

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, August 6, 2014, at 1:30 p.m., in the County Commissioners Meeting Room. Members and guests in attendance at the meeting included:

Troy Ellington	Jeff Messenger	John Coyle
Rick Schiff	Bill Weissgerber	Greg Skidmore
Tim Schwinabart	Bob Gatto	Deborah Carpenter-staff
Jeff Conner	Bill Meagher	Chad Fike-staff
Tony Doerr	Carol Jacobs	William DeVore-staff

1. Call to Order - by Chairman Ellington at 1:30 pm.
2. The July minutes were unanimously approved, as submitted, by a vote of 7 to 0.
3. Report of Officers – None
4. Unfinished Business – None
5. New Business – Deborah Carpenter, assistant director of the Office of Planning and Land Management announced that the Deep Creek Watershed Management Plan Steering Committee will conduct a public meeting on Saturday, August 9th, at the Gallatin Yurt at Wisp Resort. The purpose of the meeting is to gather public comment on the draft Deep Creek Watershed Management Plan. The meeting will begin at 10:00 a.m. All interested persons are invited to attend. Mrs. Carpenter also noted that the 49-page plan is available on-line at the county website.

A. Miscellaneous

1. Deep Creek Watershed Zoning Appeals Cases-

- a. **VR-725** - an application submitted by James Benton for a Variance to allow the reconstruction of a residence, that would come to within 5.06 feet of the side property line. The property is located at 1265 Penn Point Road, tax map 66, parcel 111, and is zoned Lake Residential 1 (LR1). After discussion, the Planning Commission, by a unanimous vote of 7 to 0, recommends to the Board of Appeals

to give special consideration to any comments from residents in the neighborhood concerning the Variance.

- b. **VR-726** – an application submitted by Wayne and Rebecca Zupancic for a Variance to allow the construction of an accessory, private swimming pool that would come to within 1.0 foot of the rear property line. The property is located at 228 Stilwater Drive, tax map 59, parcel 619, Lot 5 and is zoned LR1. After discussion, the Planning Commission offered no comments on the application.
- c. **Intp-22-** an application submitted by Bill’s Marine Service, Inc. et al, for an Interpretive hearing regarding the issuance of a zoning permit to Bill Meagher of Lakeside Commercial Properties. The property is located at 20294 Garrett Highway tax map 58, parcel 267 and is zoned Town Center. The appellant believes that the basis for issuance of the permit for the commercial business service was incorrect and/or illegal for various reasons that are outlined in the application for the Interpretive hearing, that were distributed before the meeting.

The zoning administrator, William DeVore, explained that after careful review of the permit application, the permit was issued on June 13, 2014. The permit was approved pursuant to the relevant Sections in the Deep Creek Watershed Zoning Ordinance (Ordinance) below:

157.007 (39) definition of marina. “A business all or part of which occupies a waterfront property....”

Section 157.024 C.7- Marinas are permitted in the TC zone “by right”. This is signified by the letter “P” in the Ordinance.

Section 157.041(C) 13- found in the Lot Area and Yard Regulations- a “Marina” requires 2 acres of lot or land area (per use).

Section 157.041 E 3 –this Section establishes density allowances for retail and service businesses situated in shopping centers. This use category allows 6,000 sq. ft. per use or six uses on this parcel, which contains 39,204 sq. ft. The purpose of this Section is to determine how many separate retail or services businesses can occupy a given tract of land, based upon its size. In the case of the shopping center, the total land area is 39,204 square feet. (0.9 acres) This size tract would allow six uses. That is 39,204 square feet divided by 6,000 sq. ft. per use.

Section 157.092 C and E- This section is the relevant section for parking requirements for the shopping center.

Section 157.092J- Lakeside Commercial Properties parking requirement is 50 spaces or less, so two handicap spaces are required.

The parking plan was submitted by the applicant and designed by Century Engineering, Inc. The plan is sealed by a Maryland Professional Land Surveyor and has a plot date of July 2, 2014. Spaces required on the Lakeside plan include 11 spaces for retail. Ten spaces for the marina and 25 spaces for the restaurants are also provided. Mr. DeVore stated that based on the Lakeside plan, a total of 46 spaces are needed and 50 spaces are provided at the site.

Attorney Greg Skidmore, representing the marina owners who are opposing the issuance of the permit also explained their positions to the Board. Mr. Skidmore explained that a marina at this location has been to the Board of Appeals previously and several amendments to the Ordinance are associated with the site. Mr. Skidmore believes that this is a legal argument involving the marina use in a shopping center as a retail/service business. Mr. Skidmore also believes that there are issues involved regarding a grandfathered, nonconforming use. He believes that the permit issued in June of 2014 is the same in substance, as the permit that was issued two years ago, which was not upheld by the courts. He believes that the emergence of a marina into the shopping center has affected the grandfathered, nonconforming status.

Mr. Skidmore stated that the issuance of the permit and the issuance without a Special Exception eliminate public input on this important process. He believes there should be opportunity to be heard which did not happen in this case. Mr. Skidmore believes that the issue would be best considered during the next review of the County Comprehensive Plan. Mr. Skidmore explained that he and his clients are still evaluating the permit and the objections to it. Mr. Skidmore explained that the legal argument made when Lakeside first proposed to rent boats is not that it is necessarily bad, but that the proper procedures must be followed and everyone must comply with the Ordinance. The attorney is grateful for the opportunity to be heard, but will make his legal argument to the Board of Zoning Appeals on August 21.

John Coyle, the attorney for Mr. Meagher, also presented a response concerning the issues that were raised by Mr. Skidmore. The property on the west side of US Route 219 consists of a parcel that has never been a part of the condominium and a parcel (2.32 acres) that has been, but is now not associated with the condominium (2.25 acres). An access road is provided on the site. Approximately 4.8 acres is dedicated to the marina which is positioned to meet the needs of a marina. Mr. Coyle stated that this application is a different way to achieve what he is trying to do, but all of the other marinas do not think this marina is necessary, though Deep Creek Marina did drop out from the original filing. Historically, the Lakeside property has been owned by the same or a related entity for many years. The attorney notes that several other marinas are bisected by roads including the Aquatic Center, Bills Marine Service and Traders Landing Condominium.

Mr. Coyle believes that the new marina use benefits the public and meets the requirements of the Ordinance especially parking requirements. He notes that some other marina owners do not have adequate parking. Mr. Coyle believes that the 4.8 acres dedicated to the use meets the needs of the statute to qualify as a marina. The attorney stated that the property across the road will be used for repairs, storage and parking.

The attorney also presented a copy of the Silver Tree marina plat; one of the objecting marinas, which show the two acres for the Silver Tree marina, is leased and not owned, without any history of unity of ownership. The two acres is also located between parking spaces and is not useable area for parking, storage and repair. The attorney believes that there was no groundswell of protest when the Silver Tree permit was issued.

Mr. Coyle stated that there are no non-conforming uses associated with the shopping center, since all of the uses are permitted outright in this Town Center zone. The submission by the owners' attorney referred to a deposition from John Nelson stating that the shopping center is somehow a nonconforming use. Mr. Coyle stated that Mr. Nelson said that the shopping center is grandfathered because of size and he refused to say that the use is nonconforming.

The attorney also points out other marinas have lakefront but are split by a road and there is nothing in the statute to prevent this. He believes that the new marina will benefit the general public and that the staff has properly interpreted the Ordinance in this case. Mr. Coyle believes that there is also frustration on the part of the applicant, concerning the continuing opposition to his marina and he believes that this is driven by the other marinas not wanting further competition.

One of the Commission members notes that there is no mention of Maryland DNR approval of the permit. Mr. DeVore and Mr. Meagher acknowledged that the DNR permit for the marina has already been approved by that agency.

After discussion, the Planning Commission believes that the application meets the requirements of the Ordinance for a zoning permit for this application however they also feel that legal questions have been raised that should be decided by the Board of Zoning Appeals. The Commission notes that this case would be heard by the Board of Appeals at their regular meeting on August 21.

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

3. Major Subdivisions-

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

- a. **Wisp Resort Phase 7, Lodestone Subdivision, Biltmore Section 1-** The developers, NLP of Maryland, LLC, submitted a final plat showing a total of 37 lots located off Shingle Camp Road. The property is part of the Wisp Resort PRD and is located on tax map 49, parcel 142, in a Lake Residential 1 zoning district and Rural land classification. The Planning Commission granted preliminary approval for a total of 145 lots in Biltmore, during their September 18, 2013 meeting. The Commission granted approval of this Final plat by a unanimous vote of 7 to 0.

5. Waiver Requests – None

B. Discussion – Transportation Priority List-

Deborah Carpenter presented the Priority Capital Projects for the Secretary's 2014 Annual Tour. Mrs. Carpenter explained the format has been changed concerning the way the list is presented. The priority list was previously distributed to the Commission, via email, before the meeting. Chairman Ellington was disappointed that the list was already assembled, noting that the Commission usually is more directly involved in preparing the list. The Planning Commission reviewed the list of projects and made comments for the items that follow:

Planning Priority #1- Truck Corridor Feasibility Study

Mrs. Carpenter explained that the County will ask the Maryland State Highway Administration (SHA) to first determine the amount of truck traffic currently passing through downtown Oakland, by way of a traffic study. The study will also help determine how much truck traffic is currently on Sand Flat Road and MD Route 495. The Commission believes that neither of these roads is safe for significant amounts of truck traffic. The Commission believes that if the assessment reveals that these routes are currently being used to divert truck traffic from downtown Oakland, then both these alternatives will need to be upgraded to appropriate standards. The Planning Commission respectfully requests that SHA considers the upgrades that are necessary to make both these routes safer for truck traffic, as part of this study.

Traffic Flow Enhancement Priority #1- Signal Warrant Project Quarry Road and US 219-Trail and Pedestrian Priorities #2 - Evaluate Pedestrian Crossings, a). UNO's, b). Traders Landing –The Planning Commission believes these two items are linked at the UNO's/Quarry Road site. Of these two options, the Planning Commission believes it would be best to focus on improving the pedestrian crossing at UNO's, rather than to investigate a new signal at Quarry Road. The existing light at US 219 and Glendale Road has timing issues, because traffic can be backed up for long distances at times, at this location. The Commission feels that another traffic light so close to this one, could intensify the problem. Instead, the Commission believes that SHA should investigate creative options for the existing pedestrian crosswalk. The Commission agrees that appropriate lighting is needed but also believes that SHA should consider a regular timing mechanism for the pedestrian crossing. One concern is that pedestrians are not crossing in groups at this crosswalk. Crossing becomes problematic when a long

series of individuals continually cross, causing traffic congestion and backups. The Commission feels that if pedestrians have a time limit, as found at many standard pedestrian crossings, the problem could be minimized. This would allow pedestrians to group together and wait on the side, making them more visible and preventing frustration for motorists.

The Commission also suggests that rumble strip type grooves be ground into the concrete, to alert motorists, at both locations that they should be slowing down while approaching the pedestrian crossing. A center dividing lane was also discussed to ease some problems at these locations, allowing pedestrians to get through traffic one lane at a time. Some members believe that strobe lights included within the yellow warning lights which are activated when the pedestrians push the button would also improve the warning given to motorists.

Traffic Flow Enhancement Priority #2 - Traffic Sensors- The Planning Commission notes that traffic flow could be enhanced at both the light at US 219 and Glendale Road and US 219 and Mosser Road, if traffic sensors were used to better regulate the flow of traffic.

Trail and Pedestrian Priority #1- Pedestrian Crossing at US 219 and Mosser Road- The Commission fully supports this priority but would like to add that there is an additional issue at this intersection which must be addressed. Traffic heading south and turning east onto Mosser Road needs a turning lane or signal. Additionally, the turning lane for turning west is being used as a passing lane rather than a turning lane and it creates some confusion and dangerous situations. Appropriate signage, signals and painted arrows in the lanes or a means for dividing the two lanes so that motorists once in their lanes cannot switch (short poles on a thin dividing strip) are all possibilities for improvement at this intersection, should the State consider them appropriate.

As a separate issue, the Planning Commission suggests that SHA consider the use of their right-of-way across from the Chamber of Commerce near the intersection of US 219 and Sang Run Road for event signage. The Planning Commission believes that this could be useful for the Deep Creek World Championships to be held in September and other events throughout the year. The Commission suggests that the county pursue this question with the State Highway Administration.

- C. Next Scheduled meeting** - The next regular meeting of the Planning Commission is scheduled for **September 3, 2014**, in the County Commissioners Meeting Room, at 1:30 pm.
- D. Adjournment-** 3:00 p.m.

Respectfully submitted,

William J. DeVore
Zoning Administrator

