

**GARRETT COUNTY PLANNING AND LAND DEVELOPMENT OFFICE**

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**MINUTES**

**The Garrett County Planning Commission** held its regular monthly meeting on Wednesday, April 7, 2010, at 1:30 pm, in the County Commissioners Meeting Room. Members and guests in attendance at the meeting included:

Troy Ellington	Jeff Messenger	Tom Herson
Tim Schwinabart	Gary Fratz	Paul Durham
Tony Doerr	William DeVore-staff	John Nelson-staff

1. Call to Order – By Chairman Ellington at 1:30 pm.
2. The March minutes were unanimously approved as submitted.
3. Report of Officers – None
4. Unfinished Business –

**A. Commission Members-Staff**

Chairman Ellington noted that the Maryland Department of Planning has invited the Planning Commission to participate in a public forum on Wednesday, May 19, at 6:00 pm, at the Lyric Building in Frostburg. This community forum is being held to gain input from Maryland residents concerning a State growth plan called “Plan-Maryland”. Chairman Ellington, John Nelson and Commissioner Holliday plan to attend the forum. Others are encouraged to attend.

5. New Business-

**A. Discussion and recommendations regarding revised drafts of Garrett County Subdivision Ordinance, Garrett County Sensitive Areas Ordinance and the Deep Creek Watershed Zoning Ordinance.**

Chairman Ellington noted that the Commission will consider all comments received during the public hearing on March 6th and also the comments that were received since the hearing. The Chairman asked Director of Planning, John Nelson to review the comments that were received regarding the draft Ordinances.

Mr. Nelson recounted the comments of the seven speakers at the public hearing:

Lou Batista representing the Deep Creek POA generally supports the new changes to the ordinances which were documented by a letter to the Commission.

Cecil Holtschneider believes that some important adjustments have been made to the originally proposed subdivision ordinance and he endorses the new changes.

Lindsley Williams spoke at the hearing, supports the amended ordinances and has submitted an itemized list that will be discussed later in the meeting.

Bill Meagher representing the Chamber of Commerce thanked the Planning Commission for responding to previous comments.

Jonathan Kessler submitted a letter that will also be discussed.

Paul Miller representing the Farm Bureau supports expansion of the Resource areas but is opposed to mandatory clustering. The Bureau does support incentivized clustering.

David George from the Limpopo subdivision would like to have noise and certain motorized vehicles closely regulated. Mr. George also has submitted a letter.

Mr. Nelson also reviewed the comment letters that were received:

Fred Warther commented that he endorses the proposed zoning ordinance and map.

Bill Weissgerber suggests that a portion of the Bedingfield property, containing approximately 15 acres of land should be added to the LR1 zone instead of the AR zone. The property is located along Turkey Neck Road at Hickory Ridge Road. Mr. Nelson added that it will be years before the sewer system would be extended to this property, located near the very southern tip of Deep Creek Lake, he feels that it is a reasonable request. The Commission voted unanimously, by a vote of 5 to 0, to make this adjustment to the final zoning map.

Robert Bednarzik opposes changing the scenic protection area from the way it was originally drafted. He believes that trees should be planted to protect scenic views from the shoreline and from the lake surface. The Commission took no action on this comment.

The Savage River Watershed Association supports extension of the AR and RR districts but opposes the elimination of the mandatory clustering provision. The association feels that mandatory clustering should remain as part of the new subdivision ordinance. The Commission took no action on this comment.

Ralph Kemp believes that the Sensitive Areas Ordinance should include stream buffers and other further stream protection. The Commission took no action on this comment.

Jonathan Kessler submitted a letter requesting further review of special exception uses in the Deep Creek Lake watershed. Mr. Kessler believes that the requirement for a special exception hearing for certain uses, should be eliminated. Mr. Nelson explained that staff has reviewed the table of use regulations and concurs that a few uses could be changed. Informal comments have questioned whether drilling for natural gas in the LR1, LR2, TR and TC zones should be changed to a Special Exception (SE) use from a Permitted (P) use. After considerable discussion the Board believes that this use should remain as a P use, with the 2,000 ft setback from the lake, as written.

Staff believes that there is an error or a typographic error that has caused the SE requirement for 157.024(D) 7 “Essential Utility Equipment” in the TR zone. All other zones are listed as P, for this use. The Commission believes that this change should be made to allow this use as P in all zones.

Staff also pointed out that car washes and motor vehicle repair garages (157.024(E) 2 and 3) could be changed from SE to P in the Commercial (C) zone. After discussion, the Commission recommends to change the SE requirement to a P use in the C zone for both uses.

Chad Fike of the Planning Office discovered that the PRD provisions in Section 1201 B in the existing Garrett County Subdivision Ordinance did not match the PRD provisions in the Deep Creek Watershed Zoning Ordinance. This effects the eligibility requirements for a PRD regarding transfer of title of a phase or phases of a PRD. The Commission recommends that this same clause from the subdivision ordinance be added to the zoning ordinance in Section 157.067B(2).

Lindsley Williams submitted a letter after the public meeting suggesting specific areas in the ordinance should be changed. ERM prepared a detailed response to these specifics and the Commission referred to the ERM response to help address the issues:

Definition of Home Occupation-Section 157.007B(34)– The Commission feels that it would be helpful to clarify the definition of home occupation to read “...*that is conducted primarily a by person(s) who’s primary or secondary residence is within the dwelling unit in which the activity occurs.*”

As a result of a suggestion from Mr. Lindsley regarding home occupations on nonconforming property in the TR and LR zones, the Commission decided to require an additional condition that parking spaces for the home occupation must be setback five-feet from an adjacent lot line, with a landscape buffer, for all nonconforming lots, in Section 157.024(B)14.

Also as a result of a suggestion from Mr. Lindsley, for the definition of nonconforming structure or lot, the Commission decided to adopt language that would be clearer by separating the terms “nonconforming lot” and “nonconforming structure.” The new terms are defined as: *Nonconforming lot – A lot or parcel that was legally created but does not currently comply with lot area or width requirements of this chapter for the zoning district in which it is located. Nonconforming structure – A legally existing structure that does not conform to dimensional requirements for the zoning district in which it is located, or having off-street parking, off-street loading or accessory buildings that do not conform to current requirements, due to the adoption of this chapter, amendments to this chapter, or changes to the zoning of the property.*

Mr. Williams believes that clarification is necessary for nonconforming uses and accessory uses. The Commission feels that a new definition is not necessary, in this case, because the term use includes both principle and accessory uses listed.

Mr. Williams suggests that there should be a requirement for variance and special exception applications that the Board examine the potential for additional adverse impact if property is nonconforming in use, area, siting, dimensions, parking or loading. The Commission believes that the Board already considers this information as part of the process.

Mr. Williams also suggests consideration be given to revising the definition of “road cartway” to include bicycle lane and sidewalks or walkways. The Commission believes that no revision is needed to the definition. Maryland Annotated Code defines bicycle as a vehicle. The term “cartway” is used uniformly to refer to road standards for vehicle travel. Sidewalks would not be within the cartway. However, the Commission suggests that the language for sidewalks and pathways be clarified in Section 159.118, to allow the Planning Director or Planning Commission to require installation of sidewalks or pathways along road frontages abutting or within a subdivision, as a condition of approval of Preliminary and Final plats, if the subdivision is within an area of the Deep Creek Lake Watershed where the Comprehensive Plan requires pathways or sidewalks.

Mr. Williams also suggests that a Special Exception be required to establish the use of a property as a Transient Vacation Rental Unit on a nonconforming lot or within a nonconforming structure. The Commission believes that the 2003 zoning amendment that resulted in the current TVRU standards have been working well and no changes are needed at this time.

Mr. Williams suggests some clarification is needed for Section 157.041 (D) (3), lot area for institutional, educational and utility uses. He believes that some uses with a 20,000 square-foot minimum lot size should have a smaller lot requirement, such as utility substations, and others such as educational uses

should have a larger requirement. The Commission agrees and will retain the 20,000 square foot minimum for utility substations. All other institutional and educational uses such as, churches, medical offices, dental offices, schools and sewage lagoons, would have a minimum lot size 20,000 square feet or the minimum lot size required for single-family residential development, whichever is greater, wherever permitted.

Mr. Williams believes that sight distance at intersections should be addressed in cases where intersections are not at right angles. The Commission believes that a reference should be added to the ordinance, under Section 157.065, to allow the Zoning Administrator to modify the dimensions of the area for sight distance, as necessary, for new developments.

Mr. Williams suggests that off-street parking may be problem in some locations, after snowfalls, especially home occupations and vacation rentals. The Commission believes that the current regulations are adequate.

Mr. Williams suggests extension of the zoned area in the county, especially around the airport. The Commission believes that they have no authority to extend zoning at this time.

Friends of Deep Creek Lake submitted a letter, after the public meeting, also suggesting specific areas in the proposed ordinances they feel should be addressed. ERM prepared a detailed response to these specifics and the Commission referred to the ERM response to address the issues:

Friends of Deep Creek Lake suggests expansion of the width of stream buffer zone and to create provisions in the ordinance enabling county staff to vary the buffer zone width adjustments based on specific conditions. Also the group suggests that “growth areas” should not have automatically narrower buffer zones. After discussion, the Commission decided to add criteria to only allow the reduction of the width of the buffer, after Planning Commission review, to determine vegetative conditions and other characteristics of the site. A note will also be added to the Sensitive Areas Ordinance map stating that buffer zones are established on perennial streams that are denoted by “blue line streams” found on the USGS, 7.5’ quadrangle maps.

Friends of Deep Creek also suggest that county staff monitor and review the condition of buffer zones. Mr. Nelson notes that Garrett County does not have a program or the staff to monitor the buffers.

Friends of Deep Creek believe that only permeable paving and stone applications should be permitted for sidewalks in the stream buffer zones. The Commission believes that this is a reasonable request that should be implemented, by a vote of 4 to 1. The group also believes that only permeable paving and stone applications should be permitted for roads and driveways in the stream buffer zones. The

Commission feels that this would be problematic and should not be implemented at this time, by a vote of 5 to 0.

Friends of Deep Creek suggest that approved temporary stream crossings must be restored to their original condition and a process should be established to monitor this work. This would include inspection, reports and assessment of post-work conditions by county staff. The group believes that the work should include “an assurance deposit”. The Commission believes that this topic is deferred to the State and should not be in the Garrett County Sensitive Areas Ordinance.

Friends of Deep Creek feel that there are too few requirements for protection of sensitive areas in the ordinance. They urge the county to adopt language which requires protection of the buffering capacity of the sensitive area and at least develop a set of steps to “strongly encourage” protection, explicitly. The Friends of Deep Creek believe that educational materials should be provided for the property owner including information on public and private sources for direct and indirect support and also a list of non-profit, conservancy and community groups in the county. They believe staff time should be devoted to these “encouragement” tasks. They feel feedback regarding effectiveness must be built into the process. The Commission voted to include language in the ordinance, to provide distribution of education material by staff, for applicants for building permits, subdivision approval or site plan approval.

The group also believes that as part of the application for subdivision, the developer should be required to plan for protection of tree canopy within the buffer zone. This is in keeping with subdivision requirements in other county ordinances and in keeping with the state goal to protect forested areas. They believe that a permit for tree removal must be approved by county staff and requirements for tree replacement should also be adopted for these Sensitive Area buffer lands. They feel that county staff should be charged with on-going monitoring. The Planning Commission recognizes that that the county is exempt from state forest conservation requirements and they feel now is not the time to implement such a plan.

The Friends of Deep Creek also suggests that application of pesticides, fertilizers, toxic or other materials harmful to aquatic plants and animals in these buffer zones should be banned. The Planning Commission agrees with ERM that these applications are covered by federal and State laws.

The group believes that developers should attain 100% retention for stormwater runoff. The Commission believes that this issue is already addressed by the new state stormwater management regulations.

The final suggestion is to require fencing of all livestock areas within sensitive area lands. The Commission does not endorse this policy at this time.

After addressing all of the comments presented, the Planning Commission concluded that the three amended ordinances and maps are ready to be submitted to the County Commissioners for their approval. As a result of this conclusion, the Planning Commission unanimously passed a motion to recommend that the final draft of the Deep Creek Watershed Zoning Ordinance, the Subdivision Ordinance, and the Sensitive Areas Ordinance should be adopted by the Board of County Commissioners providing that all modifications agreed to today be incorporated into the final draft ordinances. The Commission will officially forward the ordinances to the County Commissioners by a letter signed by Chairman Ellington. Mr. Nelson expects that the Commissioners will conduct a public hearing for adoption of the proposed ordinances sometime in early to mid-May.

## **B. Miscellaneous**

### **1. Deep Creek Watershed Zoning Appeals Cases-**

- a. VR665** - an application submitted by Bill Hutchinson for a Variance to allow an addition to a residence that would come to within 0.0 feet of a rear property line, instead of the required 40.0 feet. The landowner has purchased the buy down from the State of Maryland. The property is located at 496 Brant Road, tax map 59, parcel 1 and is zoned Lake Residential. The Commission has no comment on this application.

- 2. Minor Subdivisions** – Mr. Nelson has approved, or is about to approve, a number of minor plats since the last Planning Commission meeting. Copies of the plats were included in the packet mailed to the Commission members.

### **3. Waiver Requests –**

- a. Thomas Herson-** Mr. Herson is seeking a waiver from the lot width and acreage standards of the Subdivision Ordinance in order to subdivide his property located along Marlin Savage Road. The 2.46-acre parcel is designated tax map 33, parcel 207, lot 2 and located in an Agricultural Resource land classification. The property is not large enough to be further subdivided without a waiver because the Agricultural Resource land classification requires a minimum lot size of three acres and lot width of 200 feet. Mr. Herson is also seeking a waiver from the road improvement standards of the Ordinance in order to avoid upgrades to the existing Marlin Savage Road. After considerable discussion, the Commission granted conditional approval of the waiver request, pending Planning Commission and Health Department review and approval of the final subdivision plat, by a vote of 5 to 0.

4. **Surface Mining Permits-** None
5. **Discharge Permit Applications-** None
6. **Maryland Planning Commission Association** – Dues of \$300 are due and the Commission has decided to forgo membership for this year.

**C. Action on Major Subdivision Plats-**

1. **Final Plat- Ginseng Hill Phase I-** The developer, Garrett Investments, LLC submitted a Final plat for a two-lot subdivision located off of Sang Run Road. The property is located on tax map 41, parcels 122 and 379 in a Rural land classification. The Planning Commission granted approval of this Final plat by a unanimous vote of 5 to 0.
2. **Preliminary Plat- Rocklick Creek Estates-** The developer, Cecil Holschneider, has submitted a Preliminary plat for a six-lot subdivision located off of Pysell Road and Garrett Highway. The property is located on tax map 42, parcel 2, in a Rural land classification. The Planning Commission granted approval of this Preliminary plat by a unanimous vote of 5 to 0.

**D. Next Scheduled meeting -** The next regular meeting of the Planning Commission is scheduled for Wednesday, **May 5, 2010**, in the County Commissioners Meeting Room, at 1:30 pm.

**E. Adjournment-** 4:30 pm.

Respectfully submitted,

William J. DeVore  
Zoning Administrator



