, Washington, came forward.

Mr. Dodd reviewed the staff report and site plan. The project involves approximately 85 acres of solar arrays and a substation. Mr. Dodd advised that a special exception for use was granted by the Board of Appeals January 8, 2015. The project has another Board of Appeals case pending to be heard January 21<sup>st</sup> for a height variance for a perimeter fence to be built around the project. A comment letter has not been received from the DPW as of this meeting. Mr. Dodd noted that if the Planning Commission approves this site plan today it should be conditioned on final approval by the Department of Public Works.

Mr. Dodd stated that a landscape plan has been submitted. Mr. Dodd reviewed Section 155-50. (1)C of the zoning code which spells out the type of screening a project of this type must have. He advised the Planning Commission that they are granted broad discretion to decide where the screening is required and may waive or reduce the buffer where field conditions dictate. Mr. Dodd noted that there was

neighborhood opposition when the case came before the January Board of Appeals meeting. Because of this opposition, staff is recommending that the full 50 ft. wide buffer be required along the easterly property line, where most of the opponents reside. Mr. Dodd advised that the applicants are aware of this recommendation. Mr. Shearon advised that they have met with the opposing neighbors. From that meeting the buffer on the east has been increased to 50 ft. Mr. Shearon gave an overview of the site plan. A portion of buffer at an intermittent stream on the property will be impacted. The Corp of Engineers and MDE have reviewed the plans and issued a permit. He noted that they will need to obtain an amended permit based on the final footprint of the substation. Stormwater management will be done in accordance with MDE's guidelines for solar panels with disconnection links. Department of Public Works has reviewed the stormwater management plan and submitted their comments. Mr. Shearon advised that these comments still need to be addressed, and would agree to this being a condition of site plan approval.

There was a discussion about how the County will be assured that the planting plan will be adhered to since the Bucktown project plantings were sparse and small. Mr. Dodd advised that every planting plan and maintenance agreement contains the same language, that is, the person who signs the agreement is supposed to contact the County for inspection within 48 hours from when the plants go in the ground. Mrs. Layton asked if the County could withhold anything until the inspection has been done. Mr. Banks stated that he has advised Mr. Shearon and Mr. Collier that the site plan will not be recorded until the agreement and surety have been posted. Both were in agreement with this. Mr. Shearon stated the signatory will probably be OneEnergy Dorchester, LLC. Mr. Shearon advised that they are working with a representative from SunEdison to purchase the project. Mr. Drummond advised that the end user should be the signatory on all planting and maintenance agreements. Marni Carroll, Senior Project Manager with SunEdison, LLC 7550 Wisconsin Ave., Bethesda, MD stated that SunEdison will own, construct and finance the project. She also stated that SunEdison will provide any bonds that are required and will sign the agreements.

Mr. Shearon reviewed the landscape plans and noted that the Webster families live on the westerly side of the project. Mr. Shearon asked the Planning Commission to grant relief from planting a buffer on this side and submitted a letter into evidence from Greg Webster that states he would have no objection to not having a buffer. Mr. Drummond asked how far the Webster property is away from the array. Mr. Greg Webster advised that it is about 100 yards away. Mrs. Layton stated that she has concerns about not having a buffer on this side. Mrs. Layton proposed a 20 ft. buffer on the Webster family side. Mr. King, Mr. Giese and Ms. Losty were agreeable to this reduced buffer. Mr. Collier advised that there is shrubbery along Linkwood Road they would like considered as existing screening. Mr. Dodd asked that language be included on the site plan that existing vegetation be considered as natural screening and will remain. Mr. Shearon agreed to add this to the site plan. Ms. Losty asked if the 8 ft. high chain link fence would be screened. Mr. Collier advised there would be screening, however the substation is being built to Delmarva Power specifications and screening must be at least 15 ft. away from the fence for security reasons. The Planning Commission agreed that the north side needs no further buffer. They would like to see West

side – 20 ft., East side – 50 ft., South side – has some existing natural buffer, but gaps need to be filled in.

Mrs. Layton asked for a motion to table this request until the February Planning Commission meeting. The Planning Commission is requesting a revised landscape plan and would like to have comments from DPW. Mr. Giese made the motion and Ms. Losty seconded. The motion unanimously carried.

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

Mr. Soper reviewed the staff report, dated January 6, 2016. The new principle residence will be 2,400 sq. ft. to be built within the expanded buffer. Property was developed prior to Critical Area law. Mr. Soper also reviewed a letter from Julie Roberts, Critical Area Commission dated December 21, 2015, stating that the CAC does not oppose the request as long as a buffer management plan is approved before construction begins. Mitigation is 3:1 for disturbance within the buffer; outside would be 1:1. The 3:1 buffer management plan will be required at the time of permit application. Surrounding property owners were notified of this case by mail.

Alex Dolgos, 8214 Whispering Pines La., Chestertown, MD an Environmental Consultant representing the Kibbes reviewed the application. The Kibbes plan to live in the existing house until the new residence is finished and then demolish the old house. Mr. Dolgos stated that there are many large trees with more than a 30” diameter on this property. The Kibbes do not want to destroy these trees so they would like to place the new house in an area that will not disturb them, which is in the expanded buffer.

Mr. Drummond asked Mr. Dolgos to answer “items 1 and c” on the Critical Area Administrative Variance Criteria Statements Application as neither had an explanation. Mr. Drummond asked Mr. Dolgos what the unwarranted hardship would be if the Planning Commission did not recommend approval of the Administrative Variance. Mr. Dolgos stated that the hardship is disturbance of the 100 year old trees, an ecological hardship. Mr. Dodd pointed out that the legal definition of an unwarranted hardship (from the critical area regulations) is without a variance, the applicant would be denied reasonable and significant use of the entire parcel or lot the variance is being requested for, meaning the existing home site, not the buffer part of the property. This is the standard the Planning Commission and Director must look at.

Mr. Dodd asked Mr. Dolgos if the owners were to tear down the existing house, would the Health Department deny the Kibbes a permit to rebuild a house of the size they want because the existing SRA would not be adequate. Mr. Dolgos was unable to answer this question. Mr. Drummond advised that if the answer to the questions is yes, and the perc is where the existing house was, then you get closer to meeting the standards for the Administrative Variance. Ms. Losty proposed that the square footage of the new house be reviewed by the Health Department and a determination made about whether the existing SRA will be adequate. Mr.

Dodd suggested that this case be tabled until the February meeting and ask the Health Department to attend.

Bert Cramer, 5936 Horns Point Rd., Cambridge, MD came forward to speak in opposition of the variance. Mr. Cramer referred to his letter of objection, dated January 6, 2016. Mr. Cramer reviewed procedural concerns he has, noting that there are sections of the application that are not filled out. The Cramers also have concerns that placement of the Kibbe house will block their view. Mr. Drummond advised that views from someone's property is not a right in Maryland, so this is not relevant to the case. Mr. Cramer stated that he had visited the property on Jan. 4<sup>th</sup> and this morning and the property did not have a posted notice on it. Mr. Dodd advised that an Administrative Variance is not required to have a notice posted on the property. The surrounding property owners are notified by mail. Mr. Cramer stated that he was advised by mail. Mr. Dodd also stated that Mr. Cramer would be notified in writing of the February meeting.

Mr. Dolgos stated that Mr. Cramer's house is within the 100-300 ft. buffer. Mr. Soper advised that according to soils data, Mr. Cramer's house is outside the expanded buffer. Mr. Dolgos stated that he has had USDA Soils out to verify and the soil map Mr. Soper is referring to is inaccurate.

Mr. Dodd would like a representative from the Health Department to be present at the February meeting. Mr. Drummond also asked Mr. Dolgos to complete (fill in the blanks) the application since Mr. Cramer has raised this as a procedural deficiency, even if it says see attached, referring to Mr. Dolgos' report dated 11-20-15. Mr. Soper asked Mr. Dolgos if he would provide the Health Department with the USDA soil information, particularly a soil delineation.

Mrs. Layton asked for a motion to bring this case back next month. Ms. Losty made the motion and Mr. King seconded. The motion was unanimous. Mrs. Layton asked Mr. Dolgos to provide a completed application, a USDA soils map, and have a representative from the Health Department attend the February meeting.

**C. BEA Permit Application – Thomas & Jennie Holmes, owners – 3518 Greenpoint Road, East New Market, Maryland – requesting approval to relocate an existing dwelling and an addition within the 100 ft. Critical Area Tidewater Buffer.**

Mr. Thomas Holmes, 3518 Green Point Road, East New Market, MD and any other person who would be testifying in the case, were sworn in.

Mr. Soper, Critical Area Planner reviewed his staff report dated January 6, 2016.. The Holmes are requesting approval to relocate and elevate an existing principal structure further from the water and out of the "V" zone into the "AE" zone. A grant has been received from FEMA to assist with this project. They are also requesting an increase of lot coverage by 108 sq. ft. for an addition. Current lot coverage is 1,754 sq. ft. The increase of lot coverage would be the maximum allowed. Mitigation is 2:1. Mr. Soper stated that he had spoken with Julie Roberts, Critical Area Commission, on January 5<sup>th</sup> and she stated they had no objection to the request and their written response will follow. A variance was granted for front yard set back from the Board of Appeals, Case #2584. Mr. Soper

reviewed the Ordinance Language (155-38.J.5.c.1-8). Mr. Dodd explained that with the adoption of the new floodplain maps in March, 2015, this put the house in the “V” zone, requiring the house to be built on pylons. Mrs. Layton asked for a motion to approve. Mr. Giese made the motion and Ms. Losty seconded. The motion was unanimous.

#### **D. Donation Bins/Drop Boxes – Discussion**

Mr. Banks spoke about an e-mail dated December 17, 2015 from the County Council, having to do with legislation recently passed by the Easton Town Council concerning donation bins. The Council asked if the Planning Commission would like to comment on or have the Council address. The Planning Commission has no problem with the boxes. Mr. Giese made a motion that the Planning Commission had no issue with the boxes and Mr. King seconded. The motion was unanimous.

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

##### **Case # 2586- Dave Wilson**

To request, a variance from the required 200 ft. setback for a manure storage building to a public way (Fishing Creek). Variance requested is 100ft. Property is located at 5215 Town Point Road Cambridge, MD 21613. Containing 137 acres, Zoned RC- Resource Conservation. Based on the information provided, the Planning Commission made a favorable recommendation.

##### **Case # 2587 – Fraternal Order of Police, Cambridge Lodge 27, Inc**

To request a Special Exception to authorize the construction of a building under the permitted use for meeting halls and facilities for clubs, lodges, and fraternal societies. Property is located at 2056 Dailsville Road Cambridge, MD 21613 Lot 2. Containing 9.69 acres, Zoned RR - Rural Residential. Based on the information provided, the Planning Commission would like the Board of Appeals to ask about the frequency of events, parking and whether the building will be rented to third parties.

##### **Case # 2588 – Todd Solar LLC C/O Invenergy**

To request a special exception to allow installation of a 20 mw utility scale solar energy project on 111 acres zoned AC- Agricultural- conservation. Property is located on Harper Road. Based on the information provided, the Planning Commission made a favorable recommendation.

##### **Case # 2589 – OneEnergy Dorchester, LLC**

To request a variance from Section 155-50(A)(4)(c) of the Dorchester County Zoning Ordinance to permit a seven foot tall security fence around the proposed solar array and electrical enclosure and an eight foot tall security fence around the sub-station equipment enclosure (front, sides and rear). Property is located at 3714 Linkwood Road Linkwood, MD 21835. Containing 116.62 Acres, Zoned AC- Agricultural Conservation. Based on the information provided, the Planning Commission made a favorable recommendation.

## **II. INFORMATION**

Mr. Dodd advised that they are waiting for the Critical Area staff to finish their review of the Unified Critical Area Code.

With no further business, Ms. Losty made a motion to adjourn and Mr. Giese seconded. The motion was unanimously carried. The meeting was adjourned at 2:20 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Ms. Losty", written in a cursive style.