
CHAPTER 156: SENSITIVE AREAS

April 16, 2010

REVISED DRAFT

Draft Revisions to Chapter 156 of the Garrett County Code

This document is the third draft of proposed amendments to the Sensitive Areas Ordinance.

The first draft was made available for public review at the end of September, 2009. After reviewing the draft and receiving comments from the public, the Planning Commission requested changes to the first draft prior to holding a public hearing on the amendments. The second draft, dated December 23, 2009, was the subject of a Planning Commission public hearing in March of 2010.

This revised version, dated April 16, 2010, incorporates all revisions recommended by the Planning Commission following its public hearing.

Revisions to the current Sensitive Areas Ordinance are indicated by grey highlights for text to be added to the current ordinance and ~~strikeouts~~ for text to be deleted from the ordinance.

Comments and explanations are in comment boxes. (They display when document is in "Print" view in Word.)

§ 156.01 TITLE; PURPOSES.

- A. This chapter shall be known as the "Garrett County Sensitive Areas Ordinance."
- B. This chapter is intended to serve the following purposes:
 - (1) To assist in carrying out the goals, objectives and visions of Md. Code, Art. 66B, as amended;
 - (2) To minimize soil erosion, avoid sedimentation of waterways, protect aquatic habitats, and protect the quantity and quality of groundwater and surface water supplies;
 - (3) To conserve Garrett County's important natural features, which will help promote tourism and thereby strengthen the county's economy;
 - (4) To minimize flooding and other problems resulting from high volumes and high speeds of stormwater runoff; and

- (5) To implement the goals, objectives and recommendations of the County Comprehensive Development Plan, ~~including but not limited to the guidelines on pages II-32 to II-36.~~

§ 156.02 APPLICABILITY; BUILDING PERMIT REQUIRED.

- A. Permit required. A building permit application shall be required to be completed and submitted and approved for a building permit prior to any new principal building being placed, constructed or erected after the effective date of this chapter.
- (1) Building permits may also be required for other structures and development under any separate Building Code that may be adopted by Garrett County.
- (2) A building permit shall only be issued if the application complies with this chapter and all other applicable county ordinances or is conditioned upon compliance with other ordinances.
- B. Construction. This chapter shall apply to any activity that requires an application for a building permit after the effective date of this chapter. Compliance shall be reviewed as part of any building permit application.
- C. New lot. In addition, an application for subdivision approval of a new lot that is submitted after the effective date of this chapter shall only be approved if the applicant proves compliance with this chapter.
- D. Towns excluded. This chapter shall apply to all portions of Garrett County, except areas within the municipal borders of an incorporated city or town.

§ 156.03 DEFINITIONS.

All of the purposes and rules of interpretation stated in the Garrett County Subdivision Ordinance, as amended, are included by reference. In addition, for the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) **BUILDING.** A combination of materials having walls and a roof to form a structure for the shelter of persons, animals or property. Decks and porches that do not include solid walls or roofs shall not be considered part of a building for the purposes of this chapter.
- (2) **DEVELOPMENT.** Any activity, other than normal crop farming and forestry activities, but including grading of roads for forestry, which materially affects the existing condition or use of any land or structure. This shall include, but not be limited to the erection of structures, the placement of mobile homes, the improvements of roads and other paving, and the filling or grading of land.
- (3) **GRADING.** Cutting or otherwise distributing the soil mantle by mechanical means so as to permanently change the contours of the land.
- (4) **HAZARDOUS SUBSTANCE.** Any substance, including oil or its by-products, that:

- (a) Conveys toxic, lethal, or other injurious effects or which causes sublethal harmful alterations to plant, animal, or aquatic life;
 - (b) May be injurious to human beings;
 - (c) Persists in the environment; and
 - (d) Any matter identified as a "hazardous waste" by the Environmental Protection Agency or a "controlled hazardous substance" by the Maryland Department of the Environment. For the purposes of this section, excluding propane and natural gas.
- (5) **IMPERVIOUS SURFACE COVERAGE.** Land area covered with a surface that is impervious to water.
 - (6) **PRINCIPAL BUILDING.** A building occupied, or intended to be occupied by, the primary use of the lot, as opposed to the accessory or subordinate use.
 - (7) **SITE PLAN.** A plan showing the proposed development of a lot or parcel. A site plan shows existing and proposed natural features, grading and contours, structures, road rights-of-way, paved and stone areas, driveways, parking spaces, walkways, vegetative cover, landscaping, and stormwater management.
 - (8) **SLOPE.** The incline of land, measured by dividing the vertical increase in elevation by the horizontal distance. For example, a 30 feet increase in elevation over a 100 feet length would be a 30% slope.
 - (9) **SOURCE WATER PROTECTION AREA (SWPA).** An area overlying an aquifer which contributes water to a community or municipal water supply well or spring. The Source Water Protection Areas are shown on the Sensitive Areas Map 1. Their boundaries are based on the Maryland Department of the Environment Source Water Assessments, as delineated by the 2007 Garrett County Source Water Protection Plan.
 - (10) **STAFF.** Designated staff-persons of the Garrett County ~~Office of Planning and Zoning~~ Department of Planning and Land Development, or its successor agency.
 - (11) **STREAM.** A river, creek, stream, run or major drainageway that the Generalized Sensitive Areas Map 1 designates as a stream.

§ 156.04 STEEP SLOPES OVER 30%.

- A. If slopes of over 30% are present in areas that potentially may be affected by grading or construction of buildings, driveways, roads or vehicle parking areas, then the applicant shall submit a site plan that designates the maximum total portions of the lot that will be ~~used for construction~~ graded due to construction of a principal building(s), driveways, roads and vehicle parking areas. Note: In many cases, an applicant may be able to avoid the requirements of this section by restricting construction to the less steep portions of a lot.
- B. Based upon the site plan, a new principal building and/or vehicle parking areas shall only be permitted to be constructed on areas with a natural slope over 30% if all of the following requirements are met:

- (1) The lot shall include a minimum lot area of 4 acres, except as provided by division (C) of this section;
- (2) A maximum total of 5% ~~2 percent~~ of the lot area that exceeds 30% slope shall be covered by all buildings, paving and stone surfaces;
- (3) The applicant shall establish to the satisfaction of the staff of the Garrett County ~~Office of Planning and Zoning~~ Department of Planning and Land Development that there is no reasonable alternative to construction of buildings and/or parking areas upon the over 30% slopes that would still provide for a reasonable use of the lot;
- (4) A grading plan shall be prepared by a qualified professional in a manner that holds grading of slopes over 25% to a reasonable minimum.
- (5) No additional fill material shall be placed on steep slope areas.

~~C. Grandfathering. This section shall not apply to:~~

- ~~(1) An existing lot of record that is not further subdivided, provided the lot meets all other requirements of this chapter; or~~
- ~~(2) A lot that meets the standards of the County Subdivision Ordinance, § 105.A, entitled "Plats With Sewage Approval."~~

C. Grandfathering. This §156.04 shall not apply to any lot of record less than four acres in gross area that existed prior to July 1, 1997, has not been further subdivided since that date, and meets all other requirements of this Chapter.

D. If the footprint of a new principal building(s) ~~on a lot~~ in addition to the area covered by driveways, roads and vehicle parking areas would affect a total of less than 200 square feet with a natural slope over 30%, then the requirements of this section shall not apply to the lot.

E. Developers are encouraged, but not required, to direct development away from areas with natural slopes of 25 to 30%. The Cluster Housing options in County Subdivision Ordinance, Article 3 and the Deep Creek Lake Watershed Zoning Ordinance, Article 5 provide attractive incentives (including reduced lot sizes) that can help accomplish this objective.

F. The slope provisions of this chapter shall apply to slopes that existed ~~at the effective date of this chapter~~ as of July 1, 1997. An applicant shall not regrade land prior to submitting an application in order to circumvent this chapter.

G. Man-Made Slopes

- (1) Structures shall not be constructed or placed on slopes exceeding 30% grade that result from development activity.
- (2) Steep slopes that resulted from development activity may be re-graded or altered in connection with redevelopment of a site in accordance with an approved site plan.

§ 156.05 STREAM BUFFERS.

- A. Growth areas. The Generalized Sensitive Areas Map 1 shows the locations of “streams” and “growth areas,” which are based upon the Garrett County Comprehensive Plan. Within the areas shown as growth areas, the minimum stream buffer shall include areas within 25 feet of each side of the top of the primary bank of a stream, as determined by the ~~Office of Planning and Zoning~~ Department of Planning and Land Development. Within areas that are not shown as growth areas, the minimum stream buffer shall include areas within 50 feet of each side of the top of the primary bank of a stream.
- B. New buildings. A new building shall not be placed within a required stream buffer.
- C. Building expansion. A building that existed prior to ~~the adoption of this chapter~~ July 1, 1997 may be expanded into a required stream buffer, provided that the intrusion shall be limited to a cumulative maximum total of 1,000 square feet of land area.
- D. Paving and stone. No new or expanded paving or stone surface shall be placed within the required stream buffer, except for any of the following:
- (1) Sidewalks or trails that will not serve motor vehicles;
 - (2) Necessary road and driveway crossings that are approximately perpendicular to the stream;
 - (3) Temporary waterway crossings related to construction, provided the crossings are approved by applicable state agencies;
 - (4) The Planning Commission may approve an exception to the 50 feet wide stream buffer (in areas not designated as a growth area) if:
 - a. The area involved is a relatively small area of land; and
 - b. The applicant or his or her representative demonstrate to the Planning Commission that the project would be more environmentally sound ~~that than~~ would otherwise occur, or is necessary to allow a road design to meet established minimum standards; ~~and,~~
 - c. An effective vegetative buffer, including grasses, shrubs and tree canopy, exists within the reduced buffer area or will be provided in accordance with a detailed planting plan shown on the approved site plan.
- E. Grading. If grading is proposed within a required stream buffer, then a grading plan shall be prepared by a qualified professional in a manner that holds grading of slopes within such areas to a reasonable minimum.
- F. Recommendations.
- (1) Property-owners are strongly encouraged, but not required, to maintain the Stream Buffers in natural vegetation and to plant new trees in areas without significant existing vegetation. At best, the buffer should include both natural ground vegetation and deciduous trees that will provide a canopy over the waterway. ~~See guidelines on page II-34 of the County Comprehensive Plan.~~
 - (2) Subdividers are strongly encouraged to establish deed restrictions to limit tree cutting within this buffer.

- (3) The County shall provide educational material to applicants for approval of subdivision plans, grading permits and building permits, including:
 - a. Information on creation and protection of vegetative buffers; and
 - b. Sources of information, support and assistance for installation and maintenance of stream buffers.

§ 156.06 NOTIFICATION CONCERNING RARE, THREATENED AND ENDANGERED SPECIES.

- A. This chapter encourages landowners and developers to work cooperatively with state and federal environmental agencies to minimize harm to habitats of rare, threatened and endangered species.
- B. A subdivision plat or building permit shall not be approved or issued for a development that would adversely affect a site known to the staff of the County Office of Planning and Zoning Department of Planning and Land Development to have been officially designated as a habitat for federally rare, threatened and endangered species by a federal agency until:
 - (1) Written notification has been provided by the staff applicant to a responsible office of the U.S. Fish and Wildlife Service or its successor agency; and
 - (2) ~~The federal agency provides a written statement that mitigation measures have been approved or are not needed or the County Planning Commission approves proposed mitigation measures;~~ The applicant provides the Department of Planning and Land Development with a copy of an approved permit issued by the appropriate federal agency, or a written statement that a permit is not needed.
 - (3) The applicant shall also provide the Department of Planning and Land Development with copies of all documents related to an approved federal permit, such as a Habitat Conservation Plan.
 - (4) An approval by the county under this section is not intended to limit the jurisdiction of applicable federal and state regulatory agencies.
- C. ~~If proposed development activity would adversely affect a site known to the staff of the County Office of Planning and Zoning to have been officially designated as a habitat for rare, threatened and endangered species on the state of Maryland list;~~ then the County staff shall make the applicant aware of such matter and shall refer the applicant to an appropriate division of the Maryland Department of Natural Resources or a successor agency. If proposed development activity would have a potential adverse impact on the habitat of a rare, threatened or endangered species officially designated by the state of Maryland:
 - (1) The Department of Planning and Land Development shall make the applicant aware of the potential impact and refer the applicant to an appropriate division of the Maryland Department of Natural Resources or a successor agency.
 - (2) County staff shall use the Maryland Sensitive Species Project Review Areas map, or a similar document published by the State, as a resource in determining

whether to refer applicants to the state. The Project Review Areas are shown on the Generalized Sensitive Areas Map 1 as a guideline for referrals.

Editorial note: Such federal sites known as of 1995 are shown on the Generalized Sensitive Areas Map; Such state designated sites known as of 1995 are shown on the Sensitive Areas Map within the “Second Close Look at Garrett County” report, which is available at the County Office of Planning and Zoning

§ 156.07 FLOOD-PRONE AREAS; FLOODPLAINS, FLOODPLAIN BUFFERS AND EROSION CONTROL.

It is the policy of Garrett County to protect contiguous areas of floodplains and floodplain buffers, as those terms are defined in the Garrett County Floodplain Management Ordinance. Compliance with Garrett County’s Floodplain Management Ordinance and Erosion and Sediment Control Ordinance, as amended and as applicable, shall be required as a condition of permits under this chapter.

§156.08. WETLANDS

It is the policy of Garrett County to protect wetlands and to preserve contiguous areas of wetland, consistent with State regulations. All development activity shall comply with the Maryland Non-Tidal Wetlands Act (Title 5, Subtitle 9 of the Maryland Annotated Code). Wetland areas shall be noted and protected on subdivision plats as required by the Section 159.029 and other provisions of the Subdivision Ordinance.

§156.09. SOURCE WATER PROTECTION AREAS

- A. Intent. Source Water Protection Areas provide water recharge for public drinking water systems. This section establishes minimum requirements to protect these resources from contamination that can threaten the safety of public water sources.
- B. Applicability. The Source Water Protection Areas shown on the Generalized Sensitive Areas Map 1 shall be subject to the requirements of this section.
- C. Requirements. The following requirements apply within Source Water Protection Areas. No building permit, zoning permit, site plan or subdivision plat shall be approved unless the proposed development activity complies with these requirements.
 - (1) The maximum impervious surface coverage for any lot within a Source Water Protection Area shall be 50 percent.
 - (2) A hazardous substance storage tank, above ground or underground, shall not be located within 500 feet of the well for a community water supply system.
 - (3) A hazardous substance storage tank located within a Source Water Protection Area and more than 500 feet from a community water supply system well, shall be placed above ground and be surrounded by a one hundred percent (100%)

catchment basin or double-walled containment and a spill protection overflow alarm.

(4) The following uses shall not be located within a SWPA:

- a. Uses that involve the storage, parking or servicing of motor vehicles or motorized equipment as a principal use, such as gasoline service stations, contractors storage yards and motor vehicle or equipment sales or service.
- b. Junk yards.
- c. Pens or other outdoor areas used for the feeding and care of livestock or poultry.
- d. Manure piles, animal waste pits, lagoons, and sewage sludge storage facilities.
- e. Metal plating establishments.
- f. Open burning sites and dumps.
- g. Quarries and mining operations.
- h. Storage of deicing chemicals.
- i. Sanitary landfills and rubble fills.
- j. Bulk storage and mixing of pesticides and fertilizers.
- k. Uses which involve, as a principal use, the manufacture, storage, use, transport, or disposal of hazardous materials; or any use which involves hazardous materials in quantities greater than those associated with normal household use.
- l. Underground pipelines carrying hazardous materials

D. Application of Pesticides. Pesticides used in recreation, agriculture, and pest control in quantities greater than those associated with normal household use shall be applied in strict conformity with their labeling and pertinent federal and state laws. The application of pesticides shall be noted in the records of an applicator certified by the Maryland Department of Agriculture. Records shall be kept of the date and amount of these substances applied at each location and the records shall be available for inspection.

E. Property owners are encouraged to apply fertilizers for agriculture within Source Water Protection Areas in accordance with a nutrient management plan prepared by a certified nutrient management consultant to manage the amount, placement, timing and application of nutrients to protect water quality.

F. Subdivision plats shall:

- (1) Delineate the Source Water Protection Area;
- (2) If feasible, place the Source Water Protection Area within open space;

- (3) Ensure that each lot has sufficient area for construction and placement of improvements so that development of the lots will be able to comply with impervious surface coverage requirements of this section.

§ 156.08 10 ADMINISTRATION.

- A. This chapter shall be administered by the staff of the Garrett County ~~Office of Planning and Zoning~~ Department of Planning and Land Development.
- B. The staff shall review applications for building permits and subdivisions to determine compliance with this chapter.
- C. Unless the staff determines that a site plan is not necessary to determine compliance with this chapter, the applicant shall be required to submit a site plan in sufficient detail to determine compliance with this chapter. The site plan shall, at an absolute minimum, show:
 - (1) Detailed existing and proposed contours in areas of over 25% slope;
 - (2) Proposed locations of structures, parking, paving and stone surfaces;
 - (3) Wetland areas; and
 - (4) Streams and their required buffer areas.
- D. If the staff determines that a detailed site plan showing the specific locations of proposed features is not necessary, then a generalized site plan may be submitted. The generalized site plan shall show the maximum outer extent of areas that will be authorized for use of proposed structures, parking, stone surfaces and paving. The general site plan shall still show contours in affected areas of steep slopes and streams and their required buffer areas.
- E. Generalized Sensitive Areas Maps
 - (1) The Generalized Sensitive Areas Maps shall be adopted by the County Commissioners.
 - (2) The Sensitive Areas Maps:
 - a. Identify streams, establish the boundaries of Source Water Protection Areas, and show Growth Areas identified in the Comprehensive Plan, for purposes of applying the requirements of this Section.
 - b. Show general locations of Maryland Sensitive Species Project Review Areas for informational purposes. The County will refer property owners to federal or state agencies for review related to rare, threatened or endangered species. See §156.06 above.
 - c. Identify general locations of environmentally sensitive areas for informational purposes, including but not limited to wetlands, floodplains, and steep slopes. The existence of these features and their impact on a particular proposed development project must be verified through site analysis.

- (3) A property owner impacted by a Source Water Protection Area may propose a change to the boundary by submitting an application to the Department of Planning and Land Development. The application shall include detailed hydrogeologic and hydrologic information indicating where in fact the new boundary line should be drawn. The Sourcewater Protection Planning Team shall be given a copy of the information. The Department of Planning and Land Development shall seek competent technical advice to evaluate the request.

§ 156.09 11 APPEALS.

A. Administrative decisions under this chapter may be appealed to the Garrett County Planning Commission. The applicant shall submit a written application to the County ~~Office of Planning and Zoning~~ Department of Planning and Land Development, together with any required fees. The application shall state the specific sections involved and the reasons for the request. The Planning Commission may then grant a modification or waiver to specific provisions of this chapter if the applicant establishes to the satisfaction of the Planning Commission that the modification or waiver:

- (1) Will have minimal impact upon important natural features; and
- (2) Is necessary to:
 - a. Avoid an undue hardship that was not self-created and that results from the peculiar and uncommon conditions of the property;
 - b. Avoid a clearly unreasonable requirement that would not serve any valid public purpose; and/or
 - c. Allow a site layout and/or improvements that would clearly be more in the public interest than what would occur if the modification would not be granted.

B. The decision of the County Planning Commission may then be appealed to the Circuit Court for Garrett County. The appeal shall be an administrative appeal pursuant to the Maryland Rules of Procedure.

C. Any appeal of an action under this chapter shall be filed within a maximum of 45 days after the date upon which the action occurred.

~~§ 156.10 SCENIC VISTA GUIDELINES.~~

~~Applicants are encouraged, but not required, to consider the scenic vista guidelines of pages II-37 and II-38 of the County Comprehensive Plan.~~

§ 156.41 12 BUILDING SETBACK FROM ROADS.

A. No new building shall be constructed and no building shall be expanded within 20 feet of the right-of-way of a public road, other than an alley.

- B. No new building shall be constructed and no building shall be expanded within 20 feet of the cartway of a private road, other than an alley.

§ 156.12 13 SEVERABILITY.

If a court of competent jurisdiction declares any provision of this Ordinance to be invalid or ineffective, the effect of such decision shall be limited to the provision expressly stated in the court's decision, and all other provisions of this Ordinance shall continue to be separately and fully effective. The Garret County board of Commissioners hereby declares that it would have adopted the remaining portions of this Ordinance other than the portion declared invalid or ineffective, if it had advance knowledge that such portion would be declared invalid or ineffective.

§ 156.14 – 156.98 RESERVED.

§ 156.99 PENALTY.

- A. If any person or entity violates a provision of this chapter, the violation shall be a misdemeanor, punishable by a fine of \$500 per violation, with each day representing a separate violation.
- B. If any person or entity violates a provision of this chapter, a civil penalty may be levied. For each violation, a civil fine of \$500 may be levied per violation, with each day representing a separate violation. The penalties shall be enforced and subject to trial as established by Md. Code, Art. 66B, § 7.01(c), as amended, which is hereby included by reference.
- C. In addition, if any provision of this chapter is violated, the Garrett County Board of Commissioners or their designee may institute any appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent the occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises.