

**Town of Bethany Beach
Planning Commission Meeting
September 17, 2016**

The Bethany Beach Planning Commission held a meeting on Saturday, September 17, 2016 at 9:00 a.m. in the Town Meeting Room.

Present: Lew Killmer, Chairman, who presided: Diane Fogash, John Gaughan, Mike Boswell, Fulton Loppatto and Susan Frederick (Building Inspector)

Excused Members: Larry Fishel

Also present: Molly Daisey, Assistant Town Clerk and interested members of the public.

Mr. Killmer called the meeting to order at 9:01 a.m.

Approval of the Agenda

Ms. Fogash made a motion to approve the agenda. Seconded by Mr. Gaughan, the motion was unanimously approved.

Discussion/Approval of the Planning Commission Minutes of August 20, 2016

Mr. Gaughan made a motion to approve the minutes as amended. The motion was seconded by Mr. Loppatto and unanimously approved.

Announcements/Comments/Updates

There has not been a NRDRM Meeting since the Planning Commission met last. The next NRDRM meeting is scheduled for next month to review a sign for the Candy Kitchen.

Mr. Gaughan addressed the recent nor'easter (Hermine). He felt that Bethany Beach was fortunate to not have the beach erosion like the Town has encountered in previous storms. Mr. Killmer agreed and the only issue we faced were several high tides.

Public Comment/Questions for the Planning Commission

New Business:

- A. The Planning Commission will consider the Application for a Land Combining filed by Ms. Mitzi Rhyne for a property identified as Lot 12, Block 27, at 515 Hudson Avenue to combined with a portion of Lot 3 (part of Lot 14 previously), Block 27 at 513 Hudson Avenue, in the R-1 Zoning District.**

Mr. Gaughan asked to make an opening statement regarding this application. As a member of this committee he is often asked questions about why there are so many regulations (ie- postings things in advance, publishing ad in local newspaper, sending notices out to residents). To get a better visual of this, Mr. Gaughan drove to Hudson Ave. He would like to give some history on this property. In January 2009 a LLC Holding Company owned the property at 513 Hudson Avenue, this property abuts the property of the applicant, 515 Hudson Ave. The LLC company applied and was given a building permit to build on the vacant lot, 513 Hudson Ave.

Also, around that time, they entered into an agreement with the applicant to sell her a portion of their lot. The portion sold was the front yard on Hudson Avenue. The area covered was approximately 610 square feet. Ms. Rhyne then conveyed back to the sellers an easement across this portion for access to the front door and parking. Mr. Gaughan found this odd. By selling that piece of property, it reduced the size of the lot at 513 Hudson Ave, but it was still greater than 5,000 square feet. This neighborhood is zoned R-1 and requires a minimum of 5,000 square feet. Mr. Gaughan then realized the existing property at 515 Hudson Avenue has about 9,400 square feet. By buying this 610 square feet, it made the property just over 10,000 square feet, which would make it eligible to be partitioned into two lots. In April of 2009 a hand sketched survey was provided to then Building Inspector, John Eckrich, showing the property at 515 Hudson Ave. as with the area from Lot 3 and further partitioned into 2 lots. Mr. Eckrich signed off on the plat and it was subsequently recorded at Sussex County Recorder of deeds. He is unsure of what the deed at 513 reflects, but it should show the easement. In September 2009 these actions were discovered by the Town and it was further discovered that the property owners had not applied or been granted any approvals by the Planning Commission for either the combining of any lot or portion, or any partitioning of lots, as required by code. The owner at 515 Hudson Ave would like to clean things up. Both properties are zoned R-1 Residential, both lots are currently improved with single family dwellings, lot 3 (513 Hudson Ave) consist of approximately 5,159 square feet and has an easement on Hudson Ave but also has 43 feet of frontage on Second Street. All setbacks are met. Lot 12 consists of 10,001 square feet and contains an existing older home. It also has frontage on both Hudson Avenue and Second Street. The current dwelling meets the side setbacks and the front setbacks (if taken from Second Street). The covered front entry on Hudson encroaches into the rear yard approximately 0.7 feet (+/-8 1/5"). Had the applicant gone thru the required procedures and steps, he is unsure that we would be here today.

Mr. Killmer advised that all notice requirements were met. Mr. Killmer asked the difference between a Class B survey and a Class A survey. Mr. Gaughan responded that he believes a Class B survey is having someone mark the various property points. A Class A survey is when it is signed by an engineer.

Ms. Frederick read the following into the record:

This is a combining request for property at block 27, lot 12 and a portion of block 27, lot 3 (part of lot 14 previously) 515 Hudson Ave (adding a portion from 513, Bethany Beach, De.

Mitzi Rhyne, owner of block 27, lot 12, known as 515 Hudson Ave is requesting approval of a combining of her lot and approximately 610 square feet of the adjoining lot at block 27, lot 3, known as 513 Hudson Ave.

History:

In January of 2009, Craftsman Land Holdings LLC, owners of 513 Hudson Ave applied for and were granted a building permit for construction of a new dwelling on lot 3, block 27. Also around that time, they entered into an agreement with Ms. Rhyne to sell her a portion of their lot. The portion sold was the front yard on Hudson Ave. The area conveyed was approximately 610 square feet. Ms. Rhyne then conveyed back to the sellers an easement across this portion for access to the front door and parking. By this action, 513 Hudson Ave now contained 5,159 square feet (still exceeding the minimum size required for a lot in an R-1 District of 5,000 square feet) and 515 Hudson now contained 10,001 square feet.

In April of 2009, a sketch survey was submitted to then building inspector, John Eckrich, showing the property at 515 Hudson as with the area from Lot 3 and further portioned into 2 lots. Mr. Eckrich signed off on the plat and it was subsequently recorded at Sussex County Recorder of deeds.

In September of 2009, these actions were discovered by the Town and it was further discovered that the property owners had not applied to or been granted any approvals by the Planning Commission for either the combining of any lot or portion thereof, or any portioning of lots required by the code. Both parties were notified of the omission. Section 410-7 (a) (Relocation of property lines) states that applicants intending to relocate property lines shall file an application to the Planning Commission. Section 410-19 (Combining) states that subdividers intending to combine two or more or portions of two or more lots of record into one or more lots of record shall file an application to the Planning Commission.

Mr. Gaughan asked Ms. Frederick, from what we know, they did not ask for a hearing regarding this. Ms. Frederick responded that in September 2009 when this was discovered, letters were sent to all property owners and it was discussed this with one of the applicant's attorneys. At that time the Town did not know the lots had been subdivided, but was aware of the combining. The only reason this is coming up now is because when this property is sold, the Town will be asked to sign off on this recorded deed/plat. Ms. Frederick cannot sign off on this because it was not properly done. This issue was discussed with the Town's attorney and it was determined because it meets all the requirements of the code (proper lot size and street frontage) the attorney felt it could not be denied. It was left alone until something was done to the property, i.e., sold or torn down. Mr. Loppato asked if 513 Hudson Ave was signed off, Ms. Frederick responded that yes, it was signed off on, it had 5,000 square feet and frontage on 2nd street. He clarified, that no one signed off on the 610 square foot piece that was sold. Mr. Loppato confirmed that we are here today doing 515 Hudson Ave only, however he feels the Commission should be doing 513 Hudson Ave as well today.

Mr. Killmer asked the applicant, Ms. Mitzi Rhyne, to come to the podium. She began by saying that she filled out an application with the Town to incorporate the 600 square feet. Her lot is almost a perfect rectangle, she had several architects and builders look at her property to see if houses could be built. Either one home or two homes, her father was ill at the time and she had planned on moving the one home that divided the lots to the back of the property and build a home in the front for herself. She was assured that this 600 square foot piece would not affect her building lot. Incorporating this small piece of land would allow her to build a small home in the front and have the older home in the back for her parents. Unfortunately, her father passed away and she no longer was going to divide the property. However, she had already filled out an application and the Building Inspector at the time told her that small piece of land would not be a problem, he approved the application. She did have a survey done. After purchasing the land and having the combining signed off on by the Town, she was not aware of all the legalities involved with this process. She was under the impression, that once the survey was completed, the Town signed off on it, it was to be sent to the County, who then signed off on it as well. She received approvals letters from the county and began paying taxes on this property. In 2009 she did receive a letter from Ms. Frederick stating that something had not been properly done. The step she missed was bringing this to the Planning Commission. Her assumption was that the then building inspector would have informed her of this step. When she began paying taxes on this in 2009, she assumed that the land had been combined, but not divided. She knew this because her home extends on both lots. She recently had her property listed for sale, with the intention that everything was proper. The survey company led her to believe that shooting the

division line while there so when she did go to sell, she could avoid having another survey done. When this survey went to the County and they saw the divided lots, that's when they began charging her for two lots, front lot and back lot. She had no intention to go about this the way it has happened. She has lived here for 25 years and loves Bethany Beach and the people here. She would now like to go thru all the steps so that when she does go to sell the home the new owners will not have any problems moving forward.

Mr. Gahuagn asked Ms. Rhyne if she had any disagreements with how he presented the history of this property and when she was marketing her property, how was it described. Ms. Rhyne replied that she was not trying to skip any steps. When marketing the property, it was described as a 10,000 square foot lot that could be divided, but is not at this point. Ms. Fogash asked for clarification that she is paying taxes on it as if it were two separate lots, which Ms. Rhyne has been for 7 years. Moving forward, Mr. Gaughan's concern is in her application, it states that she would like to remove the partition line, she is not seeking to have it divided, when she sells this to someone, she can say that it is 10,000 square feet, because it is. If the new owner decides that because this is in an area where 10,000 square feet, they may want to subdivide it. They would be liable to come back to the Commission and ask for approval to partition, which on paper it would work. However, practicality, if you are there at the property, looking at it, it doesn't work because you cannot build on the 600 square feet. Ms. Rhyne is aware of that, and while meeting with architects and builders, she had them draw up plans for houses that would work with both lots. Ms. Frederick referenced the survey that selected the setbacks, this is a footprint of 1400 square feet, with all correct setbacks. Ms. Frederick's research when this was discovered and discussions with the Town's attorney, while she does not prefer odd shaped lots, this does have two buildable lots meeting all the criteria.

Mr. Gaughan asked Ms. Rhyne if she'd given any thought to offer the 600 square feet for sale back to 513 Hudson Ave. If she were to sell this back to the owners at 513 Hudson, they could remove the easement and unencumber their plat of land, preventing any future buyer of falling in the trap of thinking it was be easily divided into two lots, leaving the one lot at 9,400 square feet. Plus avoiding issues later on if it was sold back to 513 Hudson Ave. Mr. Rhyne replied that this has crossed her mind, many times, the last few months. However, she doesn't believe they would be interested in purchasing the 600 square feet.

Ms. Fogash asked for clarification on the easement, does it goes away at any time or is it permanent. Ms. Frederick answered that no, it does not go away, it goes with the land.

Mr. Gaughan asked Ms. Frederick if she received any questions/comments from the notices that were sent out/posted. Ms. Frederick replied that no, not for this application.

Ms. Lauren Alberti, Ms. Rhyne's realtor on this property, was recognized. There were seven people involved in Ms. Rhyne selling/purchasing/buying this property, and everyone involved felt that this small 600 square foot piece was part of the lot. The second comment is the people next door have no problem with the easement, no one questioned it. She would like this issue rectified, this should have been a simple process, which it has not been.

Ms. Frederick replied that there have been many people involved in this recently, however, when this was discovered in 2009, everyone was put on notice that this would have to be rectified at some point.

Mr. Loppatto made a motion to approve the combining request filed by Ms. Mitzi Rhyne, for property identified as Lot 12, Block 27, at 515 Hudson Avenue to combined with a portion of Lot

3 (part of Lot 14 previously), Block 27 at 513 Hudson Avenue, in the R-1 Zoning District. Mr. Boswell seconded the motion and it was unanimously approved.

B. Review and possibly approve two minor revisions to the proposed Residential Bulk Density Ordinance.

There is some confusion and concern in the purpose section where colors, textures and materials are mentioned but there is no mention of color, textures and materials anywhere else in the ordinance. Therefore, Mr. Killmer is suggesting that the three terms be removed from §425-26: Legislative, Findings, and Statement of Purpose. He does not want current as well as any future property owners to get the idea that the Town wants to dictate the color of a residential structure as well as what materials they must use to construct or remodel a home.

Mr. Gaughan made a motion to remove reference to color, texture and materials from §425-26: Legislative, Findings, and Statement of Purpose. Ms. Fogash seconded the motion and it was unanimously approved.

The second revision is regarding some confusion as what counts as a story/floor and what doesn't count especially for structures on pilings. Currently it reads, "A story is a space in a residential building between two adjacent floor levels or between a floor and the roof." Mr. Killmer would like to add the following, "For houses constructed on pilings that space that is used primarily for parking cars and storage is not considered to be the first floor of the structure." Mr. Boswell questioned why it was limited to pilings, not cinder blocks as well. Mr. Killmer suggested that 'elevated' would be used instead of pilings.

Mr. Gaughan made a motion to approve the addition of, "For houses elevated so that the space is used primarily for parking cars and storage is not considered to be the first floor of the structure." Ms. Fogash seconded the motion and it was unanimously approved.

Mr. Tracy Mulligan, 98A Central Blvd, was recognized. He has a comment on the motion, when it was stated that that first floor space is primarily used for vehicle parking and storage, it is also common to find an entrance to the home, HVAC and hot water heaters.

Ms. Jane Richards, 315 Hollywood Street, was recognized. She began by thanking the Commission for their hard work on the bulk density, she feels that it has great legislative intent in terms of harmonious character with the neighborhood. She has been researching the Sussex County maps, looking at the sizes and configurations between R1 and R2. She has driven thru R1 zones and taken photos. She recommends that the Commission, if they have not done so, to drive thru the area. She handed out photos to the Commission.

Tracy Mulligan, 98A Central Blvd was recognized. He stated that he would like to make a comment regarding R-1 and R-2 rezoning. Mr. Killmer advised Mr. Mulligan that the rezoning of R-1 and R-2 has been tabled. He may make his comment the end of the meeting.

Mr. Killmer would like to add the below executive summary to the PowerPoint presentation:

Synopsis

- *The proposed legislation applies only to new construction of residential structures and major remodeling projects only in the R-1 and R-1B Zoning Districts*
- *If approved, there would be a one-year window before the proposed legislation goes into*

effect.

- *The proposed Residential Bulk Density legislation is an attempt to modify only the maximum lot coverage requirement while allowing tradeoffs for setbacks but not changing the maximum building heights of residential structures.*
- *Through of use of tradeoffs and incentives the proposed ordinance strives to create a balance between the rights of property owners to construct a residential structure as they so desire but at the same time respecting the compatibility of that new structure with the existing homes in a particular neighborhood based on the concepts of size, density, bulk and scale.*
- *Encourage the maximum height of future residential structures to be two and a half stories again through incentives and tradeoffs.*

Mr. Gaughan suggested that it may be helpful if there is a map depicting R-1 and R-1B Zoning Districts so people who are not familiar can see a picture of it. Mr. Killmer agreed and asked Ms. Frederick to provide a Zoning Map for Monday's presentation.

Mr. Gaughan made a motion to approve the Synopsis as written. Mr. Boswell seconded and it was unanimously approved.

Mr. Tracy Mulligan, 98A Central Blvd was recognized. He supports this synopsis. He would like to publicly thank Ms. Frederick's responses to his questions. R-1 and R-2 rezoning is not a problem right now. He feels it is best to do things like this before they become a problem. R-1 and R-2 should be voted on together. He asked for clarification on the one-year window about the above synopsis.

C. Begin the discussion and review an agenda with the members of the Planning Commission for the State of Delaware's requirement to perform a 5-year update to the Town's 2012 Comprehensive Plan

Beginning next month, a review as required by the State of Delaware, to update the Town's 2012 Comprehensive Plan. This is not as extensive as starting from scratch, Mr. Killmer and Ms. Frederick have been updating this each year, also required by the State. He asked the Commission to make themselves familiar with the plan. One thing that will be done is closing out things that have been completed and add in things the Town would like to accomplish. Moving forward, there will be one item placed on the Agenda each month. Mr. Loppatto asked when the deadline is to have this completed. Mr. Killmer is hoping to have this completed by this time next year.

Mr. Boswell asked about the current park survey that the Town has asked residents to complete. He feels the cost should be included with the questions. Ms. Fogash agreed with Mr. Boswell's comment. Mr. Killmer replied that the park is being done in phases, as to not impact other projects in Town. The purpose of the survey is to get public input.

Ms. Jane Richards, 315 Hollywood Street, was recognized. She has read the Comprehensive Plan and her concern is the mention of the development of Bethany Beach and the Town remaining small and the challenging growing number of occupancy of residential rentals.

Adjourn:

Mr. Gaughan made a motion to adjourn the meeting. Mr. Boswell seconded the motion and it was unanimously approved. The meeting was adjourned at 10:56 a.m.

The next Planning Commission meeting is Saturday, October 22, 2016 at 9:00 a.m.

Respectfully submitted:

Molly Daisey
Assistant Town Clerk