

**Town of Bethany Beach  
Planning Commission Minutes  
February 16, 2013**

The Bethany Beach Planning Commission held a meeting on Saturday, February 16, 2013 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; Faith Denault; John Gaughan; Fulton Loppatto; and Chuck Peterson. Excused member: Mike Boswell.

Also present: Susan Frederick, Building Inspector; Lindsey Good, Administrative Secretary; and interested member of the public.

**OPENING OF MEETING**

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

**Approval of Agenda**

Mr. Gaughan made a motion to approve the agenda. Ms. Denault seconded the motion and it was unanimously approved.

**Discussion/Approval of the Planning Commission Minutes of January 19, 2013**

Mr. Peterson made a motion to approve the minutes dated January 19, 2013. Seconded by Ms. Denault, the motion was unanimously approved.

**Announcements/Comments/Updates**

***Non-Residential Design Review Update (Denault/Killer)***

There was not a Non-Residential Design Review Committee meeting this month so there was no report.

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

- There was a First Reading on an ordinance to amend Chapter 486 (Littering, Solid Waste, Recyclables and Yard Waste). Mr. Killmer said that he reviewed the ordinance with Public Works Director, Brett Warner, and it was brought to the Town's attention that there is currently no mention of recycling or yard waste in the ordinance.
- There was a First Reading on an ordinance to amend Chapter 530 (Signs), Section 4 (b) Types of Signs Exempt from Sign Permit Exempt from Sign Permit, to amend the definition of "Construction Signs". The Town Code currently states that a maximum of four (4) construction signs are permitted to be located on the construction site, not exceeding sixteen (16) square feet in aggregate, while a valid building permit is active. Mr. Killmer explained that it needed to be clarified that only one sign per contractor is permitted, and the size and height of signs needed to be regulated. The amended

ordinance also permits the Town to take down the signs if they don't meet the requirements.

- Town Council voted to approve the formation of a Town sponsored Fourth of July Committee. The appointed members of the committee are Philip Rossi (Chairman), Joe Cavalluzzo (non-voting member), Gloria Farrar, Fulton Loppatto, Lonny Moore, Jerry Morris, Chuck Peterson, and Mary Rossi.
- Council approved a contract submitted by Layne Christensen Company to alter existing aerator for the purpose of sound reduction for the amount of \$74,700. Mr. Killmer added that there were many complaints from nearby residents regarding the loud noise being produced by the aerator.
- Town Council voted to wait until a future time to award a contract for the Mineral Pond, since all of the bids that were received were priced higher than expected.
- It was approved to reallocate funds in the budget as a result of the water tower.
- Council voted to schedule public hearings, beginning in March, regarding the amendments to the Town's Zoning Code. The topics of discussion will be a changing the minimum livable floor area for a commercial lodging room, adding definition of livable floor area and livable floor area square footage to the definition section, amending Appendix 3 (Table of Dimensional Requirements), updating the definition of an accessory building, rezoning of 96 Hollywood Street and 98 Hollywood Street from Residential to C-1 Downtown Commercial, resolve possible conflicts between requirements in the Code and the Non-Residential Design Guidelines, and amending Appendix 3 (Table of Dimensional Requirements regarding buildings containing apartments/lodging rooms in the C-1 Central Commercial Zoning District. The items of an Ordinance to Resolve Possible Conflicts Between Requirements in the Town Code and the Non-Residential Design Guidelines and an Ordinance to Amend Appendix 3 (Table of Dimensional Requirements) in the Town Code Regarding Buildings containing apartments/lodging rooms in the C-1 Central Commercial Zoning District is on the agenda to be discussed at today's Planning Commission meeting.

### ***Comments, Q&A and Discussion for Planning Commissioner Members (All)***

Ms. Frederick stated that the issue regarding the definition of an accessory building that occurred at a Board of Adjustment hearing has been momentarily resolved. The applicant appealed the decision but it was denied, so they have re-submitted revised plans that now meet requirements of the Town Code.

Mr. Gaughan questioned if there have been any developments to the Addy/Cooper plans. Ms. Frederick stated that she has not received any updates.

### **PUBLIC COMMENT/QUESTIONS FOR THE PLANNING COMMISSION**

Property owner, Mr. Bruce Frye, questioned if it is possible to include a synopsis after each housekeeping item on future Planning Commission agendas. Mr. Killmer advised Mr. Frye to forward his suggestion in writing to the Town Council, and noted that housekeeping items are advertised to be discussed at various Town meetings that are open to the public including

Council Workshops, Town Council meetings, public hearings, and Planning Commission meetings.

Mr. Gaughan expressed that he agrees with Mr. Frye's suggestion to recommend including a synopsis under housekeeping items on Planning Commission agendas. He stated that a brief description of the topics being discussed at meetings would be very useful and informative to residents.

Mr. Killmer acknowledged that Mr. Frye's suggestion is an action to consider.

## **NEW BUSINESS**

### **Review and Resolve Possible Conflicts Between Requirements in the Town Code and the Non-Residential Design Guidelines**

Mr. Killmer stated that Ms. Frederick drafted both of the memos that were distributed to the Commissioners regarding Dimensional Requirements for the Commercial Districts and Possible Review and Revisions to the Town Code and Non-Residential Design Guidelines.

Ms. Frederick explained that she noticed a conflict in the Non-Residential Design Guidelines and the Town Code when items between the two contradicted one another. She provided the following information on the conflicts between requirements in the Town Code and the Non-Residential Design Guidelines:

*1. Minimum Lot Area (No Conflict between codes)*

*App.3 Five-thousand (5,000) square feet for C-1  
Seven-thousand (7,000) square feet for C-2  
Lot area per lodging rooms currently under review*

*App. 4 The Design Guidelines don't have any requirements for minimum lot area.*

*2. Minimum Street Frontage (No Conflict between codes)*

*App. 3 Forty (40) per lot (or dwelling unit) for interior C-1 lots  
Fifty (50) per lot (or dwelling unit) for corner C-2 lots  
Sixty (60) per lot for commercial  
Forty (40) interior/fifty (50) corner for residential*

*App.4 The Design Guidelines **suggests and encourages** larger projects covering more than one lot to break up the façade into visible increments no more than forty feet (40') in width to be compatible with the existing character and scale of the district.*

*3. Maximum Lot Coverage (No Conflict between codes)*

*App. 3 C-1 Commercial – Total lot coverage minus any parking and setbacks.  
C-1 Residential – Forty percent (40%)  
C-1 Apartments and Lodging – Forty percent (40%) (provided parking is met)  
C-2 Commercial and Residential – Eighty percent (80%)*

App.4      *The Design Guidelines **encourages** building design that minimizes shading of street and neighboring properties, allows for cross ventilation. Outdoor spaces are encouraged.*

4. *Minimum Yard Depth (Some Variation)*

App.3	C-1 Commercial	Front	Zero feet (0')
		Rear	Fifteen feet (15')
		Side	Zero feet (0') or seven feet (7') if abutting Residential
	C-1 Residential	Same as R-1	
	C-1 Apt./Lodging	Same as R-1	BUT Side yard waived if above commercial
	C-2	Front	Nothing listed
		Rear	Twenty feet (20')
		Side	Zero feet or (0') or twenty feet (20') if abutting Residential

App.4      *States that setbacks are to be the same as in Appendix 3  
Adds an eight-foot (8') front yard setback at twenty-four feet (24') above grade*

5. *Maximum Height (Conflict)*

App.3      C-1 and C-2      *Thirty-one (31') above grade or base flood **to the highest point on the building. If using base flood, the roof is required to have a 5:12 pitch throughout.***

*References App.4 by footnote (q)*

App. 4      *The Design Guidelines state that the height shall be a maximum of thirty-one feet (31')  
From grade or base flood, whichever is higher **to the top plate/eave.***

*Allows a maximum of three stories.*

*Allows a non-habitable sloping roof elements to a maximum height of thirty-five feet (35').*

*Allows cupolas to a maximum height of thirty-seven (37') if no bigger than four feet by four feet (4'x4')*

*Encourages an eight-foot (8') front façade setback at a height of twenty-four feet (24') (exception for dormers).*

*Encourages dormers and gable elements (maximum of twenty-five percent <25%>).*

*Prohibits flat roofs above thirty-one feet (31').*

Ms. Denault questioned if these conflicts arise often in situations. Ms. Frederick replied that they don't occur often, and that she recently realized there were conflicts between the Non-Residential Design Guidelines and the Code in an application submitted in the C-1 Commercial Zoning District.

Mr. Peterson asked if air handlers on structures are permitted to exceed the maximum height of thirty-one feet (31'), and referenced the height including the air handlers of a restaurant in the Town. Ms. Frederick stated that the Non-Residential Design Guidelines permits air handlers to exceed the maximum height, but she will review the standards more thoroughly.

Mr. Gaughan questioned Ms. Frederick what modifications she is recommending. Ms. Frederick explained that she is suggesting to eliminate the maximum height of thirty-one feet (31') from *Chapter 425 Attachment 3, Appendix 3*, under district *C-1 (Central Commercial), Residential: Single-dwelling-unit-building* of the Code and to add a Note (s) which would state, "Refer to the Non-Residential Design Guidelines".

Mr. Loppatto questioned if the Non-Residential Design Guidelines are regulated by force of law. Ms. Frederick replied that some of the guidelines are required to be followed and other guidelines are encouraged but not required.

Mr. Gaughan advised that the modifications and amended language be concise and voted on at this meeting, so it can be presented to the public at the public hearing.

Mr. Peterson made a motion to approve eliminating the maximum height requirement of thirty-one feet (31') from Chapter 425 Attachment 3, Appendix 3, under districts C-1 (Central Commercial), and C-2 (Neighborhood Commercial) of the Code and to replace it by adding a Note (s) that would state, "Refer to the Non-Residential Design Guidelines". Mr. Gaughan seconded the motion and it was unanimously approved.

**Review Appendix 3 (Table of Dimensional Requirements) in the Town Code Regarding Buildings Containing Apartments/Lodging Rooms in the C-1 Central Commercial Zoning District.**

Ms. Frederick reported the following information on Dimensional Requirements for the Commercial Districts and possible revisions to Commercial requirements:

*In Appendix 3, the Table of Dimensional Requirements, there are four (4) categories under C-1 Commercial; Commercial, Residential (single dwelling unit), Multi-dwelling unit and buildings containing apartments/lodging rooms. Each category has different lot coverage and setback requirements.*

*Single family and multi-unit buildings in the C-1 District have the same lot area and setback restrictions as the R-1 District.*

*Commercial buildings in the C-1 District are permitted total lot area for lot coverage, less required off street parking and yard setbacks as required by Code. The setbacks for commercial uses are none for the front setback, fifteen-foot (15') rear setback and none for the side yards unless abutting a residentially zoned property (then requiring a seven-foot <7'> setback).*

*Buildings containing apartments/lodging rooms in the C-1 District mixes multi-unit buildings (already addressed) with lodging rooms (hotels) with one use being more commercial in nature*

*than the other. The permitted lot coverage for this category is the same as for buildings in the R-1 District; forty percent (40%) lot coverage, twenty-foot (20') front yard setback, fifteen-foot (15') rear yard setback and seven-foot (7') side yard setbacks or no side yards if located above commercial space. With these limitations, it would be impossible to construct a hotel or other lodging establishment with the density that the Code permits.*

*Ms. Frederick recommends that the Code be changed to recognize lodging rooms as a separate category due to the commercial nature of lodging establishments and that they be permitted the same/similar lot coverage and setback regulations as other commercial buildings.*

Ms. Frederick explained that she reviewed old versions of the Summary of Dimensional Requirements in the Code dating back to 1960, and found that there were no permits from 1962 to 1965. Around 1972, the Code had hotels and motels categorized under Commercial use. During this time, hotels had minimum setbacks, but this changed in 1978 when hotels were no longer mentioned in the Code. In the current version of the Code, the setbacks would not make it possible to build a hotel in that particular location.

Mr. Loppatto questioned if there are any residential properties located in the C-1 District. Mr. Killmer stated that there are residential properties located above the Blue Surf retail businesses on the first floor, and noted that it is a requirement to have a commercial on the first floor in the C-1 Downtown Commercial District. He added that one of the purposes of the Non-Residential Design Guidelines was to encourage a mixed use of the C-1 District to create a downtown atmosphere.

The Commission ensued a discussion on different options to amend the Town Code to clarify the language and to meet the standards that are in the Non-Residential Design Guidelines.

Mr. Peterson made a motion for the Planning Commission to recommend to Town Council to approve an ordinance to amend the "Table of Dimensional Requirements" for C-1 (Central Commercial and C-2 (Neighborhood Commercial) Districts as follows:

1. Amend the category C-1 District by designating a single category identified as "Commercial/Residential" and deleting the existing categories (Single-Dwelling-Unit Building, Multi-Dwelling – Unit Building and Buildings (containing apartments/lodging rooms)) as well as all of their tables of dimensional requirements.
2. Amend the "Table of Dimensional Requirements" by adding footnote "(i)" to the Table under District C-1 under the column titled "Maximum Lot Coverage by a Building (a)(percent).
3. Amend the "Table of Dimensional Requirements" by deleting "31" and replacing it with footnote "(q)" to the Table under the District C-1.
4. Amend the "Table of Dimensional Requirements" Footnote (q) by deleting the former provision and adding new verbiage.
5. Amend the "Table of Dimensional Requirements" by deleting the heading "Residential" as well as "The same as for R-2 District" under the C-2 District.

6. Amend the "Table of Dimensional Requirements" by deleting "31" and replacing it with footnote "(q)" to the Table under the District C-2 (Neighborhood Commercial) under the column titled Maximum Height (p)(q) Main (feet).

Mr. Gaughan seconded the motion and it was unanimously approved.

Mr. Killmer stated that he would draft a summary of the proposed amendments and submit it to the Town Council for a public hearing.

#### **SUMMARY OF ACTION ITEMS**

- A. Mr. Killmer will create a summary of the proposed changes to the Code that were discussed at this meeting and submit it to the Town Council so a public hearing can be scheduled.
- B. The Commissioners are going to review the definition for bulk density in the Code. A public hearing on this issue should be scheduled to take place in May or June and then generate a document for the Town Council to review.
- C. Ms. Frederick is going to create a final draft of amendments to the Code regarding bulk density issues for the Planning Commission to review at next month's meeting.
- D. Ms. Frederick will add more examples to of types of houses that the Commissioners prefer to her Power Point presentation on bulk density that she presented at a previous Planning Commission meeting. She will also create a list of individuals and businesses that should be invited to attend a future public hearing on bulk density.

#### **ADJOURN**

Mr. Peterson made a motion to adjourn the meeting. The motion was seconded by Mr. Loppatto and unanimously approved. The meeting was adjourned at 10:25 a.m.

The next meeting is scheduled for March 16, 2013.

Respectfully Submitted:

---

Lindsey Good, Admin. Secretary