

**Town of Bethany Beach
Planning Commission Minutes
May 22, 2010**

The Bethany Beach Planning Commission held a meeting on Saturday, May 22, 2010 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; Chuck Peterson; Kathleen Mink; Faith Denault; John Gaughan; and Fulton Loppatto.

Also present: Jeff Mascornick, Intern; Susan Frederick, Building Inspector; Jerry Dorfman, Councilperson; Patricia Titus of Coastal Point; Lindsey Shallcross, Administrative Secretary; and other interested members of the public.

The meeting was called to order at 9:00 a.m. Mr. Killmer introduced the new intern, Jeff Mascornick to the Committee members. Mr. Mascornick shared with the members his past work experiences.

OPENING OF MEETING

Approval of Agenda

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

Discussion/Approval of the Planning Commission Minutes of April 17, 2010

Ms. Mink made a motion to approve the minutes dated April 17, 2010. Mr. Peterson seconded the motion and it was unanimously approved.

Announcements/Comments/Updates

Non-Residential Design Review Update (Killmer/Denault)

Ms. Denault gave the following report:

The Non-Residential Design Review Committee (DRC) met on April 26, 2010 and May 14, 2010. She stated that Kites, Tails & Toys withdrew their request.

During the April 26, 2010 meeting, the DRC met to discuss and vote on an application and plans for general commercial and individual tenant signage submitted by Gerald McCabe for the Blue Surf Condominiums, LLC for properties located at 98 Garfield Parkway, Lots 7-12, Block 106, Atlantic Avenue and Garfield Parkway, C-1 Zoning District, Bethany Beach, DE 19930. Three of the new signage requests were approved but the DRC requested that a fourth sign application be re-done because it did not meet the current design guidelines for signage.

During the meeting on May 14, 2010, the DRC approved the application submitted by Sean Martin for Kohr Bros., Inc. for a front and side façade renovation, new signage, and counter roll down shutter for property located at 101 Garfield Parkway Lots 1 and 3, Block 105, C-1 Zoning District, Bethany Beach, DE.

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

Mr. Killmer reported the following:

- The Town Clerk of Bethany Beach, Lisa Kail, was given a congratulatory gift card and flowers for completing Master Municipal Clerk training.
- A donation check for the amount of \$20,000 was presented to members of the Bethany Beach Fire Volunteer Company.
- Joseph Healy, Rosemary Hardiman, Fulton Loppatto, and Lew Killmer attended a Main Street Basic Training seminar that took place on May 18th and 19th in Dover, DE. Mr. Killmer suggested that the Main Street project would take tremendous effort and Town resources to achieve, and it was his opinion that it wouldn't accomplish what the Town is trying to achieve.
- The Solar Energy Ordinance was approved by the Town Council.
- The Town Council approved three Charter and Ordinance Review Committee White Papers.
- The White Paper submitted by the Communications Committee was not fully approved, but the Council provided the Communications Committee with direction on future projects.
- The Town Council approved the planning and design phase of the Atlantic Avenue Sidewalk Project for \$68,230.
- The contract from, Hectronics, for the purchase of parking pay stations was approved, and the first seventeen parking pay stations are now in the process of being installed.
- The final Verizon Contract as part of the Utility Relocation Project on Garfield Parkway for the amount of \$381,297 has been approved.
- The Town voted to approve an Memorandum Of Understanding (MOU) with South Bethany, Millville, and Ocean View regarding the upcoming renewal of the Mediacom Cable Network contract.
- A "Mobi-Mat" has been installed for evaluation at the beach access at Campbell Street. The Mobi-Mat is five (5)' wide by fifty (50)' long and retails for just under \$4,000 per mat. The purpose of this mat is to make crossovers easier and safer when walking over the dunes.
- The purchase of two (2) radar based traveling speed indicating signs that will be placed on Route 1 at the north and south entrances to the Town was approved.

Comments, Q&A and Discussion for Planning Commissioner Members

There were no comments or questions at this time.

PUBLIC COMMENT/QUESTIONS FOR THE PLANNING COMMISSION

At the end of the meeting, property owner, Mr. Norbert Kraich, had a number of questions as to the actions of a previous Town Council regarding the issue of the repeal of the ordinance that permitted residential structures in the R-1 Zoning District to be built to a height of thirty-five (35) measured from grade level.

Mr. Peterson explained that, in 2006, the Council voted to repeal a section of the Zoning Code related to height but that they did not adopt a new ordinance in its place nor was it fully removed from the Town Codebook. The Planning Commission readdressed the matter in this meeting by approving a draft ordinance to be sent to the Town Commissioners for their review.

Mr. Kraich asked why the Town Solicitor didn't spot the error in the Town Code.

Mr. Killmer explained that that Town Solicitor was not present at the Town Council meeting when the vote to rescind the ordinance that permitted thirty-five foot (35) structures occurred. The Town Solicitor's newly hired assistant was the only one present at the meeting.

Mr. Killmer also explained that to the best of his knowledge this was the first time that a Town Council has repealed an existing ordinance, so the proper procedure was not well known.

NEW BUSINESS

Town Council Request to Possibly Amend Chapter §45 "Ordinances, Adoption of" (Sections §45-1 and/or §45-8)

Mr. Killmer explained that Sections §45-1 and §45-8 of the Town Code could have multiple interpretations by various individuals upon reading. The Town Council has requested the Planning Commission to suggest alternative language that is not ambiguous.

The current Code is as follows:

§45-1. Amendment or repeal of existing ordinances.

No existing ordinance shall hereafter be amended or repealed, except by an ordinance specifically amending or repealing the existing ordinance. The adoption of such an ordinance repealing or amending an existing ordinance shall be dealt with as the adoption of a new ordinance, except where otherwise stated herein.

§45-8. Exemptions.

Notwithstanding any other provision in this chapter to the contrary, this chapter shall have no application to the following, which are specifically exempt from the terms of this chapter.

- A. Any action by the Town Council adopting, amending or repealing Chapter §425, Zoning, or the Town Zoning Map.
- B. Any action adopting, amending or repealing Chapter §410, Subdivision of Land.

It was suggested that the Town Code be amended as follows with the proposed changes in red:

§45-8. Exemptions.

Notwithstanding any other provision in this chapter to the contrary, this chapter shall have no application to the following, which are specifically exempt from the terms of this chapter:

- A. Any action by the Council adopting, amending or repealing Chapter 425, Zoning, or the Town Zoning Map. (See §425-109 and §425-110 for adopting, amending or repealing ordinances in Chapter 425, Zoning or the Town Zoning Map)
- B. Any action adopting, amending or repealing Chapter 410, Subdivision of Land. [Amended 3-20-1987 by Ord. No. 185] (See §410-48 and §410-49 for actions that involve adopting, amending or repealing sections and/or parts of Chapter 410, Subdivision of Land)

Mr. Peterson made a motion to bring the request of amending Chapter 45 “Ordinances, Adoption of” (Section §45-8) to the Town Council. Mr. Gaughan seconded the motion and it was unanimously approved.

Request by Board of Adjustment to Amend Sections §425-1-1. Rules; records to be kept and §425-105. Powers and duties

Mr. Killmer reported that Dr. Bob Parson, Chairperson of the Board of Adjustment, requested to add/amend the current language to Section §425 of the Town Code.

The Current Code is the following:

§ 425-101. Rules; records to be kept. [Amended 10-16-1987 by Ord. No. 195]

- A. The Board of Adjustment shall adopt rules necessary to conduct its affairs and in keeping with the provisions of this chapter. The Board shall select from among themselves a Chairman and Secretary, provided that, if the Mayor serves on the Board of Adjustment, he or she shall act as Chairman. Meetings shall be held at the call of the Chairman, with reasonable notice to the other members, and at such other times as the Board may determine, and the presence of two members shall constitute a quorum. The Chairman or, in his or her absence, the Acting Chairman may administer oaths and compel the attendance of witnesses.

All meetings shall be open to the public.

- B. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be public record and be filed immediately in the Town Office.

Recommended Changes To The Current Code In Red

- B. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be public record and be filed immediately **in the Board of Adjustment files which are maintained by the office of the Building Inspector in the Town Hall.**
- C. **The Building Inspector shall be responsible for maintaining those files in accordance with standards provided by the Board of Adjustment. The Town may keep copies of those records in a separate location, consistent with the directions and standards of the Town's Administration.**

Addition of a New Subsection B and the Renumbering of the Current Town Code Ordinance Section §425-105. Powers and duties.

§ 425-105. Powers and duties

B. Applicant's Responsibilities

1. All applications for Variances and Special Exceptions must be submitted to the Building Inspector prior to the published deadline. Submissions that fail to meet this requirement shall not be considered until all of the requirements are fulfilled. In the case of Appeals from an Administrative Decision, the appeal shall be filed no later than thirty (30) days from the date of the action that is being appealed.
2. An applicant shall be one of the following:
 - a) The owner of record to the property, or
 - b) The holder of a valid purchase and sales agreement for the purchase of the subject property, or
 - c) The holder of a valid option for the purchase of the subject property.
3. All applications shall be signed by the owner of record to the property.

4. It is the obligation of the Applicant to submit adequate plans and exhibits in accordance with the terms of the Zoning Ordinance for all applications for Administrative Appeals, Variances and Special Exceptions.

Ms. Denault made a motion to bring forth the request to amend Sections §425-1: *Rules; Records to be Kept* and §425-105: *Powers and Duties* to the Town Council for approval. Mr. Gaughan seconded the motion and it was unanimously approved.

An Ordinance to Amend Section §425-2 (“Definitions & Word Usage”-“Height, Building or Structure”) And The “Table of Dimensional Requirements” To Delete Language Which Would Permit Any Residential Structure In The R-1 District Having a Minimum Roof Pitch Of 7/12 For At Least 60% Of The Roof Area To Have A Maximum Height Of 35 Feet Measured From Grade, Provided That Such Structure Does Not Contain More Than Three Floors Of HVAC-Controlled Living Space.

Mr. Killmer explained that the purpose of amending Section §425-2 and the “Table of Dimensional Requirement” is to fulfill the requirements for repealing the Ordinance and to correct the dimensional requirements and definitions.

The suggestion for amending **Section 425-2 (“Definitions and Word Usage”- “High of Building or Structure”)** is to **delete** the following text:

“Additionally, whenever a residential structure in R-1 has a minimum 7/12 roof pitch for at least 60% of the roof area, that structure may have a maximum height of 35 feet measured from the grade of the lot; provided, however, under no circumstances shall such structure contain more than three floors of HVAC-controlled living space.”

Also, there is a need to amend the “Table of Dimensional Regulations” by deleting footnote “(r)” in its entirety (“(r) Any residential structure in the R-1 Zoning District which has a minimum roof pitch of not less than 7/12 for at least 60% of the roof area may have a maximum height of thirty-five (35) feet measure from grade; provided, under no circumstances shall such structure contain more than three floors of HAC-controlled living space.”) and re-designating current footnote “(s)” as “(r)”.

Mr. Peterson made a motion to bring forth to the Town Council the request to amend Sections §425-2 (“Definitions & Word Usage”-“Height, Building or Structure”) and the “Table of Dimensional Requirements” to delete language which would permit any residential structure in the R-1 District having a minimum roof pitch of 7/12 for at least 60% of the roof area to have a maximum height of thirty-five (35) feet measured from grade, provided that such structure does not contain more than three floors of HVAC-controlled living space. Seconded by Ms. Denault, the motion was unanimously approved.

OLD BUSINESS

Continue to Update the 2005 Bethany Beach Comprehensive Plan

Mr. Gaughan stated that when the Planning Commission first began the Comprehensive Plan Project, there was content in the Comprehensive Plan that he didn't understand why it was in the Plan, but he now realized that the information is necessary to fulfill the requirements of the State of Delaware. He encouraged Mr. Mascornick, the summer intern, to provide additional data that he may come across that adds value to the Comprehensive Plan.

Mr. Killmer advised that any member who may forward e-mails to Mr. Mascornick to copy those e-mails to the other members of the Planning Commission and for Mr. Mascornick to do the same.

Mr. Killmer explained that many businesses in the Town aren't associated with the Chamber of Commerce. He added that he wants to improve the Town's relationship with those businesses.

The Committee members reviewed and discussed the "Consideration of Public Safety Initiatives" document prepared by Ms. Mink.

Ms. Mink reviewed her expanded bicycle and pedestrian safety contributions to the Comprehensive Plan.

A discussion ensued on pedestrian safety in the Town.

Ms. Denault acknowledged that Ms. Mink's point to initiate discussion with DELDOT regarding traffic/walk signal timing at the intersection on Route 1 and Highway 26 is critical. She noted that the off-season walk signal changes too quickly.

Mr. Killmer stated that there have been numerous complaints about the talking traffic signal on Route 26 near Saint Ann's, but since Route 26, Route 1, and Kent Avenue are State Highways, the Town has limited jurisdiction.

Mr. Killmer advised that the next step is for the Planning Commission to develop a working document on the topic of public safety that includes suggestions for ways of improving pedestrian, bike and the impact of cars/traffic on the Town.

Ms. Denault asked, are there other public safety issues that need to be addressed, besides bicycle safety?

Ms. Frederick suggested that following issues should be addressed:

- The lighting in public areas throughout the Town at night.
- Make sure that buildings are equipped with handicap access points.
- Talk to lifeguards to see if they have enough safety equipment.

Mr. Killmer also suggested that putting call boxes around the Town might be a good idea.

Ms. Mink noted that she is going to contact Public Safety Director, Ralph Mitchell, regarding public safety.

Possible Status Reports of Individual Planning Commission Members Regarding Strategic Plan Assignments

Mr. Gaughan reported that he is going to meet with Ms. Carrie Subidy from the Bethany-Fenwick Island Chamber of Commerce in June regarding Activity Issues, and he will probably have an update for the Committee in July or August.

Letter from Jane Fowler Regarding the Zoning Code

Bethany Beach Property owner, Ms. Jane Fowler, wrote a letter to the Town Council and Planning Commission members regarding the Zoning Code and the very large new house that is being built at 114 Central Boulevard. She is asking the Town to review and possibly recommend changes to the Town Code that would limit the size of houses that can be built in Bethany Beach, especially east of Route 1.

Mr. Killmer explained that they have very few options to pursue other than possible changes to the existing setbacks, but not much else can be revised.

ADJOURN

Ms. Mink made a motion to adjourn the meeting. Ms. Denault seconded the motion and it was unanimously approved.

The meeting was adjourned at 10:55 a.m.

Respectfully Submitted:

Lindsey Shallcross, Admin. Secretary