

**Town of Bethany Beach  
Planning Commission Minutes  
November 5, 2007**

The Bethany Beach Planning Commission held a meeting on Monday, November 5, 2007 in the Bethany Beach Town Hall, 214 Garfield Parkway, Bethany Beach, DE 19930.

Members present for the meeting were: Lew Killmer, who presided; Kathleen Mink, Donald Doyle, Tony McClenny and Fulton Loppatto.

Also present: Councilman Tracy Mulligan, John Eckrich, Building Inspector, Seville Pettit, Administrative Secretary, Patricia Titus of the Coastal Point and interested members of the public.

The meeting was called to order at 10:06 a.m.

**OPENING OF MEETING**

Mr. Killmer made a suggestion to modify the agenda to first discuss the consideration of additional requirements for future PRD, Small and Major Subdivision Applications.

Mr. Killmer gave a brief overview, explaining the Planning Commission's interest in considering possible additional requirements for future applications regarding PRDs and minor as well as major subdivisions. The purpose of this meeting is for the Planning Commission to suggest additional requirements to ensure that the few remaining non-grandfathered large tract of undeveloped land be developed in a manner that will benefit the community, is attractive and fits in well with the architectural style of the Town and protects and preserves as much as the existing environment as possible.

***Consider additional requirements for future PRD, Small and Major Subdivision Applications***

The Planning Commission members began the review of additional requirements for future PRDs, Minor and Major subdivision. Changes are included in these minutes.

Mr. Doyle made a motion to attach this document with Chapter 200-40 under General standards. The motion was seconded by Ms. Mink and unanimously approved.

***Review of Article V: Nonconforming Uses, Structures and Lots***

The Planning Commission members began the review of Article V: Nonconforming Uses, Structures and Lots. Changes are attached to these minutes.

**ADJOURN**

The meeting was adjourned at 1:35 p.m.

## **Planned Residential Development (PRD), Minor And Major Subdivision Proposed Requirements**

### **General Considerations:**

- Flexibility in design to take the greatest advantage of natural landscapes, existing community character and layout, trees, and other ~~natural~~ native vegetation and other unique features.
- ~~Allowance of sufficient freedom for~~ The developer ~~to~~ shall take a creative approach to the use of land and related physical development, as well as utilizing innovative techniques to enhance the visual character of the ~~Town~~ development.
- Architectural styles that reflect traditional architecture of our beach community shall be encouraged.
- PRDs and structures shall have a mix of sizes, styles, facades, color and roof pitch. An artist rendition and/ or a computer-generated picture of the exterior of the proposed structure(s) shall be provided with preliminary and the Final Plans.
- Efficient use of the land that may result in reduction in development and maintenance costs of street and utility systems.
- Provide and incorporate planning principles to support pedestrian, bike use as well as motor vehicle use within and outside the PRD and Subdivisions.
- ~~Provide an open space system that shall consist of both active and passive uses and area.~~
- The minimization of erosion and sedimentation, minimization of changes in groundwater levels and increased rates of runoff, minimization of the potential for flooding and design of drainage so that groundwater recharge is maximized.

### **Open Space Requirements:**

- Provide an open space system that shall consist of both active and passive uses and area.

- ~~Green~~ Open space ~~should~~ shall be provided within the PRD and Subdivisions. ~~Green~~ Open spaces are typically maintained as common open space areas consisting of lawn, trees, landscaping, sidewalks or pathways, benches, etc. An open area shall consist of both active and passive uses and area.
- Open space areas shall not comprise less than 15% of the gross area of the PRD. All open space may be open to the residents within the PRD or dedicated to the Town of Bethany Beach upon mutual agreement between the Town and the applicant/ developer.
- Open space areas shall be arranged to maintain contiguity with other open space areas on adjacent lands in order to ensure the potential for a contiguous open space network throughout the Town.
- The size and location and configuration of open space must provide adequate access to residents within the PRD and enable appropriate access for maintenance. Long thin or inaccessible areas of open space should be avoided.

#### **Landscaping Requirements:**

- Existing mature trees should be protected and incorporated into the design of the PRD and Subdivisions. This is currently required under the current PRD ordinance.
- Minimization of the loss of existing vegetation, minimization of soil removal with minimal grade changes.
- Street trees ~~should~~ shall be provided and shall be planted outside of the Town's right-of-way. Adequate planting strips should be provided ~~between~~ along the street and sidewalk to allow for street trees. ~~and other landscaping.~~ Plant species should be utilized that will minimize future impacts to sidewalks and streets due to root growth.
- Landscaped buffers using a combination of berms and plantings shall be used to buffer uses within the PRD and from nearby roadways.
- Landscape plans with perennial elements with a focus of using native species to enhance the survival rate of the plantings.
- Require the developer/ home owner association to replace dead trees and shrubs that are part of the landscape design.

#### **Street Network, Access and Circulation Requirements:**

- The proposed street layout should provide an attractive streetscape.
- If applicable, a hierarchy of streets should be provided which promotes safe residential access and efficient circulation through the PRD and Subdivisions.
- Any through traffic should be restricted to proposed collector streets within the PRD and Subdivisions. Interconnectivity with existing adjacent street networks shall be achieved if at all possible.
- The use of alleys shall be encouraged to allow vehicular access and parking on the side and rear of residential lots.
- Street width may be reduced in designated areas of the PRD if the developer/ builder can demonstrate that the design does not compromise the health, safety and welfare of the community and provides adequate emergency access to buildings.
- Well-designed and aesthetically pleasing crosswalks, sidewalks and pedestrian amenities are incorporated in the overall street design.

**Parking Requirements:**

- Adequate parking in the rear of the dwelling units that can be accessed by an alley is encouraged.
- Alternatively, adequate parking be provided behind the dwelling units and accessed by a driveway and screened from view of the street is also encouraged.
- ~~Adequate parking may be provided by driveway and/ or front facing garage with no on-street parking.~~
- Any on-street parking is clearly defined using stripping, lines, bump outs or other traffic calming measures.
- Adequate off-street and/ or overflow parking is provided using well-defined parking lots or areas.
- ~~Adequate turning radii shall be provided if applicable.~~
- ~~Well designed and aesthetically pleasing crosswalks, sidewalks and pedestrian amenities are incorporated in the overall street design.~~

**Lighting and Signage Requirements:**

- Streetlights should be of a consistent style throughout the PRD or Subdivisions and be compatible with existing streetlights within the Town of Bethany Beach.
- Streetlights should also be aesthetically pleasing and should add value to the community as well as being compatible with the style of the homes in the PRD or Subdivisions.
- All signage in the PRD or Subdivisions should be of a consistent style throughout the PRD or Subdivisions and meet all of the sign ordinance regulations of the Town of Bethany Beach.

## Article V

## **Nonconforming Uses, Structures and Lots**

### **§ 245-30. Legislative Intent.**

- A. Within the zoning districts established by Chapter 245 of the Bethany Beach Town Code or amendments that may later be adopted, there exist lots, structures, uses of land and structures and characteristics of use which were lawful before this chapter was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this chapter or future amendment. It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.
- B. Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the zoning districts involved. A nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this chapter by attachment on a building or premises of additional signs intended to be seen from outside the premises, or by the addition of other uses, of a nature, which would be prohibited generally in the zoning district involved.
- C. To avoid undue hardship, nothing in this chapter shall require any changes in the plans, construction or designated use of any building or part thereof, in which the excavation, demolition, removal of an existing building, or construction of which shall be lawfully in progress at the time of passage of this chapter or for which a building permit shall have been issued pursuant to law, provided that construction shall be promptly and diligently pursued and completed within 18 months of the issuing of the building permit.

### **§ 245-31. Continuation.**

All structures, lots, uses of structures and uses of land that do not conform to the regulations of the zoning district in which they are located after the effective date of this chapter or amendment thereto shall be regarded as nonconforming and may be continued so long as they remain otherwise lawful, including subsequent sales of property.

### **§ 245-32. Legal Non-Conforming Lots of Record.**

- A. In any district in which single family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single family dwelling and

customary accessory buildings may be erected on any single lot of record at the effective date of the adoption or amendment of this chapter. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the zoning district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the zoning district in which such lot is located. Variance of area, width and yard requirements shall be obtained only through action of the Board of Adjustment.

- B. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are not of record at the time of passage or amendment of this chapter, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this chapter, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this chapter.

**§ 245-33. Change of use.**

A nonconforming use of a structure may be changed to another nonconforming use of the same or a more restricted classification if authorized by the Board of Adjustment. Whenever a nonconforming use of a structure has been changed to a more restrictive classification or to a conforming use, such use shall not thereafter be changed to a use of less restrictive classification. A nonconforming use may be changed to another equally restrictive or more restrictive nonconforming use only if permitted as a special exception to the following conditions:

- A. The applicant shall show that the nonconforming use cannot be reasonably changed to a conforming use.
- B. The applicant shall show that the proposed change will be no more objectionable in external effects than the existing nonconforming use, or will be more appropriate than the existing nonconforming use with regard to **but not limited to:**
  - 1. Traffic Generation and Congestion
  - 2. Parking
  - 3. Noise, Vibrations, Smoke, Dust, Fumes, Vapors, Gases or Odor
  - 4. Outdoor Storage, Exterior Display of Merchandise
  - 5. Sanitary Disposal of Waste
  - 6. Hours of Operation
  - 7. External Lighting
  - 8. Number of Employees On Site
  - 9. Volume Of Sewage Generated
  - 10. Demand For Water Supply
  - 11. Fire Hazards

- 12. External Appearance
- 13. Increase Storm Water Run-Off

**§ 245-34. Abandonment.**

Whenever a nonconforming use has been discontinued or in a nonoperative status for a period of at least one year, such use shall not thereafter be reestablished, regardless of change of ownership and any future use shall be in conformity with the provisions of this Code. The casual, intermittent temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

**§ 245-35. Repairs and Alterations.**

- A. A structure or building containing a nonconforming use may be repaired, improved, altered or enlarged, provided that the repair, improvements, alteration or enlargement conforms to the requirements of this and other codes and does not increase the part of the structure or building comprising the use nonconformity.
- B. A structure or building which is nonconforming as to dimensions or lot density may be repaired, improved, altered or enlarged, provided that the repair, improvement, alteration or enlargement conforms to the requirements of this and other codes and does not increase any existing nonconformity of dimension or density; and further provided, that whenever nonconformity exists because the number of principal buildings exceeds the maximum number of principal buildings permitted on a lot in that district, no repair, alteration or improvement shall be permitted which would increase the size (i.e., height, width, length or cubic volume) or intensify the use (e.g., create a two-apartment building out of a single unit guesthouse) of any secondary principal building. For purposes hereof, "secondary principal building" shall mean any principal building on a lot containing two or more principal buildings which, because of its size, location, amenities, nature and frequency of use or other factors, cannot be considered the primary principal building. By way of example, ~~and~~ but not in limitation, secondary principal buildings would include garage apartments, guest houses and cottage, occupied or used less frequently than other principal buildings on the lot. [Amended 1-17-1997 by Ord. No. 313]
- C. In the case of a building containing apartments and/or commercial lodging rooms in an R-1 or R-2 District, the size and location of individual apartments may be changed, provided that the total area comprising the nonconforming use is not increased and the number of apartments or commercial lodging rooms remains the same or is reduced.
- D. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an

extent not exceeding 25% of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

- E. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.
- F. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**§ 245-36. Replacement.** [Amended 3-16-1979 by Ord. No. 83; 9-20-1985 by Ord. No. 158; 9-15-1989 by Ord. No. 230; 10-21-1994 by Ord. No. 287]

- A. No existing building or structure, nonconforming in use, dimension or density, which is razed, demolished, removed, destroyed or damaged by voluntary act of the owner (or any person acting with the permission or at the direction of the owner) shall be rebuilt, reconstructed or replaced
- B. An existing building or structure nonconforming in use, dimension or density which is damaged by fire, explosion, natural catastrophe or act of God may be rebuilt or replaced if commenced within 90(ninety) days of the issuance of a building permit and completed within eighteen (18) months of such damage. [Application for the issuance of a building permit is to be made within one \(1\) year of the damage or destruction.](#) Where, due to causes beyond the control of the owner(s) of the building, [an application for the building permit can not be made within said one \(1\) year or the completion of the work cannot be done within said eighteen \(18\) months,](#) the Board of Adjustment may grant an extension of time, not to exceed six (6) months, provided that the request for an extension is filed before expiration [of the one \(1\) year for issuance of a building permit or the eighteen \(18\) month period for the completion of the repairs and/ or replacement.](#) Where an existing building or structure under this section is destroyed or significantly damaged, all parts of the structure which have been damaged or destroyed to the point that they will not be used in restoring or repairing the structure shall be removed from the property within three (3) months of the date of damage. Any replacement of a building or structure nonconforming in use or dimensions shall:
  - 1. Not increase the density or dimensional nonconformity in any manner.
  - 2. Not enlarge or extend the nonconforming use.
  - 3. Have all construction conform to the Bethany Beach Building Code and the terms of the Bethany Beach Building Permit.