

GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT

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MINUTES

The Garrett County Planning Commission held its regular monthly meeting on Wednesday, December 5, 2012, at 1:30 p.m., in the County Commissioners Meeting Room. Members and guests in attendance at the meeting included:

Troy Ellington	Jeff Conner	Jerry Plauger
Bob Gatto	Bill Weissgerber	John Nelson-staff
Tim Schwinabart	George Brady	William DeVore-staff
Tony Doerr	Paul Durham	

1. Call to Order - by Chairman Troy Ellington at 1:30 pm.
2. The November minutes were unanimously approved, as submitted.
3. Report of Officers – The Vice Chairman Tony Doerr stated that he believes that the Planning Office did a great job in putting together the Tier maps that were required by Senate Bill 236, the Septic Bill.

Chairman Ellington also notes that the next meeting will be in 2013 and the Commission will be required to elect officers for the upcoming year at that time.

4. Unfinished Business – Mr. Nelson stated that the County Commissioners have accepted the Planning Commission recommendation and have adopted the final Tier Map for the county as required by the Sustainable Growth and Preservation Act of 2012. The map will be forward to MDP for their comments. The final map shows Tier 3 as 10% of the county land area, while Tier 4 equals approximately 84% of the land area total.
5. New Business –

A. Discussion of Potential Amendments to the Deep Creek Watershed Zoning Ordinance-

Mr. Nelson had explained at the November meeting that the Planning Office would prepare certain potential amendments to the Deep Creek Watershed Zoning Ordinance that are intended to clear up specific discrepancies that were discovered during recent appeals to the Circuit Court. Chairman Ellington notes that the Commission has received a copy of these proposed amendments to the

Ordinance labeled “Potential Amendments to the Deep Creek Watershed Zoning Ordinance for Consideration by the Planning Commission”. A copy of the potential amendments is attached to these minutes.

Mr. Nelson explained that the first two amendments to the Ordinance will more appropriately reflect the language in Article 66B, the enabling Maryland law. The need for the modification was discovered as a result of the litigation to the Circuit Court regarding the boat rental service issue at Deep Creek Lake.

Maryland law provides a distinction between requirements for a zoning text amendment, versus a zoning map amendment; and this distinction became apparent when the text amendment for the boat rentals at the lake was enacted earlier this year by the County Commissioners. Section 405 of Article 66B clearly distinguished these types of amendments, while the current version of the Deep Creek Watershed Zoning Ordinance does not. The discrepancy in the Ordinance is that no matter what type of amendment (text amendment or map amendment), the Ordinance requires a finding of fact, with regard to certain planning matters that are not relevant to a text change. Article 66B specifies that a “finding of fact” on certain planning matters is required only when a change in zoning classification is contemplated. The original wording of the amendment process was carried over from the 1975 Zoning Ordinance. The first two potential amendments to the Deep Creek Watershed Zoning Ordinance are:

Amendment 1- Section 157.189 “Factors to be Considered by the County Commissioners” would be modified with new wording from Section 405, of Article 66B, stating that: Subsection A. “Zoning regulations, restrictions, and boundaries may periodically be amended or repealed”. And Subsection B. “Where the purpose and effect of the proposed amendment is to change the zoning classification, the County Commissioners shall make findings of fact that include the following matters: (1) The report and recommendations of the Planning Commission; (2) Population change in the area to be affected by the proposed change; (3) Availability of public facilities such as police and fire protection, and water and sewerage to serve the area; (4) Present and future transportation patterns in the area; (5) Compatibility with existing and proposed development of the area; (6) The relationship of the proposed change to the adopted Comprehensive Plan for the County; and (7) Whether there has been a convincing demonstration that the proposed rezoning would be appropriated and logical for the subject property.”

Amendment 2- A second proposed amendment would revise Section 157.190- “Action by the County Commissioners on Amendment”. The existing Subsection A. would be replaced, with the following new text: “The County Commissioners may enact any proposed text amendment, modification or repeal by a majority vote of the Board. The County Commissioners may grant an amendment to change a zoning classification based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that

there was a mistake in the existing zoning classification. A complete record of the hearing and the votes of all members of the Board shall be kept”.

Mr. Nelson also explained that a third amendment should be considered because of an oversight that has been in the Table of Dimensional Requirements in the Ordinance since its inception in 1975. Within the table, the C-Commercial zone should be included with the TC-Town Center zone under “other commercial uses...” because it is reasonable and consistent to have the same minimum land area requirement in both the commercial and town center zoning districts for the same general commercial uses. Amendment 3 would read as follows:

Amendment 3- Section 157.041E.2 in the Table of Dimensional Requirements new text would be added to include the “C”-Commercial zone next to the “TC”-Town Center zone in the “zoning district” column.

Mr. Nelson also explained that Amendment 4 should be considered because of an error that occurred when the current Ordinance was re-codified. A new provision for shopping centers was added to the Table of Dimensional Requirements, (current Section 157.041 E.3) in February, 1993. The current column heading “Minimum Total Lot or Land Area per Use” has been incorrectly listed as one acre instead of the intended area of 6,000 square feet. The current version also lists the “Minimum Average Lot Area per Dwelling Unit” column as 6,000 square feet and should have been blank. Specific language in 157.041E. 3 should also be considered to clearly define those uses that can take advantage of the reduced minimum land area that is allowable in a shopping center. Amendment 4 would read as follows:

Amendment 4- Modify Section 157.041E.3 in the Table of Dimensional Requirements by replacing the existing Section with new text. The revised text in Section 157.041 E.3 should read: “Retail uses, service businesses and commercial recreational uses that are situated in shopping centers having a minimum land area of 1 acre. Only those retail, service and commercial recreational uses specified under this Article as requiring a minimum land area of 10,000 square feet in the TC and C Zoning Districts, are subject to the reduced minimum land area per use afforded by this Section”. Additionally, the text “six thousand (6,000) square feet” should be placed under the column heading “Minimum Total Lot or Land Area per Use.”

The language in Amendment 4 has been restructured considerably, in order to distinguish clearly that only those uses that require 10,000 square feet should be afforded the reduced land area criteria of 6,000 square feet, in a shopping center. The current wording implies that a use, such as a hotel that requires a minimum land area of one acre, could be allowed in a shopping center with 6,000 square feet, which was not the intent of the Ordinance.

The allowance for “any other district”, in the current table, would also be stricken from the Ordinance because it does not afford any reduction of land area and is therefore, not necessary. At the suggestion of Bill Weissgerber, the “Minimum

Yard Width” in the table heading will be amended, by Mr. Nelson, to include the word “feet”.

The Commission believes that the first two amendments, discussed by the Commission, are necessary in order to clarify the intent of the Ordinance. The Commission believes that it is virtually impossible and not consistent with Article 66B to generate a “findings of fact”, based on certain, specified planning matters for a text change amendment. The Commission concluded that such planning matters are only applicable when a map change is involved.

After considerable discussion, the Planning Commission passed a motion to endorse Amendments 1 and 2 and recommended that they be forwarded to the Board of County Commissioners for their action. The motion passed by a vote of 6 to 0, with Commissioner Gatto abstaining. Amendments #3 and #4 were deferred for further discussion.

B. Miscellaneous

1. Deep Creek Watershed Zoning Appeals Cases – None

2. Minor Subdivisions – Approved minor subdivisions were included in the packet mailed to the Commission members prior to the meeting.

3. Major Subdivisions –

a. Preliminary and Final Plat- Lot 2 McHenry Business Park- The Board of Garrett County Commissioners submitted a Preliminary and Final plat for a one-lot commercial subdivision located along Business Park Drive. The property is designated tax map 42, parcel 52 and located in an Employment Center land classification. The Planning Commission granted approval of this Preliminary and Final plat by a unanimous vote of 7 to 0.

b. Preliminary and Final Plat-Harvey Subdivision- Scott Harvey and Winifred Harvey submitted a Preliminary and Final plat for a four-lot subdivision located off of Pleasant Valley Road. The property is designated tax map 85, parcels 271 and 161 and located in an Agricultural Resource land classification. Discussion ensued regarding the well and septic setbacks that affect adjacent properties. The Planning Commission granted conditional approval of this Final and Preliminary plat by a unanimous vote of 7 to 0. The Planning Commission’s approval is conditioned on the final review and approval of homeowner documents.

4. Mining Permit Applications – None

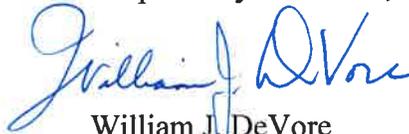
5. Aglan Preservation District Applications-None

6. Action on Planned Residential Development (PRD)- None

C. Next Scheduled meeting - The next regular meeting of the Planning Commission will be held on **January 2, 2013**, in the County Commissioners Meeting Room, at 1:30 pm.

D. Adjournment- 2:30 p.m.

Respectfully submitted,



William J. DeVore
Zoning Administrator

**POTENTIAL AMENDMENTS TO THE DEEP CREEK WATERSHED ZONING ORDINANCE
FOR CONSIDERATION BY THE PLANNING COMMISSION:**

1) Amend Section 157.189 by replacing the existing Section with the following new Text:

§ 157.189 FACTORS TO BE CONSIDERED BY COUNTY COMMISSIONERS.

- A. Zoning regulations, restrictions, and boundaries may periodically be amended or repealed.
- B. Where the purpose and effect of the proposed amendment is to change the zoning classification, the County Commissioners shall make findings of fact that include the following matters:
 - (1) The report and recommendations of the Planning Commission;
 - (2) Population change in the area to be affected by the proposed change;
 - (3) Availability of public facilities such as police and fire protection, and water and sewerage to serve the area;
 - (4) Present and future transportation patterns in the area;
 - (5) Compatibility with existing and proposed development of the area;
 - (6) The relationship of the proposed change to the adopted Comprehensive Plan for the County; and
 - (7) Whether there has been a convincing demonstration that the proposed rezoning would be appropriated and logical for the subject property.

2) Amend Section 157.190.A by replacing the existing Section with the following new Text:

§ 157.190 ACTION BY THE COUNTY COMMISSIONERS ON AMENDMENT.

- A. The County Commissioners may enact any proposed text amendment, modification or repeal by a majority vote of the Board. The County Commissioners may grant an amendment to change a zoning classification based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification. A complete record of the hearing and the votes of all members of the Board shall be kept.

3) Amend Section 157.041E.2 in the Table of Dimensional Requirements by replacing the existing Section with the new Text detailed in the Table below:

4) Amend Section 157.041E.3 in the Table of Dimensional Requirements by replacing the existing Section with the new Text detailed in the Table below:

TABLE OF DIMENSIONAL REQUIREMENTS

157.041E

	Zoning District	Minimum Total Lot or Land Area Per Use	Minimum Average Lot Area Per Dwelling Unit	Minimum Lot Width (feet)	Minimum Yard Width		
					Front	Side	Rear
2. Other commercial uses pursuant to § 157.024.	TC & C	10,000	—	—	10	—	35
	Any Other District	20,000	—	100	20	15	35
3. Retail uses, service businesses and commercial recreational uses that are situated in shopping centers having a minimum land area of 1 acre. Only those retail, service and commercial recreational uses specified under this Article as requiring a minimum land area of 10,000 sq. ft. in the TC and C Zoning Districts, are subject to the reduced minimum land area per use afforded by this Section.	TC & C	6,000	—		10	—	25