

Meeting Minutes
Town of Dewey Beach Planning Commission Public Hearings and Meetings
Meeting Date: April 12, 2014

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Purpose. To hold the first of a series of public-hearing style meetings to garner public input and stimulate Planning Commission discussion on important zoning issues related to increased coastal flooding and sea-level rise, zoning in the Neighborhood Residential district, and FEMA/DNREC requirements regarding floodplain management.

Opening. The meeting was called to order by Chair David King (3:02 pm). Followed by the Pledge of Allegiance and roll call. A quorum of the Planning Commission was present, including Jim Dedes, Mike Harmer, and Marty Seitz. Also in attendance were Town Manager Marc Appelbaum, Town Commissioner David Jasinski, and members of the public including Bill Coulbourne, John Glowacky, Kevin Monigle, Pat Vernon, Jane Timmerman, Cole Murphy, Mike Boyd, Tim Arnold, and Chris Flood amongst others.

Minutes. A motion was made and seconded to approve minutes for the February 22 and March 1, 2014 Planning Commission meetings, and passed by unanimous voice vote.

Regular Agenda

1. Issues specifically related to coastal flooding and sea-level rise:

- Under what circumstances – if any – should/could an existing structure be elevated such that the resulting building height exceeds current building height limit of 35’? For example, if substantially damaged FEMA would require any rebuild to be elevated to its base flood elevation plus the Town’s freeboard requirement. This would be problematic for an existing structure that is already near 35’ in height and requiring additional elevation to meet Town flood elevation requirements. Of course there is always recourse to the Board of Adjustment for a height variance based on hardship. The question is, does it make sense to provide more certainty of outcome by incorporating relief under certain circumstances into the zoning code (as a matter of right for all properties meeting certain criteria)?

Kevin Monigle, from Snug Harbor which is currently at a building height of 32.5’ with a base building elevation around 5’. They are looking to elevate their building to get “out of the water”. While FEMA regulations might require them to raise their building by 2’ to 3’, they do not want to park cars underneath but would like to go up 5’ to 6’. That is to go above the minimum, because it is expensive and they want to be proactive such that when FEMA again raises the minimum they are still in conformance. Numbers discussed included a cost to elevate their building of order \$100K and DNREC estimates of 3’ to 6’ of sea-level rise by 2100. Chair King asked Mr. Monigle to get Jim Dedes a copy of his elevation certificate to aid the commission in its data collection process.

Bill Coulbourne (property owner in Indian Beach professionally involved in designing residential buildings in coastal floodplain areas) noted 1) with the Biggert Waters Act and anticipated future changes to flood maps that some communities are floating their building elevation requirements, i.e., 2’ above the FEMA base flood elevation. So, when FEMA changes its FIRMs (Flood Insurance Rate Maps), the town code immediately changes in a corresponding manner; 2) FEMA maps the 100-year floodplain (1% annual-chance flood), but what he sees across the country, is that it should be mapping – and we should be regulating – to the 500 year flood.

Tim Arnold, 207 Jersey St. asked if any such change would be Town wide or just for buildings in flood zones? Chair King stated that any such change would only apply to residential structures in a flood zone, and noted that prior code had an exclusion for residences in the NR zoning district which were in a flood zone, to build to an

1 additional foot of height (presumably due to the institution of a mandatory freeboard of 1' as part of the Town's
2 participation in the National Flood Insurance Program (NFIP)).
3

4 **Pat Vernon** asked for clarification of some definitions:

- 5 ○ "what is zero elevation" – average sea level as per the 1988 North American Vertical Datum
6 (88NAVD)
- 7 ○ "how is building height determined" – the height of the highest point of the roof above the highest
8 point of the roadway in front of the center of the property, i.e., grade
- 9 ○ "what is base flood elevation" – FEMA's 1% annual-chance flood elevation published in an effective
10 FIRM
- 11 ○ "what is base building elevation" – the measurement point depends on flood zone: the finished level of
12 the first floor for AO- and AE-zones; the bottom of the main horizontal structural supports for VE-
13 zones
14

15 **Commissioner Dedes** asked the public, if the town provides relief from the current 35' height limit because of
16 flooding is there a number in peoples' minds as to how high this limit should be, or should it just be enough to
17 meet FEMA standards. **Tim Arnold** responded that it depends on where in town, e.g., in the NR district 35' is
18 already "way too high" for a community in which the norm is essentially 1 and 2 story homes.
19

20 Town Commissioner **David Jaskinski** suggested that it would be good to document the progression of FEMA
21 100-year flood levels for Dewey Beach, since the FIRMs came out first in the 1970s. Then everyone would
22 know where they were when base flood elevations were first required for their property.
23

24 **Bill Coulbourne** noted that there were lots of homes in AO zones behind the dunes in NJ that were destroyed or
25 swept off their foundations during Hurricane Sandy, suggesting we might want to revisit building standards in
26 some/all of our AO zones.
27

28 **Commissioner Dedes** suggested possibly distinguishing between conforming and non-conforming properties,
29 and providing similar relief to commercial-use structures (which are not required by FEMA to be raised, to just
30 flood proof to such a level). He also noted that he has been told by officials in South Bethany that allowing
31 properties to be elevated above the current 32' height limit has resulted in properties losing ocean views. Of
32 course the alternative is to require major changes to some existing structures such that they conform both to a
33 FEMA rebuild and town maximum height requirements.
34

35 **Cole Murphy**, Ann Acres, said they have the same issues. Recognizing that current statistics are based on mean
36 sea level, he expressed concerns about storm surge issues when considering how much to allow a property to be
37 elevated.
38

39 **Commissioner Marty Seitz** summarized potential negatives related to allowing the raising of damaged
40 properties, including change in neighborhood character and loss of views.
41

42 **Jane Timmerman**, Snug Harbor, stated if forced to elevate to Town flood standards (due to substantial
43 damage) but remain below the Town 35' building height limit, that they would have to remove one floor of their
44 existing structure. Also, if elevating the building, they would like to be able to raise it above the current
45 minimum required elevation to protect against the storm-of-storms/five-hundred year storm/future sea-level rise
46 and excessive storm surge – but not to gain parking, an outdoor shower or other non-safety related benefits.
47

48 Commissioner Seitz commented regarding the draft DNREC draft floodplain ordinance, especially the 14 items
49 under the listed purposes, that it doesn't say anything like, we want to maintain occupancy and use of existing
50 properties; which should be one of our goals: to enable our citizens to maintain and continue to occupy their
51 homes. He expressed his opinion that this should be one of our goals – even if at odds with DNREC's goals –
52 and that this should be undertaken as one of the Town's responsibilities.
53

- 54 • Should the Town increase its required freeboard and, if so, to what height (freeboard is the additional elevation
55 required of buildings in a flood zone as a buffer for excessive flooding or tidal surge, as part of the Town's
56 participation in the National Flood Insurance Program, and results in flood insurance rate reductions for

1 properties in a flood zone)? Currently the Town requires a freeboard of 1' while DNREC recommends a
 2 freeboard of 18". Why increase the required freeboard? DNREC predicts sea level is rising, and while FEMA
 3 will reset the FIRMs sometime in the future, if one is building a house today, you want to have it safe for the
 4 next 30 to 50 years. One way to deal with all this uncertainty is to increase the freeboard, possibly to 2' or 3'
 5 (freeboards of 1', 2' and 3' result in increasingly reduced flood insurance rates). This bumps some properties up
 6 against the current 35' height limit. **Bill Coulbourne** stated, if one caps building height, that eventually there
 7 are going to be a lot of people with homes that will at some point become uninhabitable.

8
 9 There was general agreement amongst the Planning Commissioners that increases in freeboard and maximum
 10 building height are two closely related issues. And, as a question raised by Commissioner Dedes, if, for
 11 example, my neighbor gets to raise an existing "35'" building an additional 3' due to FEMA requirements
 12 should I get to build a new home at a height of 38'? Also, as noted by **Commissioners Dedes and Harmer**,
 13 flood zones change (as evident in the proposed 2015 FIRM) and we need to be cognizant of that and find
 14 someway to smoothly modify zoning requirements to align with changing flood zone boundaries and
 15 definitions.

16
 17 **Commissioner Seitz** stated that in 100 years, a large number of properties in Dewey will become abandoned
 18 due to tidal erosion and rising sea level. A reasonable near-term goal – for the next 30 to 40 years – is to
 19 maintain the community we have and to make the modifications that are reasonable to do that, to help ourselves
 20 and maintain community.

21
 22 **Jane Timmerman** stated that it seems that there needs to be some flexibility with regard to existing buildings,
 23 conforming versus non-conforming structures, different regulations for different zones, etc., and that everyone
 24 needs to work together.

25
 26 **Town Commissioner Jasinski** noted that the Planning Commission should factor into their deliberations how
 27 an increase in freeboard might affect the Town's ratings in the DNREC Community Rating System (CRS) and
 28 serve to lower everyone's flood insurance rates purchased under NFIP (currently offered at a 10% discount).

- 29
 30 • Should the Town code extend its prohibition on building seaward of mean high tide to properties on the Bay
 31 and/or consider extending any such prohibition to anticipate future sea-level rise? (4:07 pm) On the ocean side
 32 there is a DNREC building restriction line which makes this regulation somewhat moot.

33
 34 On the Bay side there is bulk heading at an elevation of about 3'. To the extent that mean high tide is around 1',
 35 this isn't going to be a real issue for a while. There was consensus that this is something to address when bay-
 36 side properties are inundated on a weekly basis.

- 37
 38 • Should the Town redefine "substantial damage" in a more conservative manner to encourage/require repetitive-
 39 loss properties to improve resilience to flooding? **Bill Coulbourne** indicated he is not aware of any community
 40 that has done this.
 41
 42 2. **Zoning Code requirements for the Neighborhood Residential district.** (4:15 pm) Does the current zoning
 43 code provide sufficient protections to preserve the character of the NR district – as stipulated in the 2007
 44 Comprehensive Development Plan – in the face of recent increases in real-estate and re-development activity?
 45

46 In 2007 the Comprehensive Plan Development Group didn't address land-lease properties because it was
 47 viewed as unlikely that they would be developed/re-developed prior to 2017 (when the Comp Plan is due for
 48 renewal). Consideration of the zoning in the NR district has now been forwarded to the Planning Commission
 49 by the Town Commissioners. The comp plan sets, as one of the Town's goals, the definition of the architectural
 50 character of its various communities, including the NR district. The comp plan also says that the Town zoning
 51 code should encourage development in the NR district that is consistent with the existing architectural character,
 52 scale and density of the neighborhood, encourage development of single family homes of modest size, and to
 53 regulate and shape residential development. Current building heights are 35' and floor area ratio (FAR) of 1.0 –
 54 both much larger than neighboring communities.
 55

1 **Bill Coulbourn and Tim Arnold** were “volunteered” to work to define the “character” of the NR district. Tim
2 noted that the NR district has an architectural character and is a community worth preserving; the neighborhood
3 is unique, having been developed in a pine forest with modest-sized, modernist/contemporary houses.
4

5 **Mike Boyd**, 121 Chesapeake (Sea Haven), characterized the neighborhood character as “small cottages” and
6 was disturbed by the construction at Chesapeake and King Charles.
7

8 **Commissioner Dedes** suggested putting together a listing of existing code requirements and some
9 drawings/pictures of what is permitted by current code.
10

11 **Town Manager Appelbaum** asked that the commission made it very clear that any proposed restrictions in
12 zoning would not take effect until some specified date in the future so as to not surprise people currently
13 negotiating a real estate transaction possibly based on current zoning code. Chair King responded that it would
14 certainly be reasonable to put an effective date of January 1, 2015 (or later) on any such proposed changes given
15 likely timelines for public comment and Town Commissioner approvals.
16

- 17 3. **Flood plain management.** (4:38 pm) Review and compare existing Dewey flood plain management code
18 (Chapter 101) with DNREC-recommended code as a prelude to possibly amending and adopting the DNREC
19 language (which has been reviewed by legal authority at the state level). **Commissioner Harmer** volunteered to
20 review and compare these two documents to facilitate updating Town code to be acceptable to/complaint with
21 DNREC standards – by identifying items that are unique in each.
22

- 23 4. **Administrative Provisions.** (4:48 pm) Review and discuss potential amendments to Article XI Administrative
24 Provisions of Chapter 185 Zoning, especially as relates to site plan requirements, changes and approval. This
25 task was stimulated by several recent building permit applications. **Commissioners Paraskewich and Dedes**
26 **and Building Official Bill Mears** were volunteered to undertake this review and provide the Planning
27 Commission with their recommendation, including identification of missing elements, unreasonable
28 requirements, and inconsistencies. **Commissioner Harmer** noted that the DNREC draft floodplain
29 management code has a lot of this type of information.
30

31 This review and report might possibly suggest a different role for the Planning Commission in the issuance of
32 building permits and issuance of zoning relief. **Town Manager Appelbaum** asked this effort take a look at
33 185-82 Filing Fees (i.e., a fee paid with a building permit application to cover legal and professional review of
34 the application; Commissioner Harmer stated that his organization charges review fees of up to \$6,500 for a
35 construction application), and to consider under what conditions the Town should require certified plat/site
36 surveys prior to or after construction.
37

38 **Adjournment.**

39 Following a motion, second and unanimous voice vote, the meeting was adjourned at 4:59 pm. The next
40 Planning Commission Meeting will be held on May 10, 2014 at 3:00 pm.