

DEPARTMENT OF COMMUNITY PLANNING & DEVELOPMENT

GARRETT COUNTY OFFICE OF PLANNING AND LAND MANAGEMENT

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MINUTES

The Garrett County Planning Commission held its regular monthly meeting on Wednesday, May 7, 2014, at 1:30 p.m., in the County Commissioners Meeting Room. Members and guests in attendance at the meeting included:

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|------------------|---------------|--------------------------|
| Troy Ellington | Bruce Swift | Deborah Carpenter -staff |
| Rick Schiff | Floyd Bary | William DeVore-staff |
| Jeff Messenger | Bob Browning | Chad Fike-staff |
| Bob Gatto | Paul Durham | Gorman Getty |
| Tim Schwinabart | Karen Myers | Greg Skidmore |
| Jeff Conner | Jerry Geisler | Robert Hoffmann |
| Bill Weissgerber | Adrian Spiker | |

1. Call to Order - by Chairman Ellington at 1:30 pm.
2. The April minutes were unanimously approved, as submitted, by a vote of 7 to 0.
3. Report of Officers – None
4. Unfinished Business – None
5. Old Business – None
6. New Business-
 - A. **Review and Discussion- Wisp Resort Wedding Tent- Jerry Geisler- Chad Fike** of the Planning Office explained that the Deep Creek Watershed Zoning Ordinance requires that modifications to a commercial resort must be reviewed and approved by the Planning Commission, per Section 157.069 C., before approval of any new zoning permits. A copy of this Section of the zoning ordinance was distributed before the meeting, which requires a review by the Commission to consider items such as landscaping, tree cover, architectural style, general design and color of any new buildings.

Jerry Geisler of the Wisp Resort presented the plan for the new proposed wedding tent at the resort. Mr. Geisler explained that the structure would be anchored with concrete piers that would be erected permanently. The tent would have a gravel base and a heavy rubber, carpeted floor. Mr. Geisler submitted a

photo of the proposed tent for Commission review. The tent is 6,400 sq ft in size and is designed to withstand heavy snowfall. The Fire Marshal has conditionally approved the tent, pending final review. The structure will be unoccupied during the winter months.

Site plans from Highland Engineering and Surveying dated, January 20, 2014, were presented by Mr. Geisler. The plans show the location of the proposed wedding tent which has been recently graded. The owners have not yet applied for a zoning permit for the new addition to the resort, as of this date.

After review, the Planning Commission determined that the plans were in conformance with the Commercial Resort standards found in the zoning ordinance. The proposed development was found to be consistent with the character of the existing Wisp Resort and no negative impacts were discovered. Therefore, the Commission voted unanimously, by a vote of 7 to 0, to accept the conceptual plan and allow the Wisp to make application for a zoning permit with the planning office for the wedding tent.

B. Discussion –Planning Commission’s 2013 Annual Report-Deborah Carpenter, Assistant Director of the Office of Planning and Land Management presented a draft of the Garrett County Planning Commission 2013 Annual Report. The report is in a similar format as previous years. The report shows that subdivisions are up slightly and the number of subdivision located within or without of Priority Funding Areas (PFAs) is about the same as in 2012.

There have been three Planned Residential Development (PRD) applications this year, while there were none in 2012. Building permits are down significantly, from 147 permits in 2012, to 78 in 2013. Permits inside PFAs are down from 11.1% to 9.8%. Permits outside PFAs are up slightly from 88.9% to 90.2%. According to the five-year trend, the declared property values are down. There was no additional activity in Agricultural Preservation, though four property owners are continuing to work with MALPF.

As per the requirements of HB409, a narrative has been added into the report explaining the progress made toward achieving the recommendations found in the 2008 Comprehensive Plan. The analysis addresses how the capacity calculations will affect the Comprehensive Plan.

Mrs. Carpenter noted that the office worked with MDP to develop a new capacity analysis. The new capacity figures show that potential development outside of PFAs has gone from 95,609 to 42,149 units, which is a 56% drop. Mrs. Carpenter distributed a handout showing that the new calculated capacity numbers are dramatically down. The assistant director believes that the bill has had a major, long term impact on the ability of the county to grow. This state law is having major implications, largely because much of the county is in the Tier IV land classification.

The local goal of the county is to have at least ten percent of all new development, within PFAs, by the year 2020. The Commission voted by unanimous vote of 7 to 0, to keep the target at ten percent which is the same as last year.

Mrs. Carpenter explained that the planning office will accept any edits of the document and the Final Draft will be reviewed at the June 4th meeting of the Planning Commission. A copy of the Capacity Analysis will be sent to all Planning Commission members.

C. Miscellaneous

1. Deep Creek Watershed Zoning Appeals Cases-

- a. VR-717** - an application submitted by Richard Descutner for Variances to allow the reconstruction of a residence to within 15.5 feet of the rear property line. The applicant also requests the new residence to come to within 11.66 feet and 8.11 feet of the side property lines. The owner has purchased the buy-down from the State of Maryland. The property is located at 264 McComas Beach Terrace, tax map 57, parcel 211 and is zoned LR1. The Planning Commission offered no comments on the request for the Variance.
- b. VR-718** - an application submitted by Parker J. Doty for a Variance to allow an addition to a residence that would come to within 7.5 feet of a rear property line. The owner has purchased the “buy-down” from the State of Maryland. The property is located at 20476 Garrett Highway, tax map 58, parcel 712 and is zoned Town Center. The Planning Commission offered no comments on the request for the Variance.
- c. SE-434** an application submitted by Adrian Spiker II, for a Special Exception permit for a commercial recreational trail area. This application was withdrawn at the request of the applicant

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

3. Major Subdivisions-None

4. Waiver Requests –

- a. Stem-** Floyd Bargy of Thrasher Engineering requested a waiver on behalf of his clients, Michael and Susan Stem, in order to subdivide their

property along Snowy Creek Road. The parcel is located on tax map 77, parcel 400, located within a Rural land classification. Mr. Bary requests permission to create a 1.18-acre lot using existing, rather than new, private road standards and a waiver from the requirement for road maintenance documents. After discussion, the Commission granted approval of the waiver for road standards by a unanimous vote of 7 to 0. The request for the waiver from road maintenance requirements was denied by a unanimous vote of 7 to 0.

- b. Flanagan-** Floyd Bary of Thrasher Engineering requested a waiver on behalf of his clients, Claudia and Susan Flanagan, in order to subdivide their property located along Amish Road. The parcel is located on map 25, Parcel 43 in a Rural Resource land classification. Mr. Bary requested a waiver from the Rural Resource minimum lot size of three acres in order to create a 2.10-acre lot. After discussion, the Commission granted approval of the waiver by a unanimous vote of 7 to 0.

5. Action on Planned Residential Developments (PRD's)-

- a. Wisp Resort Phase 11 B and C- Lago Vista -formerly Sandy Shores Estates.** The developers, Waterfront Group Tranquility, LLC, submitted a final plat showing a total of 27 lots located off Sandy Shores Road. Lago Vista-Section 3 is part of the Wisp Resort PRD and is located on tax map 57, parcel 618, in a Lake Residential 1 zoning district. These lots are part of the original 51-lot Preliminary plan for Sandy Shores Estates approved by the Planning Commission on December 5, 2007. The Sandy Shores Estates development has been renamed “Lago Vista”. The Commission granted approval of this Final plat by a unanimous vote of 7 to 0. The Planning Commission also discussed the proposed revised plats of Lago Vista- Section 1 and 2. These plats are revisions to the original Sandy Shores Estates- Section 1 and 2, previously approved by the Planning Commission on January 2, 2008 and September 10, 2008, and are intended only to document the name change to Lago Vista and not to create any new lots. The Commission’s review determined that these name change plans are consistent with the originally approved plans and agreed to sign the plans after they are complete.

D. Discussion – Greg Skidmore letter concerning legal and educational considerations regarding Special Exceptions.

Deborah Carpenter noted that Special Exceptions are also called “special use” or “conditional use” permits in some jurisdictions, which may be better terminology for this type of use. Mrs. Carpenter explained that such uses could adversely impact adjacent properties and these uses are sometimes limited or conditioned to mitigate these negative impacts. In a letter to the Chairman Ellington, Greg

Skidmore of Skidmore, Alderson and Duncan asserts that the chairman spoke incorrectly by stating that SE-434 would be “difficult to disapprove outright, based on the Schultz vs. Pritts court case”. Mrs. Carpenter believed that this assertion should be discussed and invited Mr. Skidmore and County Attorney Gorman Getty to discuss the issue at this meeting of the Planning Commission.

Gorman Getty explained that the zoning ordinance defined certain uses that are permitted outright and certain uses that are prohibited. Another category the ordinance provides is the Special Exception category which requires review by the Garrett County Planning Commission and approval by the Deep Creek Watershed Board of Zoning Appeals. Mr. Getty notes that the courts recognize Special Exception as a middle ground, where certain uses may be permitted, subject to certain conditions. The concept of how it applies must consider that the Deep Creek Watershed Zoning Ordinance does not include a definition for “Special Exception”, but there is Special Exception “use” in the ordinance. If there is no definition of a Special Exception in the ordinance, Mr. Getty contends that the court will then refer to the language in the Land Use Article.

Mr. Getty believes that the Schultz versus Pritts case is the standard for how the board of appeals, and ultimately the courts, evaluate whether the Board has exercised their discretion appropriately in deciding a Special Exception case. The concept is that the use being applied for, at a particular location, does not have any adverse consequences separate and apart from the type of problems that it may create elsewhere in that zone. Mr. Getty explains that a Special Exception is a form of a permitted use, but it gives the authority the ability to place conditions on the use. Mr. Getty believes that Garrett County has this type of “default analysis” because the ordinance does not define this Special Exception use.

The courts have ruled after the Schultz/Pritts case that the local jurisdiction, or in this case the Board of County Commissioners, has the ability to develop another set of standards to look at these uses and better define under what terms, a Special Exception use could be approved.

Mr. Getty suggests that the planning office and the Planning Commission should research and develop other definitive standards for Special Exceptions. He believes that the office should research and gather the information on what other jurisdictions have done and use this as an opportunity to better define this “middle ground” of the Special Exception use and how it should be applied. The goal would be so that everyone understands what the rules are from the beginning. Though there is precedence for Schultz versus Pritts, the courts review each individual case on an individual basis. Mr. Getty recommends that the office staff gather this information under the guidance of the Planning Commission, to appropriately discharge the advice and make recommendations to the County Commissioners, to advance the zoning regulations to help create more certainty on this issue. The attorney believes that a by product of this new standard could be fewer applications to the Board and the better defined criteria

could be more difficult to challenge, provided that the Board makes a reasonable judgment. Mr. Getty respectfully disagrees with the conclusion that Mr. Skidmore reached in his letter regarding the chairman's statement during the Planning Commissions review of SE-434.

Mr. Getty believes that the assignment of a "catch all" category is widely used throughout the State. He believes this type of category is needed in order to accommodate activities that are not anticipated, but are addressed by the Special Exception category. He feels that it would be a mistake, specifically in regard to recreation, to become so specific on types of recreational activity that exclusions are created that are not contemplated, for example snowboarding, which may not have been foreseen not long ago. Mr. Getty is not aware of any analysis that would conclude that Schultz versus Pritts would not apply in the case of a "catch all" broad category such as SE-434, which was couched as "other recreational use." If a new standard is developed, then that standard would be the one that would be applied.

Greg Skidmore generally agrees with Mr. Getty's explanation of Special Exceptions. However, Mr. Skidmore found that after researching the relevant cases and considering Mr. Spiker's specific request, he believes that the legislative body did not consider the negative impacts of such a use in this zone.

Mr. Skidmore believes the Schultz versus Pritts case law does not apply when there is no specific designation for this use, as in the case of SE-434. Mr. Skidmore believes that the legislative body cannot look back and conclude that this use has been considered previously. The attorney believes that in this case, the Board of Appeals cannot rely on Schultz versus Pritts as a basis. Also Mr. Skidmore notes that the Ordinance does permit certain uses, but specifically prohibits the sale and rental of recreational vehicles, in this zone. He believes that this is an important consideration in this specific case.

Chairman Ellington and the county attorney believe that the planning staff should research and take advantage of concepts that have been developed in other jurisdictions and suggests finding ordinances where improvement of the Special Exception concept has been successful and model any new recommendations after them.

Discussion ensued regarding new criteria that could be developed to change the burden for the applicant from a negative one, where the use does not have any adverse consequences separate and apart from the type of problems that it may create elsewhere, to positive criteria where the applicant may have to show that the use would be constructive for the neighborhood.

- E. Next Scheduled meeting** - The next regular meeting of the Planning Commission will be held on **June 4, 2014**, in the County Commissioners Meeting Room, at 1:30 pm.

F. Adjournment- 3:00 p.m.

Respectfully submitted,

William J. DeVore
Zoning Administrator

