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John Nelson
Director, Office of Planning and Land Development
Government of Garrett County
203 South Fourth Street, Room 210
Oakland, MD 21550

Re: Comments on Proposed Changes in Deep Creek Watershed Zoning and Related Ordinances

Dear John:

While I appeared at the County Commissioners' May 8 hearing on the above-captioned subjects, I indicated that I would submit a letter so that you would have a written record of the thoughts I introduced that day and details about them that did not warrant extended remarks at that point, along with a few other issues that seemed best to leave to this as well.

I ask you to forward this letter to the members of the sponsors of that hearing, namely the County Commissioners, and the Planning Commission for their consideration as the process moves along. You may also post it in any website that carries comments others are making on these issues.

Overall, I am pleased to join the voices I heard at the prior Planning Commission hearing on March 6 that recommended, broadly, adoption of the proposed changes as then revised. I also want to express my appreciation for the obvious attention the Planning Commission and you paid to my remarks in March and my letter of March 13 as reflected in the April 16 document and minutes of the Planning Commission's April meeting.

That said, I still feel there are aspects of the Planning Commission's recommendation of proposal of April 16 that could, if considered and adopted, adapted, or set in motion result in an even better outcome near-term and later on than the County is already poised to attain.

Coverage of Lake Zoning Plan:

As you know, the Comprehensive Plan calls for a major employment center and additional housing in, and along the southern side of, the Garrett County Airport. These are areas that abut the proposed limit of the Deep Creek Watershed Zoning Map, and most (if not all) of the land within the area is in public ownership.

While I fully agree with the position some others (such as the DCL Property Owners Association) that zoning should extend county-wide to bring about the protections the all county residents should have were that instituted, there is a significant "disconnect" when the Plan calls for growth in one specific area and a well-proven growth management tool – zoning – stops just short of the area in question.

At the May hearing, I was reminded by one of your staff that the boundaries of the Lake zone district are those derived from early "watershed" maps (the accuracy of which is open to question at the edges), so going outside that could require some enabling steps. If that's the case, I would recommend that you guide the County Commissioners to provide you just that, either focused (see below) or county-wide.

To the extent there is public ownership in these areas, the plan could – and should – be modified to reflect the broad uses intended and, simultaneously, exclude uses that would be adverse to the desired end result. Thus the airport area itself should be reserved for aircraft operation, maintenance, and storage on the grounds and buildings, and residential uses of all kinds should be precluded. To the south, the plan calls for multifamily housing along uses that would employ county residents in offices and a range of other commercial/light industrial settings. Accordingly, it would seem that area should not allow single family dwellings. These kinds of provisions should be added to the Zoning Ordinance in this cycle of revisions or as an add-on to be explored in the next year or so instead of being "held back" for the next cyclical review that would not occur for another six years.

More broadly, the county – now with the "downdraft" of wind turbines – should see that minimal overall zoning controls could serve a broad public interest by putting into place a bare minimum base line zone for all areas outside specific cities, towns, and current zone districts. Such a zone might reasonably contain only a simple use restriction such as "any use not excluded by laws of the United States or State of Maryland, and subject to the location and limitations of such laws and any further controls established by the Commissioners of Garrett County in the interests of protecting public health, safety and welfare."

Comments on the April 16, 2010 Revised Draft's Proposed Provisions:

Article 1 – Territorial Jurisdiction (§ 157.002):

- Add to this at least the portions of the Airport that are within the Deep Creek Lake watershed, particularly if more current topographic data reveal any areas previously omitted due to incomplete data.

Article 2 – Definitions (§ 157.007(B)):

- (44) Non-Conforming Structure or Lot (page 15): The definition should explicitly include "accessory structures" as well as refer explicitly to the range of area and dimensional characteristics of the structure, such as height, but also placement on the land (such as rear and side yards).
- (45) Non-Conforming Use (page 15): The definition should be amended to explicitly include not just "use," but also any "accessory use."

Article 3 – Uses Permitted in Zoning Districts (§ 157.022(B) (page 23):

- I recommend that the paragraph be split, separating and generalizing the State of Maryland from Garrett County. The first should end with "laws and regulations of the State of Maryland" and the one relating to Garrett County should be written more broadly than just those Garrett County has established in the name of the Garrett County Health Department.
- I would also recommend that the provisions end with a general statement that if there are multiple limitations from any of the cited authorities, then the "more or most restrictive provision(s) applies."

Article 3 – Zoning Districts and Map / Table of Allowed Uses (§§ 157.023 and 157.024) (pp 24-41)

- A. [Zone district list] (Page 24): For reasons set out earlier, I recommend creation of two additional zoning districts – (10) A – Airport and (11) AMU – Airport Mixed Uses. Preferably this would occur in this revision cycle. If not, it should be developed immediately after this and not wait for the next cyclical review six years from now.
- 157.023 – provisions for Airport and Airport Mixed Use along the following lines (page 26-41):
 - I. Airport – To provide facilities for the operation, storage, maintenance, and repair of private and commercial aircraft and to prevent establishment of uses that would limit the development of such facilities such residences.
 - J. Airport Mixed Use – To provide areas for planned residential uses at density greater than single family in conjunction with areas for employment of county residents in offices and other commercial and light industrial settings subject to development controls established by any applicable public development authorities.
 - [This letter does not add corresponding details to the use and other tables that follow in Article 3.]
- 157.024(B)(14)(a) (Page 29): While the "customary home occupations" provisions are reasonable for a "conforming structure" on a "conforming lot" (see above comments on the definitions of these), when any factor is non-conforming, the potential for adverse consequence on those who face, are adjacent, or near the home occupation is significant, particularly if the "home occupation" employs any non-resident or generates recurring travel to the home by non-residents. Accordingly, the section should establish more stringent requirements for home occupations where the land or structure where the home occupation would operate is non-conforming to be explored in a special exception type process. My recommendation is that there be no "by right" employment of non-residents and no anticipated customers or clients "by right", or, if that is deemed too restrictive, then limiting employment and visitors combined to no more than one at any given time, with anything more being taken up as a special exception.
- 157.024(B)(20) Transient vacation rental unit (page 30): As with home occupations, this use, currently proposed by right (but with controls to some extent in §157.079) in Lake Residence zone districts (both 1 and 2), should be limited by right to situations where both the lot and building are conforming for up to five (bedrooms), but with additional protections to hear and decide other cases as a special exception. Alternatively, provide that when there is a non-conformity, the "by right" limit on bedrooms is three (3) with allowed double occupancy, and hear requests when more than three if the circumstances include lot or siting non-conformities.

Article 6 – General Regulations – Roofs and Roof Structures (§157.078(C)(4)(b)) (page 88)

- It may be wise to add some overall limit to the height of roof structures and make sure they are within the overall heights measured for height purposes as well as add something about making sure the materials selected are also subject to the purposes and provisions of prior paragraphs (A), (B), and (C).

Article 6 – General Regulations – Transient Vacation Rental Units (§157.079(C) and (D)) (page 89)

- To correct weekend-long overflowing trash accumulations that are not within "bear proof" containers – as is often the case with this use – the provision for weekly pickup should at least be amended to provide that this be at some portion of day each short term occupancy ends but after the time the occupancy ceases that day for any trash not contained within the "bear proof" trash containers.
- A better step would be to require even the pickups from "bear proof" containers on the day each short term occupancy concludes, but after the time the occupancy ceases, with any added costs of having the Sanitary District receiving site to stay open later Saturdays (or Sundays) be borne from added fees that could be passed onto property renters.

Article 9 – Non-Conformities (pages 105-108)

- Overall, this section should be examined and amended as warranted to ensure that it also reaches non-conforming accessory uses and structures, not just principal uses and structures and that its abandonment provisions likewise pertain to non-conforming accessory uses and structures.

Article 11 – Board of Appeals (pages 112-119)

- Finally, I recommend that provisions be added to both the standards for consideration of variances and special exceptions to require that the Board examine the potential for additional adverse impact from requests that originate from a property, principal or accessory building, or principal or accessory structure that is already non-conforming as to use, area, siting, dimensional or parking and loading standards. An application's supporting materials should make these aspects explicit and the Board should receive evidence that is specific to these factors if they apply. That said, such factors should not preemptively exclude consideration or establish insurmountable standards applicant's would have to overcome, but the Board should require evidence from the applicant delineating the degree of non-conformity and describing the measures specifically proposed to address the issue(s) at hand, binding approvals if forthcoming to the measures presented or some refinement thereof as the Board may determine from the record of each case. While such procedures could be sensible for all zone districts when non-conformities are at hand, they are particularly needed for Lake Residential and Town Residential zone districts to protect the interest of residents and residential properties – and the county's tax base.

Conclusion

Again, I want to commend the County, its Commissioners, its Planning Commission, your consultants and your staff – and you – for the excellent program to review important development ordinances and frame recommendations that will serve the county well in the coming years. I urge that the Commissioners adopt the amendments as now proposed, hopefully with some of the adjustments herein suggested and with encouragement to explore establishing "bare bones" land use controls for the entire county in near-term, but future, endeavors.

Thank you for considering these comments.

Lindsley Williams