

**Town of Bethany Beach  
Planning Commission Minutes  
January 22, 2011**

The Bethany Beach Planning Commission held a meeting on Saturday, January 22, 2011 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; John Gaughan; Fulton Loppatto; Chuck Peterson; and Faith Denault.

Excused member: Mike Boswell

Also present: Susan Frederick, Building Inspector; Jeff Mascornick, Planning Commission Intern; former Planning Commission member, Kathleen Mink; Lindsey Shallcross, Administrative Secretary; and other interested members of the public.

The meeting was called to order at 9:00 a.m.

**OPENING OF MEETING**

*Approval of Agenda*

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

*Discussion/Approval of the Planning Commission Minutes of November 20, 2010*

Ms. Denault made a motion to approve the minutes dated November 20, 2010. Mr. Gaughan seconded the motion and it was unanimously approved. The Planning Commission did not meet in December.

*Announcements/Comments Updates*

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

Mr. Killmer reported that the new owner of Capriotti's Sub Shop, Mr. David Morgan, submitted an application for new signs to replace the existing signs for the property located at 767 Garfield Parkway, Lot 3, Block 30, C-2 Zoning District, Bethany Beach, DE.

Mr. Killmer stated the application for a new building sign and a new pole sign met all of the Town's Design Guidelines as well as the Town Code requirements and the Design Review Committee unanimously approved both signs.

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

Mr. Killmer reported the following:

- The ordinance to amend Chapter 525 “Wireless Communications Facilities” of the Town Code of Bethany Beach was approved. Mr. Killmer thanked Mr. Loppatto and Mr. Peterson for their help with the drafting of the ordinance.
- Several members of the community expressed their concerns with the proposed ordinance that regulates the parking of recreational vehicles and the placement as well as the time limits for the use of portable on demand storage units (PODS). Some residents store all of their summer belongings in PODS and have them dropped off and picked up twice a year and want the Town Council to address their concern in updated language to the proposed ordinance. Regarding RVs, a number of residents have visitors who arrive in RVs during the summer and stay for more than 72 hours and they requested that the Town Council address this issue in the next draft of the proposed ordinance. The Town Solicitor is going to create language that addresses both of these issues.
- It was voted to create an amended ordinance that prohibits smoking on the entire length of the boardwalk and access ramps to the street and the beach on a year-round basis.
- The Town Council approved the increase in EMS fees.
- The AT&T access to the Town’s water plant and stand pipe for installation of a cellular antenna array was not approved, by a vote of 6-1. AT&T claims that it needs additional cell phone coverage in the Bethany Beach area but space at the Town’s water treatment facility is very limited which is one of the reasons the Town is not offering the use of the standpipe.
- The Town received approximately \$1 million in grants during the year. The largest grant received was for the Garfield Streetscape Project for \$447,094. The Town’s required 10% match of \$44,710 towards the project was authorized to be included in the budget.
- The request from King Limousine for a reduction in shuttle bus permit fees as well as an additional van parking space was unanimously denied by the Town Council.
- The purchasing of equipment for the Town’s public works department was approved.

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

There were no comments or questions at this time.

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

There were no comments or questions for the Planning Commission at this time.

**NEW BUSINESS**

*Review an Ordinance to Amend Section 425-100 (“Board of Adjustment – “Membership; Appointment, Terms: Removal; Vacancies”) to Amend the Composition of the Board of Adjustment and to Expand the Board of Adjustment from Three to Five Members in Accordance with State Law*

Mr. Killmer explained the issue with establishing an ordinance to increase the membership on the Board of Adjustment from three members to five members and whether the membership should be comprised of three residents and two non-residents or have no restrictions with the ability of all property owners in Bethany Beach to be eligible.

There are three different statutes that the State Legislature has to be able to regulate the Board of Adjustments in each municipality. They are the rules that must be followed when creating a Board of Adjustment, which each municipality is required to have.

In the Town of Bethany Beach, a method is used that was designed when towns like Bethany Beach were quite new and most of the homes were owned by individuals that didn't have their primary residence in the Town. Because of the urgency of availability of members, they worked under a 3-member system where one of the members was a Chairperson, another member who could be the Mayor or the Town Solicitor, and the third member had to be the Chair of the Zoning Commission.

The current composition of the Board of Adjustment consists of the following three members:

- 1.) Dr. Bob Parsons (Chair) and a permanent resident.
- 2.) Thomas Mahler – currently a non-resident property owner, but is in the process of building a home in Bethany Beach.
- 3.) Vahan Moushegian – recently appointed who is a non-resident property owner who lives in Ocean View, Delaware.

A request for a variance from Chapter 425, Zoning, Appendix 3, Table of Dimensional Requirements, footnote (p) related to height and roof pitch was recently filed by Mr. Mahler for the roof trusses on his new home under construction at 105 Fourth Street. When the truss manufacturer delivered the trusses, they were at the wrong pitch and could not be modified.

The issue that drives the Town to consider expanding the membership on the BoA from 3 to 5 members is that Mr. Mahler cannot rule on his own application for a variance and Dr. Parsons has recused himself, which leaves the recently appointed member, Mr. Moushegian, the only remaining member of the Board of Adjustment.

There were other options that were discussed, such as determining if it is permissible for another town's Board of Adjustment to hold the hearing or have Sussex County Board of Adjustment hold the hearing.

Mr. Killmer noted that he has been trying to convince the Town Council for years to have a five member board since he knew the value of having five members over three members on the Board of Adjustment, but there has always been a resistance to do that.

Mr. Killmer emphasized that Mr. Jaywork's original draft of the ordinance made no mention whether the members had to be full-time residents or non-resident property owners and while he would like to expand the Board of Adjustment to five members but wishes to limit the number of non-resident property owners who could serve on the Board of Adjustment. He asked the Town to ask the Town Solicitor to draft an alternative amendment for expanding the membership on the BoA. The amended draft ordinance mimics the resident requirements that are used for establishing membership on the Town Council.

Currently, four of the Town Council members must be residents but three members can be non-residents. The current Town Council has six of the members who are residents.

Mr. Killmer feels it is more important to balance out residents and non-residents. He added that non-residents should be at the table, but not ever a quorum of non-residents.

Mr. Killmer informed the Commissioners that there is a proposal before them that is an amended draft for the ordinance, which is dated January 18, 2011. There is also an original draft of the ordinance that was previously sent in the mail to the Commissioners. He noted that everything in the amended draft ordinance is word-for-word of what is in the State Code, except for Section (B), which was modified by the Town Solicitor. The Town Solicitor feels comfortable that the Town can defend this ordinance because the term "resident" is used in both cases.

Mr. Killmer opened up the discussion on this issue and asked the Commissioners if they had any comments or questions, or any recommended changes to either of the proposed ordinances. He added that one of the two proposed ordinances must be approved by the Planning Commission as their recommendation to the Town Council as soon as possible. A public hearing is already scheduled for February 7, 2011 since this is an urgent matter.

Mr. Gaughan noted that there is no general definition of "part-time resident" in the revised drafted ordinance dated January 18, 2011.

Mr. Killmer stated that there is a definition of "permanent residents" in Section (B) of the draft ordinances, adding that he specifically asked that question to the Town Solicitor and he said it is not needed.

Ms. Denault questioned that since Mr. Moushegian is a resident of Ocean View, how did he get appointed to be on the Board of Adjustment?

Mr. Killmer said that the current statute states no distinction between resident and non-resident.

Mr. Killmer emphasized that decisions by the Board of Adjustment has a significant impact on the possible future planning direction of the Town.

Mr. Killmer stated that he would like to move forward with this, if there are no further comments or questions.

Mr. Peterson made a motion to accept the amended draft ordinance dated January 18, 2011, which limits the number of non-residents to two members on a five member BoA. Ms. Denault seconded the motion and all were in favor.

## **OLD BUSINESS**

### *Review Third Draft of the 2010 Comprehensive Plan for Bethany Beach*

The Commission spent the balance of the meeting completing a page-by-page review of the third draft of the Comprehensive Plan.

There was a brief recess at 11:05 a.m.

The meeting was rejoined at 11:15 a.m.

The Commission continued reviewing and revising the Comp. Plan.

## **SUMMARY ACTION ITEMS**

- A. Mr. Mascornick is going to make all of the recommended changes to the Comp. Plan that the Commissioners brought forward, including updating all of the maps.
- B. The Commission will review Draft 4 at the next meeting. The final draft should be completed in February and submitted to the Town Council for approval.
- C. Mr. Killmer develops an additional housing recommendation for the Plan.

## **ADJOURN**

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

The meeting was adjourned at 12:54 p.m.

Respectfully Submitted:

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Lindsey Shallcross  
Admin. Secretary