

**Town of Bethany Beach  
Planning Commission Meeting Minutes  
April 21, 2012**

The Bethany Beach Planning Commission held a meeting on Saturday, April 21, 2012 at 9:00 a.m. in the Bethany Beach Town Hall, 214 Garfield Parkway, Bethany Beach, DE 19930.

The following members were present: Lew Killmer, who presided; Mike Boswell; Faith Denault; John Gaughan; Fulton Loppatto; and Chuck Peterson.

Also present: Susan Frederick, Building Inspector; Councilpersons, Jerry Dorfman; Joseph Healy, and Margaret Young; Lindsey Good, Administrative Secretary; and interested members of the public.

Mr. Killmer called the meeting to order at 9:00 a.m.

*\* Note: Mr. Killmer stated that the order of the agenda will be amended so that Item (A) under New Business will be discussed first.*

**NEW BUSINESS**

*The Planning Commission of the Town of Bethany Beach will consider the Application for a Sketch Plan Review filed by Stanley J. and Dolores F. Walcek for property identified as Lots 5,8,9 and 10, Block 25, at Garfield Parkway, in the R-1 Zoning District*

Mr. Killmer reviewed the rules and regulations of a Sketch Plan Review. He explained that a Sketch Plan Review is the first step of the approval process, and a vote does not take place. Each review has a list of requirements that needs to be met before the proposed Planned Residential Development (PRD) is permitted to move forward. The purpose of this meeting is to conduct an informal sketch plan review of the application. The Town Code required no separate posting of the property for this public review. The Preliminary Plan Review meeting is a more formal review and requires the property to be posted as well as the notification by first class mail of all property owners within 200 feet of the proposed major subdivision and/or PRD in addition to the normal notification requirements. For this particular application, however, a public notice was advertised in the Coastal Point newspaper, posted on the property, posted at the five (5) places in the Town (PNC Bank, Town Hall, Bandstand, Post Office, and South Coastal Library), and posted on the Town's website on March 23, 2012 as well mailing all affected property owners within 200 feet of the proposed PRD for the reason of it being a possible controversial project.

Ms. Frederick provided the following information:

This is a request for a Planned Residential Development (PRD) sketch plan review for property located at Lots 5,8,9 and 10, Block 26, Garfield Parkway submitted by Stanley Walcek. The applicant has submitted a set of plans that include a site plan that meets the requirements of Section 410-22, Subsection (B), road plan and details, water plan and details, sewer plan and details, stormwater management plan, erosion and settlement control plan and details.

The property consists of approximately twelve and a half (12.5) acres and has approximately three hundred and ten (310) feet of frontage on Garfield Parkway (DE Route 26). The parcel is located in the flood zone AE with elevation of five (5)' and six (6)' and contains seven and eight tenths (7.8) acres of federal wetlands and four and four tenths (4.4) acres of state wetlands. The property is zoned R-1 Residential. Based upon this information, the parcel meets the basic requirements by definition for a PRD.

The sketch plan shows that the PRD will be limited in the area fronting Garfield Parkway, approximately three and a half (3.5) acres (+/- 151,421 square feet) of the site and will be developed as a PRD with six (6) buildings with four (4) dwelling units per building, for a total of twenty-four (24) units. Each building will have a footprint of approximately fifty (50) feet x hundred (100) feet. All of this area is within designated federal wetlands. The applicant is proposing a new private way for access with twenty-two (22) foot of vehicular access, concrete curbs and five (5) foot wide sidewalks on each side.

Appendix 3, Table of Dimensional Requirements states that the minimum lot area required per unit for multi-dwelling unit buildings in an R-1 District is five thousand (5,000) square feet per unit and forty (40) foot minimum street frontage. For twenty four (24) units, the minimum lot area for all of units proposed is 120,000 square feet.

Section 425-84 (Planned Residential Development) states that the net density shall be computed after subtracting land allocated to street rights-of-way and all federal and/or state designated wetlands, except where filling is permitted. The proposed plan shows access to all units by the twenty-two (22) foot wide private way. It is my understanding that the private way is used to provide the required street frontage for each unit and that its paved area is to be subtracted from the total area to determine the maximum density of the parcel. The actual area of the wetlands that will be permitted to be filled and the actual area of the paved area are not identified.

The required setbacks are twenty (20) foot minimum front yard, seven (7) foot minimum side yards and a fifteen (15) foot minimum rear yard. The setbacks are not identified but the buildings look like they will easily meet these criteria.

Mr. Killmer asked Ms. Frederick what other agencies are currently reviewing the plans for this application.

Ms. Frederick explained that the Army Corp Of Engineers is currently reviewing the application and it has not yet been approved.

Mr. Killmer questioned if the Planning Commission can approve the application without first being approved by the Army Corps of Engineers.

Ms. Frederick stated that the Army Corps of Engineers must first approve the application and determine the area to be converted to non-federal wetlands before the Planning Commission is able to vote on it.

Mr. Stanley Walcek was asked to come to the podium at this time.

Mr. Walcek reported the following information on the application he has submitted:

The development he is planning is located on federal wetlands, therefore it is required that an Individual Permit be obtained. There are many regulations that need to be met in order to receive an Individual Permit. Applicants must acquire a Water Quality Certification that is issued by the State of Delaware. He has applied through the State government and Federal government for an Individual Permit and assured that the plans submitted are consistent with the Bethany Beach Town Code. The federal permit cannot be obtained until the Water Quality Certification is complete. In addition, it is mandatory that a Mitigation Plan be submitted with the required permit. The Mitigation Plan that has already been submitted to the Corps of Engineers is a proposal to enhance the existing wetlands and minimize flooding issues in nearby areas, including Gibson Avenue. It is his understanding that some of the flooding that occurs in these areas originates from the property of the application.

He has owned this property since 1970, and has been consistent with all of the regulations that are enforced, including the Clean Water Act that was passed in 1972. The State became involved during the year of 1976 and he acknowledged that he must abide by the current regulations.

Mr. Killmer asked that Mr. Walcek further explain what the proposal specifically entails.

Mr. Walcek explained that it is an attempt to implement a development while minimizing the impacts on the wetlands to the greatest extent possible. If it were being proposed that single-family home lots be built on this property, it would not comply with the Code since the property is in a flood zone area. Therefore, it was decided to concentrate on developing the least possible number of buildings. The six (6) buildings being proposed each consist of four (4) dwelling units per unit, and the layout would be one (1) story units stacked above one another with an elevator located in the interior of the building. At this stage of the application, he feels confident that if it is approved these units will fulfill an essential developmental need for the Town and would be consistent with the Town Code.

Mr. Killmer questioned Mr. Walcek if the purpose of this proposal is to benefit any particular demographic age group of the Town.

Mr. Walcek addressed that the information on the proposal has been provided to the public and there appears to be a positive feedback. He explained that the proposed plan includes downsizing while upgrading, with amenities such as an elevator.

Each unit will be approximately one thousand seven hundred (1,700) square feet of heated area, and will include a garage. The units would welcome elder citizens, but also not be limited to any particular age group.

Mr. Killmer asked what the market range would be for each unit.

Mr. Walcek stated that the cost of the units would be determined once the expense of implementing the development is known.

Mr. Killmer questioned if the proposed development will include advantages for owners, such as being maintenance free.

Mr. Walcek stated that in respect to preservation of the wetlands and in order to respond to surface water management and storm water management, the proposal would utilize the spaces between the buildings and the space behind the buildings as wetland preservation to serve as the main function of filtering storm water. He noted that the necessary officials of the State, the Sussex Conservation District and the Fire Marshall have reviewed the proposal and he is under the impression that they feel this would be an appropriate course of action to help manage the flooding issues. The area underneath the buildings will be built up, which is why cost of preparing the site is unknown at this time.

Mr. Killmer opened the discussion to any questions the Planning Commissioners may have at this time.

Mr. Loppatto asked Mr. Walcek for clarification on his proposal to fill this property with buildings, but also preserve the wetlands. Mr. Walcek previously stated that his plan includes preserving the area in between and behind the buildings as wetlands, but Mr. Loppatto expressed that he does not understand where the wetland boundaries would be.

Mr. Walcek advised that the actual pad of the building and the immediate surrounding streets and sidewalks will be filled, but all other areas will be maintained as wetlands. His calculations indicate that approximately one and two tenth (1.2) acres are going to be filled, and the balance of the property will remain wetlands. There would be disturbed areas while the development is being built, however, these disturbed areas can be reconstituted as wetlands. For example, the trees in between the building would need to be removed but they can be replaced with plantings to provide a pleasant curb appeal.

Mr. Loppatto emphasized that as Ms. Frederick previously stated, in order for an application to be approved as a Planned Residential Development (PRD) there is a required amount of space that must be available to include all of the units, which will result in less wetlands for the application submitted. An application that is submitted as a PRD is required to have a designated amount of square footage around each unit in the development, but the wetlands cannot be included as a component of that calculation.

Mr. Walcek stated that based on the verbiage in the Bethany Beach Zoning Code, he finds it necessary that the Planning Commission approve this proposal. Once the Army Corps of Engineers issues a permit for the area he has applied for, it is no longer designated wetlands so the issue that Mr. Loppatto addressed would be resolved.

Ms. Denault questioned Mr. Walcek about where he is intending to park vehicles in the proposed development.

Mr. Walcek explained that each unit would include a garage and a twenty-foot (20) wide and deep driveway, making it possible to park three (3) cars off of the street.

Mr. Gaughan expressed his appreciation to Mr. Walcek for attending this public hearing and taking the time to answer questions and concerns. He addressed his concern with the history of the property dating back to the 1970's, and referred to the court case of Walcek vs. U.S. on September 11, 2002 that involved preserving the wetlands. He asked Mr. Walcek if the application being submitted is located on the same property as the previous application that was denied.

Mr. Walcek replied that it is the same property for the application that is being proposed.

Mr. Gaughan asked Mr. Walcek to further explain the decision of the U.S. Court of Appeals.

Mr. Walcek explained that since he was being required to preserve the wetlands, he filed a suit with the U.S. Court of Appeals. As a result, they provided him with two and two tenth (2:2) acres of land with twenty-eight (28) single family lots that could be utilized to be filled. Mr. Walcek had one and two tenths 1.2 acres of uplands, and that area is where Bethany Crossings is located. He explained that the Army Corps of Engineers is reviewing this application that he has submitted like it is a brand new application. He added that he would be utilizing less than two (2) acres of the two and two tenth (2.2) acres that was provided to him by the Army Corps of Engineers.

Mr. Gaughan asked Mr. Walcek what has changed since the first time he submitted an application compared to the current application.

Mr. Walcek said that at the time of his first proposal, there were certain circumstances that were involved. First, the Army Corps of Engineers gave him two and two tenth (2.2) acres, that had eighteen (18) lots extending from Central Boulevard. He acknowledged that he attempted to donate this section of Central Boulevard to the Town of Bethany Beach, but it was denied. Secondly, there were some internal conditions that resulted in selling the upland portion of his property to Mr. Mark Dieste.

Mr. Gaughan stated that he appreciates Mr. Walcek's condition, but it is not a decision for the Planning Commission to make. He pointed out that the proposal is clearly within boundaries of wetland designation and it has been previously litigated at least once.

Mr. Peterson asked Mr. Walcek for further clarification regarding the building permit that was granted in 1996. He was permitted to develop on two and two tenth (2.2) acres and it was required that an additional two and two tenth (2.2) acres be restored. It was mandated that as a condition of Mr. Walcek obtaining these acres, the other eleven (11) acres could not be developed. He asked what circumstances have changed since his previous proposal.

Mr. Walcek advised that he has not utilized the two and two tenth (2.2) acres of land that were provided to him for the purpose of filling, which is the reason the Army Corps of Engineers is reviewing this proposal as an entirely new application.

Mr. Loppatto asked Mr. Walcek to further explain what the four and four tenths (4.4) acres of mitigation is referring to.

Mr. Walcek again noted that this is being reviewed as a new application, and the four and four tenth (4.4) acres were a part of the mitigation. If wetlands are destroyed, it is required that wetlands are built at another location.

Mr. Loppatto asked where Mr. Walcek's mitigation took place.

Mr. Walcek explained that he is proposing to have onsite mitigation, which would utilize the four and four tenth (4.4) acres. The proposed plan would enhance the property and be beneficial for many people, therefore, should be highly considered. If this application were approved the current significant issue of flooding would also be resolved.

Mr. Loppatto stated that he realized this is only the Sketch Plan Review, the beginning phase of the approval process, but asked that Mr. Walcek to provide more detailed color coding and explanations in the plans if it progresses to the Preliminary Plan Review stage.

Mr. Killmer noted that these specific details are not required at a Sketch Plan Review and the measurements were determined by the State of Delaware.

Mr. Killmer opened the discussion to public comment and questions at this time.

Mr. Brian Nester, property owner, was asked to come to the podium. He opposes this application because he does not agree with the idea of developing on designated wetlands, especially at a beach resort community. He added that the complete application has not yet even been submitted to the Army Corps of Engineers.

Mr. Walcek stated that it is a federal law that if a structure is built on wetlands, it can be required that it be removed. He emphasized that a permit application has been submitted to the Army Corps of Engineers and it is currently in the process of clarification.

Mr. Nester suggested that that since there has been discussion that this proposal would benefit elderly individuals, there should be restrictions in place, such as designate it being a 55+ community. However, he opposes this proposal overall because of the decline in preservation of natural resources.

Mr. Bruce Frye, property owner, was asked to come to the podium. He opposes Mr. Walcek's proposal for the following reasons: 1.) The Bethany Beach Comprehensive Plan states that the Town's highest priority is to maintain green space. 2.) In regards to flooding issues, wetlands reduce flooding and filter the water. The Town has committed \$50,000 on a flooding study, so the results should be obtained before any further action is taken. 3.) Loss of habitat. 4.) Traffic on Route 26 would increase with twenty-four (24) additional units in place.

Ms. Lenore Spriggs, property owner, was asked to come to the podium. She opposes this application. She stated that she agrees with Mr. Frye's previous points. She is representing her community and they are very concerned about the habitat if this application is approved.

Ms. Jan Crooker, property owner, was asked to come to the podium. She opposes this application because she feels the wetlands should be preserved. She explained that her property has many issues with flooding that is a result of the development around her property. She also expressed a concern with parking if this application is approved.

Mr. Donald Danner, property owner, was asked to come to the podium. He stated that he purchased his property with full understanding that the wetlands would remain preserved for people to enjoy and never be built on. He believes that flooding will become worse if this land is filled in.

Ms. Eleanor Fesel, property owner, was asked to come to the podium. She opposes this application because she does not want existing wildlife in the wetlands to deteriorate. She also enjoys the current view of the wetlands from her property. She has spent over \$10,000 on flooding issues on her property and flooding will only become worse if this property is built on. She added that people enjoy coming to Bethany Beach for the way that it is now.

Ms. Norma Kropp, property owner, was asked to come to the podium. She expressed concern with an increase in traffic if this application is approved. She asked Mr. Walcek where the access point from the development to the road would be.

Mr. Walcek addressed that the access point will be on Route 26 and there will be a center lane for traffic turning right. He added that there is a process to go through in able to obtain the necessary permit and there is ample opportunity for public comment.

Ms. Barbara McNally, property owner, was asked to come to the podium. She opposes the proposed plan because she feels the wetlands should be preserved. She loves the Town the way it is.

Mr. Jack Walsh, property owner, was asked to come to the podium. He stressed concern with Mr. Walcek's desire for this application to be approved after the application has been denied various times in the past. He emphasized that the Planning Commission should not be repeating this process again, noting that the Army Corps of Engineers should approve all of the appropriate permits before the Planning Commission considers it.

Mr. Walcek stated that the permit application has already been submitted to the Army Corps of Engineers and it is pending, which is the reason why he applied for a Sketch Plan Review.

Mr. Gerald Hoefler, property owner, was asked to come to the podium. He questioned Mr. Walcek about what the proposed height of the buildings in the development would be.

Mr. Walcek responded that the proposed buildings are three (3) levels high, and would comply with the height requirements in the Bethany Beach Code.

Mr. Lawrence Cavaiola, property owner, was asked to come to the podium. He opposes this application. He questioned the requirement of four and four tenths (4.4) acres to be utilized for mitigation and whether it was accomplished.

Mr. Walcek explained that the mitigation was never perfected, and this is an entirely new application being submitted.

Hearing no further public comment or questions, Mr. Killmer called a recess of the meeting at 10:10 a.m.

The meeting rejoined at 10:15 a.m.

#### *Discussion/Approval of the Planning Commission Minutes of March 17, 2012*

Mr. Boswell made a motion to approve the minutes dated March 17, 2012. Seconded by Mr. Peterson, the motion was unanimously approved.

#### *Announcements/Comments/Updates*

##### **Non-Residential Design Review Update (Killmer)**

Mr. Killmer reported the following:

The Committee held a meeting on April 13, 2012. The Committee approved an application submitted by Tia Sexton, tenant of 14 N. Pennsylvania Avenue, for a modified exterior to the existing building and a new sign. Modifications to include new paint, lighting, stonework and retractable awning for property located at 14 N. Pennsylvania Avenue, Lot 23, Block 102 in the C-1 Commercial Zoning District, Bethany Beach, DE.

Ms. Denault added that the planned design of the sign and awning is very attractive.

Mr. Boswell asked what the time frame is of the design being completed.

Ms. Frederick stated that it should be completed in the near future.

**Comments/Updates Regarding the April Town Council Meeting (Killmer)**

Mr. Killmer gave the following report:

- Council approved the ordinance to amend Chapter 530 (Signs) if the Bethany Beach Code to exempt the Town from the Sign Ordinance in its entirety and to revise the definition of “a sign” was approved.
- Council voted to approve an ordinance to amend the Table of Dimensional Requirements to amend and correct footnote references for maximum lot coverage and minimum yard depth in the R-1A (Residential) district.
- Council approved the Town’s Investment Policy as amended.
- Council approved the Charter amendment regarding Chapter 15 (Alderman and Assistant Alderman) as recommended by the State of Delaware.
- The proposal to show movies on the beachfront in the Town of occasional summer evenings was approved by Council.

**Comments/ Q&A and Discussion for Planning Commission Members (All)**

Mr. Boswell questioned Mr. Killmer what the outcome was of the brainstorming session on affordable housing held on April 12<sup>th</sup>.

Mr. Killmer explained that the meeting took place at the Sussex County Administrative Center. In attendance were Brandy Bennett, Sussex County Housing Coordinator, Brian Hall of the State Planning Office, Carol Horton, Director of the Delaware State Housing Authority; and Brad Whaley, Assistant Director of the Sussex County Community Development and Housing Authority. Commissioners Mr. Mike Boswell and Mr. Fulton Loppatto were also in attendance. It was concluded that Bethany Beach and other coastal towns, are small compact communities with high property values, minimal undeveloped tracts of land, which would make the process of creating affordable housing even more challenging. The consensus of the group was to work with surrounding communities that are more inland that have a larger inventory of undeveloped land that is more affordable, and they are located within a short distance of coastal communities. The group also discussed the idea of gaining support for providing public transportation in Southern Sussex County, especially in coastal communities. They developed an action plan for Brian Hall of the Delaware State Planning Office to arrange future meetings with Planning Commissioners of Bethany Beach and other surrounding communities.

Mr. Killmer is going to draft a summary of the meeting on affordable housing and distribute it to the Commissioners. In the meantime, he is waiting to hear back from Mr. Brian Hall.

Mr. Gaughan asked if public hearing on the application for a major subdivision submitted by Ms. Jo Carroll Onoffrey is going to be scheduled on a Friday per her request.

Mr. Killmer stated that the meeting is going to be scheduled on a Saturday during a Planning Commission and the applicant's request to schedule the meeting on a particular day is not being accepted.

Mr. Frederick noted that she met with Town Manager, Cliff Gravier, to discuss the issue addressed by Mr. Gaughan at the previous meeting regarding different engineers representing Ms. Onoffrey during the various phases of the approval process. Ms. Frederick and Mr. Gravier agreed that this situation would create major conflict. Mr. John Murray was planning to represent Ms. Onoffrey during the Sketch Plan Review process. Ms. Frederick explained that Kercher Engineering did not contact the applicant to make her aware of this conflict, so Ms. Frederick contacted the applicant to notify her that Mr. Gravier was informed by the engineer April 2<sup>nd</sup> that he would no longer be representing Ms. Onoffrey. Ms. Frederick added that the application submitted also did not meet the dimensional requirements of the Town Code, which the applicant was additionally unaware of.

Ms. Frederick noted that she is implementing a plan on proceeding with amending the Zoning Code to address overall building bulk In Residential areas.

Mr. Gaughan noted that there were a number of concerns expressed by the public at the public hearing on April 20<sup>th</sup> regarding the proposed ordinance on fences. He questioned what the plan is for moving forward with this proposal.

Mr. Killmer advised that the sole purpose of a public hearing is for the Council to receive feedback from the public. Many of the concerns conveyed at this public hearing were regarding the proposed height of fences.

Mr. Killmer mentioned that underground electric fences are exempt from the Code. He addressed that the proposed ordinance also states that any fences outside of five (5) feet are not affected, so he is going to amend it to include verbiage such as "*Under no circumstance, regardless of where the fence is located, cannot exceed \_\_\_\_\_ feet.*"

Mr. Gaughan clarified his previous question, by asking if this issue is going to be further discussed by the Planning Commission, or if it is going to be voted on by the Council. He explained that he believes the public has expectations of further discussion before it is voted on.

Mr. Killmer stated that three (3) separate public hearings have been held on the proposed ordinance on fences. The public has had ample opportunity to express concerns.

Mr. Killmer is going to write a memo to distribute to the Town Council, which will address the issues mentioned at the Public Hearing held on April 20<sup>th</sup> regarding the proposed ordinance on fences. The issues will eventually be voted on by the Council.

Mr. Boswell questioned if an application has been submitted by John Cooper and Carolyn Hockman with John, William, and Christine Addy requesting a major subdivision.

Ms. Frederick replied that a letter was received yesterday (April 20<sup>th</sup>) from the Sussex Conservation District, which she has been expecting. She explained that the Council must approve the use of easements for the stormwater system for this application, but the application must first be re-submitted for preliminary plan review, with all requested information being provided regarding all other easements outside of the Town's jurisdiction and must first be approved by the Planning Commission. She has not received any recent updates from Mr. Jeff Clark on whether they are moving forward with a request for approval.

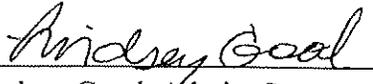
### **SUMMARY OF ACTION ITEMS**

- A. Mr. Killmer is going to draft a summary of the meeting on affordable housing that was held on April 12<sup>th</sup>, 2012 and distribute it to the Commissioners. In the meantime, he is waiting to be contacted by Mr. Brian Hall.
- B. Ms. Frederick will implement a plan on proceeding with amending the Zoning Code to address overall building bulk in Residential areas.
- C. Mr. Killmer is going to write a memo to distribute to the Town Council, which will address the issues mentioned at the Public Hearing held on April 20<sup>th</sup> regarding the proposed ordinance on fences. The issues will eventually be voted on by the Council.

### **ADJOURN**

Mr. Peterson made a motion to adjourn the meeting. Seconded by Mr. Gaughan, the motion was unanimously approved. The meeting was adjourned at 10:50 a.m. The next meeting is scheduled for May 19, 2012.

Respectfully Submitted:

  
Lindsey Good, Admin. Secretary