

**Town of Bethany Beach
Planning Commission Minutes
June 22, 2013**

The Bethany Beach Planning Commission held a meeting on Saturday, June 22, 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, Chairman (presided *Old Business, Item (A)*); Fulton Loppatto (presided *New Business, Items (A), (B) and (C)*); Mike Boswell; Faith Denault; John Gaughan; and Chuck Peterson.

Also present: Susan Frederick, Building Inspector; Mayor Tony McClenny; Council members, Jack Gordon, Joseph Healy, Carol Olmstead and Margaret Young; Lindsey Good, Administrative Secretary; and interested members of the public.

OPENING OF MEETING

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

Approval of Agenda

Mr. Loppatto made a motion to approve the agenda. The motion was seconded by Ms. Denault and unanimously approved.

Discussion/Approval of the Planning Commission Minutes of April 20, 2013

Mr. Peterson made a motion to approve the minutes dated April 20, 2013. Seconded by Mr. Gaughan, the motion was unanimously approved.

Announcements/Comments/Updates

Non-Residential Design Review Update (Denault/Killmer)

Mr. Killmer reported the following:

The Non-Residential Design Review Committee has been very active for the past two (2) months, since there have been an increased number of applications for review. All applications were reviewed and approved, with the majority of applications being requests for new signage.

Comments/Updates Regarding the June Town Council Meeting (Killmer)

Mr. Killmer reported the following:

- Town Council asked the Planning Commission to review and make recommendations on the items that are on the June Planning Commission agenda.
- Council approved the resolution to execute a cable franchise agreement between the Town and Mediacom, LLC as recommended by the cable franchise working group and their attorney.
- There was a First Reading on an Ordinance to amend Chapter 301 regarding Smoking, to increase the number of designated smoking areas permitted during the summer season.
- The date for the Town Council Election was scheduled for September 7th, 2013.

- The Reorganization meeting was scheduled to take place on September 16th, 2013.
- Council approved to amend the Schedule of Fees regarding Building Permit Fees.

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

There were no comments or questions at this time.

PUBLIC COMMENT/QUESTIONS FOR THE PLANNING COMMISSION

There were no comments or questions at this time.

OLD BUSINESS

Review and Receive Comments Regarding the Residential Building Bulk Power Point Presentation With Invited Representatives from the Building Trade Industry and Members of the Public

Mr. Killmer explained that the Commission members have been developing ideas to minimize residential building bulk, and Ms. Frederick created a PowerPoint presentation on the ideas that were developed by her and the Planning Commission. He noted that any comments and suggestions from representatives of the building trade industry or public would be greatly appreciated.

Ms. Frederick gave her presentation, and the following comments and recommendations were provided by the public and representatives of the trade industry:

Jane Richards, property owner, questioned what the timeline is for the Code to be amended. She also questioned the fairness of future builders and property owners who may not be able to profit from minimized building bulk regulations. Ms. Frederick replied that always maintaining the same building regulations would not be ideal, and modifying the Code to minimize building bulk is the appropriate action at this time.

Representatives from the building industry in attendance expressed that having trade-offs in the Code would be an excellent idea, since it would allow variation and flexibility while encouraging bulk restriction. It was also suggested to include building height restriction as a tradeoff.

Mr. Gaughan stated that all representatives in the trade industry are welcomed to submit any ideas or suggestions to the Planning Commission. Mr. Killmer agreed and advised anyone with recommendations for tradeoffs, to please submit them to the Planning Commission. He added that the Planning Commission greatly appreciates their input.

Mr. Loppatto suggested that an ordinance should be drafted after the feedback is provided to the Planning Commission. Once an ordinance is drafted, builders and developers will be invited back to a meeting to review it with the Commissioners.

Tracy Mulligan, property owner, questioned if the basic approach is to minimize building bulk and direct home sizes towards how they originally were when the Town was first developed. Ms. Frederick replied that the goal is to assure that the public's concerns are addressed, and added that tradeoffs are a more flexible and less restrictive approach.

Mr. Killmer asked the Commissioners if they feel this is an issue that should be pursued. All of the Commissioners agreed that this issue should be focused on and resolved.

Mr. Killmer expressed his appreciation to Ms. Frederick for all of her research on ways to eliminate bulk density and for creating the excellent PowerPoint presentation on it.

Mr. Killmer called for a brief recess of the meeting at 9:50 a.m.

The meeting was rejoined at 10:00 a.m.

NEW BUSINESS

Review, Comment and Vote On a Request from the Town Council for the Potential Creation of a New Zoning District, Commercial Lodging Zoning District (CL-1), Including Review, Comment and Vote on Recommendations for a Draft Ordinance Regarding the Same

Mr. Loppatto explained that this proposed ordinance is an amendment to Section 425 of the Code and related appendices to create a Commercial Lodging District (CL-1). He stated that Mr. Jack Burbage will be giving a presentation at this time.

Mr. Jack Burbage stated that he has been a Bethany Beach property owner since 1983 and emphasized that he respects the public's opinion on this matter. He is proposing to purchase the Bethany Arms Motel from seller, Mr. Wilbert Powell and other family members, and plans to replace it with a new hotel. He expressed the hotel he is proposing is a traditional one that everyone would be proud of. He explained that downtown merchants are suffering because of the economy and business owners have told him that they are in favor of this opportunity. It was noted that he has been developing properties since 1983, so he has significant amount of experience in developing attractive structures.

There are one-hundred and fifteen (115) parking spaces planned for the hotel with a maximum number of four-hundred and thirty-four (434) guests which could be accommodated at the hotel at any one time, as compared to the higher number of four-hundred and eighty (480) guests that the Bethany Arms Motel and Blue Surf has been able to accommodate. The hotel would be three (3) stories, and the exterior appearance will be similar to the Blue Surf Complex next door.

Mr. Burbage emphasized that if the hotel being proposed is voted down, the public will not know what will be eventually built on that property. He assured the Commissioners and the public that he has the best interest of Bethany Beach in mind regarding this project. In addition to the proposed hotel being an advantage for tourists, it would also benefit the Town's residents because it would include a restaurant, spa, pool, fitness center and conference room the could also be utilized by the community.

At this time, Mr. Burbage asked the Commissioners and public members if there are any concerns or questions that they would like to ask.

Mr. Loppatto stated that the issue that is being discussed today is the proposal to create a new zoning district (Commercial Lodging District CL-1)). He asked Mr. Burbage to provide his

opinion on this proposal and to discuss the advantages and disadvantages that would occur from changing the current zoning of the properties to CL-1.

Mr. Burbage explained that he feels that a Commercial Lodging District (CL-1) is much more preferable than a Commercial District (C-1). The CL-1 District would prohibit stores from being built on the properties that make up the Bethany Arms and if the property was not rezoned to CL-1, a hotel would not be permitted to be built there. He added that a hotel has existed on that property since the early 1900's and has been utilized as being commercial for the past sixty (60) years.

Mr. Gaughan noted that residents have addressed the following questions and concerns to him: 1.) Would the proposed hotel have a skywalk? 2.) Would Hollywood Street be closed during the construction? 3.) What would the height of the hotel be? Mr. Burbage responded that a skywalk has never even been considered. As for Hollywood Street being closed during construction, it would definitely not be closed. Hollywood Street would also remain a public street with access to the beach and boardwalk. Lastly, the hotel would be three (3) stories high.

Mr. Gaughan stated to Mr. Burbage that the illustrations that he provided of the proposed hotel do not include the orientation. He asked for an explanation of exactly what the illustrations consist of.

Mr. Jeff Schoellkopf introduced himself at this time and stated that he is an architect and planner who has been working with Mr. Burbage. He reviewed his experience in design, which includes completing many projects on the eastern shore and a number of projects in the Bethany Beach area. He also helped facilitate the process of developing the Bethany Beach Non-Residential Design Guidelines.

Mr. Schoellkopf referenced Mr. Gaughan's question, and explained that he has been working with Mr. Burbage for the past few months, and they are presenting the Concept Development Phase at today's meeting. There are three artist's renditions that show the latest developments, and they have been following the Non-Residential Design Guidelines and working closely with the developers. He emphasized that the buildings that are illustrated shows exactly what is being proposed. The roof height of the proposed hotel would be the same as the Blue Surf Condominiums and Shops and they are attempting to distinguish the proposed hotel from the Blue Surf complex by including bay windows and a varied front façade. The portion of the hotel on the north side of Hollywood Street would include the lobby and a restaurant. The hotel portion on the south side of Hollywood Street would consist of three (3) floors of guest rooms and the section on Atlantic Avenue would have two (2) levels of guest rooms.

Mr. Gaughan questioned how the beach would be accessible from Hollywood Street with the proposed hotel there. Mr. Schoellkopf explained that there will be sidewalks on both sides of Hollywood Street. Mr. Burbage added that the beach access on Hollywood Street would be the same as it is now.

Ms. Denault questioned where the hotel parking lot and unloading dock would be located. Mr. Schoellkopf stated that the parking will be located underneath the hotel, and the parking lot will

not be visible from the outside. The loading dock would be on the left section of the hotel and screened from view and located underneath the building.

At this time, Mr. Schoellkopf distributed artistic renditions of various views from the hotel from different directions.

Mr. Gaughan questioned if there would potentially be traffic issues on Atlantic Avenue. Mr. Schoellkopf stated that hotel guests will be able to pull into the property to check-in and then park in the parking garage, and there will be more details presented if the plan moves forward.

Mr. Peterson commented that he would like to address that it wouldn't be appropriate to keep the district zoned Residential while it is being utilized as Commercial. He referenced the Delaware Supreme Court Code, and said that two items apply to the Town: 1.) The property has been utilized as being Commercial for the past sixty (60) years and it will be continued to be used as that. 2.) The property needs to be zoned as either Commercial (C-1) or Commercial Lodging (CL-1), emphasizing that it can't be zoned as Residential (R-1). Mr. Loppatto acknowledged that the objective for rezoning the property is to make it more consistent with both its historic as well as its current use.

At this time, any interested members of the public were asked to address the Commission with any comments or questions regarding the agenda item being discussed.

Jane Richards, Bethany Beach property owner, was recognized. She expressed that she has a concern with the parking for the hotel. She feels that additional parking spaces would be needed if the hotel is built.

Mr. Loppatto advised that any questions or comments addressed at this time must regard the agenda item that is currently being discussed, which is creating a new zoning district, Commercial Lodging (CL-1).

Mr. Boswell made the following suggestion on the following sentence, "Hotels or motels, in a building or group of buildings, offering transient lodging accommodations on a daily rate to the general public. Additional services to be provided may include restaurants, meeting rooms, and recreational facilities <add the text "retail facilities" here>" under the title *Commercial Lodging* on Page 1 of the proposed ordinance.

Mary Lou Tietz, Bethany Beach property owner, was recognized. She stated that Council assured the public at this month's Town Council meeting that a new zoning district (CL-1) would not permit retail facilities to be built on that district. Mr. Loppatto explained that the intent of adding "retail facilities" as a category to the proposed ordinance is to allow having retail facilities inside the hotel.

Dan Costello, Bethany Beach property owner, was recognized. He expressed that he is concerned that the Planning Commission is not following the regulation on Zoning within the non-conforming section of the Code. Mr. Graviat explained that in this particular case, the variance is for the structure and not the use, because it is a structure variance.

Gilbert Tietz, Bethany Beach property owner, was recognized. He questioned that the item being discussed is regarding Lot 110. Mr. Loppatto advised that Block 110 is not yet up for discussion, and the purpose of this discussion is to determine if the creation of a new zoning district (CL-1) needs to be established.

Tracy Mulligan, Bethany Beach property owner, was recognized. He suggested that if it is voted to amend the text from “hotels and/or motels” to “commercial lodging units”, then the text should be consistent throughout the entire ordinance. He feels what keeping the text as “hotels and/or motels” would be more appropriate since it is more specific. He referenced *Section 425-77 (B) Dimensional Requirements (C) Maximum lot coverage by buildings: Total lot area, less the required off-street parking and loading requirements as well as the yard setbacks are required herein*. He noted that it seems to be an important requirement for parking, and suggested that the terms should be explained so that they are more understandable. Mr. Peterson noted that adding an attachment to that section would be beneficial to help clarify it.

The Commission is going to take action towards completing Mr. Mulligan’s recommendation.

Mr. Mulligan referenced Section 425-77 (B) Dimensional Requirements (D) Yard setbacks (3) Side yard setback: zero (0) feet for buildings and structures, unless the buildings or structures adjoin a residential district. In such case, a side yard setback of not less than seven (7) feet is required. He made a recommendation to consider requiring ten (10) or twelve (12) feet instead of seven (7) feet so that it is recognized as being an adjoining property. Mr. Loppatto acknowledged that this is a good suggestion.

Ms. Jane Richards referenced the Table of Dimensional Requirements and the building lot coverage requirement and expressed additional parking concerns for parking on the lot of the hotel. Mr. Loppatto assured her that there are parking requirements that must be followed, and the Commission will take her concern into consideration.

Mr. Killmer referenced Section 425-77 (F), Item B (q) and advised that the date of the Bethany Beach Nonresidential Design Guidelines needs to be changed to 2008, to replace 2004.

Hearing no further comments, Ms. Denault made a motion to recommend to Town Council to approve the proposed ordinance as amended to create a new zoning district, Commercial Lodging Zoning District (CL-1). Mr. Gaughan seconded the motion and it was unanimously approved.

Mr. Loppatto called for a short recess of the meeting at this time.

Review, Comment and Vote On a Request From Town Council Relating to the Potential Rezoning of Property in the Town of Bethany Beach (Lot # 1 in Block 106 and Lots # 9, 10, 11 and 12 in Block 110) to the Commercial Lodging Zoning District (CL-1), Including Review, Comment and Vote Upon Recommendations for a Draft Ordinance Regarding the Same

Mr. Loppatto explained that the purpose of this discussion is to vote to recommend to Council to approve the proposed ordinance is to rezone Lots #1 in Block 106 and Lots # 9, 10, 11 and 12 in Blocks 110) to the Commercial Lodging Zoning District (CL-1).

Mr. Peterson questioned if the owner of the lots has any issues with the proposed rezoning changes.

Mr. Wilbert Powell, one of the owners of the Bethany Arms, explained that he is strongly in favor of this proposed project and does not have any issues with the rezoning of the lots.

John Schmidlein, Bethany Beach property owner, was recognized. He questioned if Bethany Arms is governed by a variance and is removed from the property, could a new hotel be built on the property if it remained as Residential (R-1)? Mr. Graviet replied that structures would only be able to be built that follow the R-1 regulations.

Mr. Schmidlein expressed that he feels the discussion on this matter took place too quickly. He referenced the Bethany Beach Comprehensive Development Plan and stated that it doesn't include any sections regarding the Town needing additional hotels. Mr. Peterson replied that discussions on these items took place at two separate meetings and it is not being rushed. Mr. Gaughan added that the Comp. Plan is a living document, and it includes provisions that discuss land use and promoting tourism. He added that the proposed hotel would not be a large change of the capacity compared to the current lodging units existing there now.

Mr. Tietz, property owner, commented that the Commission and Council should increase involvement of the public in this decision and realize that there are many residents who oppose the proposed hotel.

Mr. Killmer gave testimony as a resident and not a member of the Planning Commission, acknowledged that this is the first time that the Town Council and Planning Commission have decided to correctly zone these parcels of land which have been zoned incorrectly in the past as well as the present. He referenced that some residents expressed concern with Mr. Burbage building a hotel on this property. He stated that if Mr. Burbage doesn't construct a hotel on this property if it is not rezoned, the property would be opened to any unknown commercial development in the future. He emphasized that the Town will be mailing out ballots to all residents, which will include all of the information on the proposal and allow everyone to vote on whether to support the zoning changes to permit the construction of the hotel or not to maintain the current zoning.

Susan Baxter, Bethany Beach property owner, was recognized. She expressed that she is in favor of creating a new zoning district (CL-1) and is in favor the new hotel.

Mr. Mulligan, property owner, stated that a Town Council Public Hearing will take place as well as a Non-Binding Referendum. He explained that the Planning Commission is required to, and will, take the necessary steps that lead up to an official Council vote.

Mr. Loppatto emphasized that the Commission has done a lot of research, and would also greatly appreciate concrete ideas submitted from the public. He added that the Commission's responsibility is to create an ordinance, and it is solely the Council's responsibility to vote on to make a recommendation on whether a hotel is going to be built.

Hearing no further comments, Mr. Loppatto called for a motion at this time. Mr. Peterson made a motion to recommend to Town Council the draft ordinance on rezoning of property in the Town of Bethany Beach (Lot # 1 in Block 106 and Lots # 9, 10, 11 and 12 in Block 110) to the Commercial Lodging Zoning District (CL-1) be approved. The motion was seconded by Ms. Denault and unanimously approved.

Review, Comment and Vote On a Request from Town Council for Potential Amendments to the Town's Comprehensive Development Plan Regarding the Commercial Lodging Zoning District (CL-1), Including Review, Comment and Vote on Recommendations for a Draft Ordinance Regarding the Same

Mr. Loppatto explained that the purpose of this discussion is to vote on recommending to Council to approve the proposed ordinance

Mr. Peterson made a motion to recommend to Town Council to approve the proposed ordinance on amendments to the Town's Comprehensive Development Plan regarding the Commercial Lodging Zoning District (CL-1). Ms. Denault seconded the motion.

Tracy Mulligan, property owner, was recognized. He referenced Page 2, the first paragraph under Section 2 which states, "*Amendment to Figure 8: Future Land Use Map, Bethany Beach to reflect entirety of Bethany Arms Property as Commercial, as attached hereto as Exhibit A. Upon adoption of this Ordinance, the map attached hereto as Exhibit A shall be the future land use map of the Town's Comprehensive Plan.*" and made a recommendation to add the word "Lodging" after the text "Commercial". The Commissioners were all in favor with Mr. Mulligan's suggestion.

Mr. Peterson made a motion to recommend the proposed ordinance with the incorporated amendments to Council. Mr. Gaughan seconded the motion and it was unanimously approved.

Mr. Peterson made a motion to recommend to send an application to the State Office of Planning for the proposed Zoning Changes to properties identified above, the proposed changes to the Comprehensive Development Plan, and/or all proposed ordinances considered. Mr. Gaughan seconded the motion and it was unanimously approved.

SUMMARY OF ACTION ITEMS

- A. Representatives of the trading industry will submit Commissioners ideas to incorporate into the Power Point presentation on Residential Building Bulk.
- B. The Commission will take action to make Mr. Mulligan's recommendations on adding an attachment under Section 425-77 (B) for clarification in the proposed ordinance to create a Commercial Lodging District.

ADJOURN

The meeting was adjourned at 1:19 p.m.

Respectfully Submitted:

Lindsey Good, Admin. Secretary