

MASON COUNTY PLANNING ADVISORY COMMISSION

June 17, 2013

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1. CALL TO ORDER

The meeting was called to order at 6:04 pm by Vice Chair Ken VanBuskirk.

2. ROLL CALL

Members present: Ken VanBuskirk, Rob Drexler, Kristy Buck, Cathi Bright and Vicki Wilson. Jim Sims and Bill Dewey were excused.

Staff present: Rebecca Hersha and Allan Borden

Department of Ecology: Tim Gates and Rick Mraz

3. REGULAR BUSINESS

ADOPTION OF AGENDA

Rob suggested that item 'Written Public Comment' on the agenda be moved up to the first topic of discussion under 'Shoreline Master Program Update'. Cathi asked to add 'Water Dependent Uses' as a topic of discussion after 'Existing Uses'. Vicki made the motion to amend the agenda and Kristy seconded, the motion passed unanimously.

APPROVAL OF MINUTES

The minutes for June 3, 2013 were reviewed and approved as amended. Rob made the motion to approve and Kristy seconded, the motion passed unanimously.

4. SHORELINE MASTER PROGRAM UPDATE

A. WRITTEN PUBLIC COMMENT

Ken asked staff if all the letters, received since January, have been addressed, adding that he would like them all acknowledged. He suggested that staff review the letters that specifically addressed Environmental Designations and invite them to the next meeting where that is a topic of discussion to address their concerns. Staff explained that they have addressed some letters regarding Environmental Designation, but there were no decisions made by the PAC on items discussed.

Rebecca explained that she will have a draft of the General Regulations on everything that has been discussed by the PAC to date, at the July 29, 2013 meeting.

Ken expressed that all correspondence received to date needs to be addressed. It was discussed in detail. Vicki asked if they could discuss Environmental Designations definitions prior to any correspondence that addresses it. PAC agreed to add Environmental Designation to the next meeting scheduled for July 8.

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Staff explained that as letters have been received, the questions and comments have been added separately to a document that organizes those concerns. It is still in draft format, but a database is being created. All questioned will be addressed and answered by staff.

There were no public comments.

Ground rules for the hearings proceedings were clarified by Vice Chair Ken VanBuskirk.

B. EXISTING USES - Continued

Rebecca submitted an addendum to Option 3 showing the revisions made by the PAC and options suggested by staff to Existing Uses.

Staff went over the addendum in detail. Any revisions or modifications to the General Regulations were highlighted for the PAC to consider. There were also revisions made by staff that were recommended.

Staff asked for confirmation from the PAC on what language they preferred, "Grandfathered" or "Conforming" or to keep the current language as "Non-conforming". Vicki asked if the language in the Resource Ordinance (RO) and the General Regulations needs to be consistent. She explained that the RO uses "non-conforming". She asked if the RO would need to be changed. Rebecca commented that she would confirm if the language should change in both the General Regulations as well as the RO.

Rob asked staff to add a definition of "grandfathered". It was discussed in detail what language would be used, grandfathered, conforming or non-conforming. Staff suggested replacing non-conforming with pre-existing and replace conforming with grandfathered. Ken asked Rick if Ecology would challenge the use of the word "grandfathered." Rick explained that it is not challenging, but approving. He clarified that if certain provisions are inconsistent with state rule and state law, they would be required to change. The use of the language and how it will apply was discussed in detail.

The PAC agreed to use "grandfathered" in place of "conforming". It was discussed with staff and determined that you would be conforming or grandfathered if you are outside the buffer. The PAC agreed to leave the name 17.50.055 General Regulations J. Existing Residential Structures as-is with no changes. Revisions were made to Option 3 as shown below with the addition of "grandfathered".

Option 3 Staff Report

- 1.1 "Existing lawfully constructed structures and floating homes, including those approved through a Variance, shall be considered ~~conforming~~ grandfathered, with the exception of residences built overwater or in floodways, which shall be considered nonconforming."
- 1.2 All lawfully constructed structures may continue and may be maintained, and repaired, and replaced 'in kind' within their footprints in accordance with the Act and this Program.
- 1.3 Lawfully ~~conforming~~ grandfathered structures may be expanded by addition of space above the building footprint up to authorized heights without a variance. Upward expansions shall minimize impacts to existing views of the water to the greatest extent possible."
- 1.4 "Lawfully constructed ~~conforming~~ grandfathered structures may be expanded or redeveloped in accordance with applicable regulations this Program. Such expanded or redeveloped structures shall be considered conforming. ~~Lateral Expansion~~ or enlargement of structures into areas prohibited by current bulk, dimensional or performance standards shall require a Variance."

Staff suggested new language and suggested replacing "manufactured homes" with "factory built homes". The PAC discussed and agreed to use "factory built homes". The discussion of replacement homes and the proposed increase was discussed in detail. PAC agreed to leave staff's suggested use and square footage as-is.

The option of replacing a manufactured home with a stick built home was discussed in detail. Staff explained that there is a current provision in the RO that allows redeveloping a property, by combining the square footage of all existing buildings, which allows an increase by 20% as an incentive to foster redevelopment without hardship. PAC asked staff to find out how many manufactured homes there are in Mason County that are less than 1,000 sq. ft.

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on a shoreline that would fall under this provision.

- 1.5 For the replacement of ~~new non-conforming grandfathered manufactured homes~~ factory built homes, a greater building footprint than existed prior to replacement may be allowed in order to accommodate the ~~conversion of single wide manufactured~~ replacement of a factory built home that is less than 1,000 square feet (see 'c') homes to double wide manufactured homes with another factory built home that does not have the same size and shape. Applications for such replacements shall submit a Habitat Management Plan that identifies measures to protect habitat and mitigates for unavoidable impacts. The replacement home may be no closer to the shoreline than the existing residence. A proposed increase less than ~~50~~25% of the existing home's footprint shall not require a Variance."

The PAC could not come to an agreement. Staff agreed to do an inventory on manufactured homes and suggested that they would use the wording proposed in the draft they will submit at the July 29, 2013 meeting. Cathi suggested striking "with another factory built home". Kristy added that it could be clarified by adding "with another stick built or factory built home".

To meet No Net Loss, staff added that they were going to keep the sentence stricken under 1.5., "Applications for such replacements shall submit a Habitat Management Plan that identifies measures to protect habitat and mitigates for unavoidable impacts."

The PAC agreed to have staff make the suggested revisions and will discuss 1.5 in more detail at the next meeting.

Staff continued their presentation with Existing Uses, Option 3.

PAC agreed to replace "conforming to this program" with "grandfathered" in 2.1.

- 2.1 Lawfully established uses shall be considered ~~conforming to this Program~~ grandfathered, with the exception of residences built overwater or in floodways, and existing non-water-oriented commercial with waterfront or any non-water oriented industrial uses, which shall be considered nonconforming.

The definition of "overwater" was defined and discussed. Kristy asked how much of it is overwater? Staff explained that the part overwater is non-conforming.

PAC agreed to replace "conforming" with "grandfathered" in 2.2.

- 2.2 All lawfully established uses, both ~~conforming~~ grandfathered and non-conforming, may continue, and may be repaired, maintained, or replaced consistent with the Act and this Program. Nonconforming uses, except for residential uses that are overwater or in floodways, shall not may be enlarged or expanded with a Conditional Use Permit.

Vicki said that there was a discrepancy with the time allowed between the RO and SMP. It was discussed in detail. The PAC agreed to stay consistent with the RO and have 2.3 read: for more than thirty-six (36) months.

- 2.3 "If a nonconforming use is discontinued (ceases to operate, use, or produce) for more thirty-six (36) months, any subsequent use, if allowed, shall comply with the Act and this Program."

Definitions were discussed.

Buffer

Staff clarified that there is a definition for "buffer" in the SMP. It was suggested using the existing definition versus the originally suggested Kitsap model. Staff agreed to keep the existing definition and not use the Kitsap model.

Setback

There were no changes

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Structure

Staff explained that the RO does not have a definition, which has posed many problems for staff. Staff recommended using the proposed SMP in the RO. PAC agreed to use staff's recommended language in the RO.

(MC draft SMP 1/17/2013) A permanent or temporary building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels. Retaining walls, decks, bulkheads, fences and similar improvements to real property are examples of structures.

(MC Res Ord 2009) A walled or roofed building including a gas or liquid storage tank that is principally above ground. (Note: This definition only applies to Section 17.01.090).

Footprint

There is currently no definition of 'footprint' in the SMP. Staff suggested language to use in the SMP for the definition as:

The total area within the perimeter of a structure (including roof eaves, if applicable), or the perimeter of a development other than a structure. However, for the vertical expansions of non-conforming grandfather structures and the horizontal expansion allowance for manufactured homes (Chapter J), footprint does not include uncovered decks or patios, nor does it include illegally established structures or additions.

It was discussed in detail. The PAC asked staff to research the wording "or the perimeter of a development other than a structure." Staff agreed to do a word search and determine if development footprint or if another type of footprint is used beside structural footprint. If so, they would keep the definition as-is. The PAC agreed that the language about Manufactured Homes (Chapter J) will depend on what is decided on with Existing Uses 1.5 Manufactured Homes.

The definition of footprint was discussed in detail. Ken asked if they should define with impervious surfaces? Rebecca explained that the name could be changed to "Structural Footprint" so it would clarify the area that it is occupying.

There were no public comments.

Water Enjoyment Use

Cathi addressed the PAC regarding the definition of Water Enjoyment Use. She asked for clarification on when the use changes and there is no impact or nothing to mitigate, why is a Change of Use Permit required under the SMP. It was discussed in detail. Rick explained that the SMP is about addressing commercial uses on the shoreline and water dependent use is preferred. If it is non-water dependent it is not prohibited, but it needs an analysis, if the conversion happens all over the shoreline, where water dependent, water related or water oriented uses are replaced by non-water dependent uses, then you lose validity.

Cathi asked for clarification on Water Enjoyment Use and how the uses are defined. Staff explained that a definition needs to be made, the use has to be open to the general public, has to be a shoreline oriented space, devoted to the specific aspects of the use that foster shoreline enjoyment. Cathi expressed that she is concerned with changing a restaurant to a dance studio, and how it would become non-conforming. Staff stated that you are allowed to make the conversion with a Conditional Use Permit. Tim explained that the use would be considered grandfathered under 2.2 of Existing Uses. It was discussed in detail. Cathi clarified that she was specifically concerned with the requirement of a Conditional Use Permit due to changing from use to another use when there is no negative impact on the shoreline whatsoever.

It was recommended for staff to remove the language in 2.1 so they don't become non-conforming or don't require a Conditional Use Permit. Staff asked Cathi for clarification on what she would like to change. Cathi explained that she wanted the ability to expand with the same category of use.

Staff agreed to look for additional options and address at a later date. Vicki asked staff to consider looking at the language that is also in the RO and to be consistent in policy.

There were no public comments.

There was a 5-minute break.

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B. COMMON LINE AND MITIGATION - Continued

PAC and staff agreed to skip this section, as time did not allow. They agreed to move to the next meeting scheduled for July 8.

C. VIEWS & AESTHETICS - Continued

Rebecca continued her presentation with Views and Aesthetics. She went over the proposed changes and suggestions made at the last meeting on June 3, 2013.

Staff explained that non-water dependent development was added to 2.a. Staff also commented that residential construction isn't defined; they changed it to read "residential development". Kristy asked if that meant no shrubs, hedge, fence, etc. between you and your neighbor? Staff remarked that there was no definition for landscape wall or retaining wall.

Rebecca explained that the language was revised on 2.b. "Buffer" was replaced with "setback". Vicki asked if this included an existing dwelling in the buffer? Rebecca explained that the language "setback" applies to structures. The issue with fences or landscape walls not to exceed twenty four (24) inches was discussed in detail.

It was clarified that sections Views and Aesthetics and Public Access are new to the SMP and all the language is new. Kristy asked staff what other jurisdictions have done? Tim stated that other jurisdictions have not been this specific. The intent here was to build on the Resource Ordinance. This section in the SMP was to clarify what was already in the RO. Staff also explained that the Residential section also used the same wording. Staff explained that the current SMP allows 30" structures within the setback, anything taller would require a Shoreline Variance. Tim reiterated that most SMP's do not have this level of detail on Views and Aesthetics.

Fence heights, types, setbacks and buffers were discussed in detail.

Cathi felt that 48" fence heights were excessive. Staff recommended increasing fence height from 24" to 36" and can only go as far waterward as the waterward edge of the structure. Cathi commented that it doesn't make any sense and asked why you cannot build a 6 foot fence behind the house, even if you are in the buffer. Staff explained that if you are waterward of the common line or 35', you cannot have a structure. Tim commented that it is really about minimizing the impacts to views. It was discussed in detail.

Vicki made the motion to have staff to revise and define the landscape height in the Resource Ordinance (pg. 70). to fix the RO and use it as a guide and remove it from the SMP all together. PAC agreed to have staff make the suggested changes to the RO and striking it from the SMP. Staff agreed to revise the wording in the RO and add a section regarding fences and fence height. Rob suggested that the maximum fence height be 36", PAC agreed. Kristy seconded and the motion passed unanimously.

17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

2. Maintenance and use of existing landscaped areas within the buffer area. An existing landscaped area is one which is defined by mowed grass, flower beds, orchard trees, nonnative shrubs, and non-native trees. Maintenance and use includes mowing, weeding, trimming, replacement of vegetation types, placing landscape walls no more than 2 feet in height, excavating or placing top soil or compost not exceeding 6 inches in depth or 10 cubic yards in total, placing play equipment (swings, slides, temporary plastic aboveground pools, but not including tree houses or other play houses), and picnic tables and chairs. Maintenance does not include the removal of native trees over 6 inches in diameter at 4 foot height. Exposure of more than 200 square feet of soil at any one time requires stormwater precautions so that no contaminated run off reaches the river, wetland, stream, or lake. If such maintenance or use in the buffer area is abandoned or discontinued for greater than three (3) years, activities must conform to the provisions of Section 17.01.110.G.1.

Public comment open.

Harvey Scott commented on the use of railroad ties and making a boxed edge to use as a planter. Would this fall under the definition of landscape wall?

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5. NEW BUSINESS

Rebecca suggested that all items not discussed be moved to the following meeting. PAC agreed to move all. Ken commented on the agenda for the next meeting on July 8. He suggested that staff put "Environmental Designations" on the agenda for that meeting.

Ken announced that Capitol Facilities Plan would need to be addressed in the next few months, stating that it will impact their schedule. He asked staff to consider adding Capitol Facilities Plan, Flood Ordinance and any rezones be added to the timeline calendar.

Vicki asked if it was appropriate to email her concerns and comments to Rebecca or if it needs to be verbally addressed during the meeting? Barbara Adkins commented that any questions, concerns or comments should be emailed to the clerk, not to staff.

6. ADJOURNMENT

Meeting adjourned at 9:25 p.m.