

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, November 5, 2014, at 1:30 p.m., in the County Commissioners Meeting Room. Members and guests in attendance at the meeting included:

Troy Ellington	Bill Atkinson	Deborah Carpenter-staff
Rick Schiff	David Cotton	William DeVore-staff
Tim Schwinabart	Paul Durham	Chad Fike-staff
Jeff Messenger	Morgan France	

1. Call to Order - by Chairman Ellington at 1:45 pm.
2. The October minutes were unanimously approved, as corrected, by a vote of 4 to 0.
3. Report of Officers – None
4. Unfinished Business – None
5. New Business –

A. Miscellaneous

1. Deep Creek Watershed Zoning Appeals Cases-

- a. **VR-728 –Continued-** an application submitted by Joseph and Barbara Moran for a Variance to allow the construction of an accessory garage that would come to within 15.0 feet of the front property line. The property is located on a vacant lot, opposite 661 Hazelhurst Road. The lot for the proposed garage can be found on tax map 67, parcel 170 and is zoned Lake Residential 1 (LR1). The Commission recommends that the Board of Appeals give consideration to the comments from the residents in the neighborhood.
- b. **VR-729-** an application submitted by Ski Harbor Condominium, Inc. for a Variance to allow the construction of a deck for a townhouse that would come within 1.0 feet of a rear property line, instead of the required 5 feet. The property is located on Ski Harbor Drive in the Ski Harbor Condominium, tax map 42,

parcel 364, (building 2) units 5 through 7, and is zoned Town Center (TC). The Commission offered no comments on the application.

- c. **VR-730-** an application submitted by Ski Harbor Condominium, Inc. for a Variance to allow the construction of a deck for a townhouse that would come within 1.0 feet of a rear property line, instead of the required 5 feet. The property is located on Ski Harbor Drive in the Ski Harbor Condominium, tax map 42, parcel 364, (building 3) unit 18, and is zoned Town Center (TC). The Commission offered no comments on the application.

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

- a. **Wisp Resort/Villages of the Wisp.** Karen Myers presented a request to convey a small area of common space from the Wisp Resort Master Association, Inc. to the Deep Creek Highlands Property Owners Association Inc. Mrs. Myers explained that steps, thought to be located on the common area of the Deep Creek Highlands Association, are actually located on the Villages of the Wisp PRD. The steps, used for access to the lake, are in disrepair and need to be replaced. Deep Creek Highlands Association is willing to repair and maintain the steps, but believe that they must take ownership of the property first. The use of the stairway is restricted to owners and guests within the Highlands community.

Mrs. Myers is asking for Planning Commission approval of a corrective deed to correct this error that occurred in 2008, involving 0.49 acres. There is no proposed change to the use of the land and the common area for the Wisp Resort Master Association, Inc. The overall open space area will be reduced by 0.49 acres. The PRD common space requirement would still exceed the required open space minimum. The Commission granted approval of the corrective deed by a unanimous vote of 4 to 0.

- 5. Waiver Requests – Sue McKenzie-** On behalf of client Sue McKenzie, Robert Stark of the Thrasher Group requested a waiver to allow the creation of a lot that contains less than the Agricultural Resource minimum lot size of three acres. The waiver is required to create a lot on the McKenzie property that is designated tax map 27, parcel 3, located at 14 Chestnut Ridge Road. The owners request to sell the home and the 1.16 acres and keep the rest of the area to be used for farming purposes. The Commission granted approval of the waiver by a unanimous vote of 4 to 0.

B. Discussion Item – Request for a zoning amendment regarding shale gas drilling-

Deborah Carpenter, Assistant Director of Planning and Land Management, explained that the Deep Creek Property Owners Association has submitted a request to the Garrett County Commissioners to prohibit vertical drilling within the area of the Deep Creek Watershed. There has been no formal request made to the Planning Commission as of this date. Mrs. Carpenter suggests that it may be best to hold any proposed formal change to the Ordinance until the review of the Comprehensive Plan takes place, citing legal precedent concerning major changes to a zoning ordinance. The Assistant Director notes that *Fasano vs. Board of County Commissioners of Washington County (1973)* placed heavy weight on comprehensive plans as a justification for zoning amendments. The more drastic the change, the greater the burden of showing that the amendment would be in conformance with the comprehensive plan. Future cases upheld that sentiment. Mrs. Carpenter notes that the Garrett County Comprehensive Plan on page 10-1, Section 10.0 states that the county's mineral resource goal is to: "promote responsible surface and underground mining of Garrett County's resources in compliance with strict standards for preventing environmental pollution..." Mrs. Carpenter noted that mining and other forms of mineral extraction are currently permitted in the Ordinance. Mining is permitted by Special Exception and drilling is permitted with conditions which include a 2,000 foot setback from the high water elevation of the lake. Mrs. Carpenter believes that the questions to be answered are whether the proposed amendment conforms to these goals and whether there is justification to treat one extractive industry differently than the others.

Mrs. Carpenter believes that the best time to re-evaluate this subject would be during the comprehensive planning cycle, as it affords the best process for public participation and for a holistic review of the topic of extractive industries. Also there may not be critical urgency at this time to address this issue by amending the Ordinance, since the State is still working on this topic and much has yet to be determined regarding Maryland regulations. The State has a list of recommendations that may or may not be enacted into the regulations. If these recommendations are passed, it is not known how the regulations will affect the issuance of drilling permits and how long it will take the appropriate state agencies to be ready to logistically handle the processing of permit applications.

Options for the Planning Commission at this time are to ignore the request, to take up the issue, urge the Commissioners one way or the other, or to delay any decision.

Some members of the Planning Commission would like to have additional information while others believe there may be enough information to move on the request, if it reaches the Commission. Other members believe that drilling in the watershed could degrade property values enough to exceed any revenue gained and otherwise greatly impact the county. Some feel that the county should prepare for gas drilling that could represent widespread industrialization and the amendment is a reasonable compromise. Some members believe the Commission should move forward after the State regulatory issues are hammered out. Another Commission member pointed out that some important

concerns have not been addressed by the State, such as extended provisions for emergency services and added road protection.

Robert Hoffmann and Morgan France, representing the Deep Creek Property Owners Association (POA), helped draft the requested amendment and appeared before the Commission. Mr. Hoffmann stated that the POA position statement previously submitted clearly defines their position. Mr. Hoffmann also noted that John Quilty is the chairman of the Shale Gas Advisory Board and a member of the POA. Mr. Hoffmann believes the proposal has been “tamped down” and as factual as possible. The recommendation is limited just to the Deep Creek Watershed. The two main concerns are: impacts on the water quality of Deep Creek Lake and impacts to groundwater. The POA feels that it is important to bring forth their position on this issue at this time.

Mr. France believes that the purpose of the Comprehensive Plan is to protect the watershed, its residents and the environment. This new technology includes five-acre drilling pads, large amounts of water and other hazards to the environment. Mr. France believes this new technology has evolved since the last Comprehensive Plan and the new methods of extraction must now be considered. He notes that zoning by its nature takes some rights, in order to protect other rights.

Paul Durham, representing the Garrett County Board of Realtors, believes that action should be taken on this item in order to better plan to allow for gas companies to know what property is available to lease. Mr. Durham believes that action on this item has benefits for all parties and action could be taken independent of any State action. Mr. Durham said that the Board of Realtors has been focusing on several studies that have been published, concerning the adverse effects of “fracking”. Some studies have shown that drill sites could negatively affect property values within one to 1.5 kilometers from the site . He believes that by limiting vertical drilling outside of the watershed that this would protect 60% of the counties tax base. The impact of accessory infrastructure is also a concern; including tanks, pressure stations, separators and other equipment. Mr. Durham believes that minimum setback requirements should also be considered for this equipment.

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

D. Adjournment- 2:45 p.m.

Respectfully submitted,

William J. DeVore
Zoning Administrator

