

MEMORANDUM OF TRANSMITTAL

TO: TOWN COMMISSIONERS

FROM: DAVID KING, CHAIR DEWEY BEACH PLANNING COMMISION

DATE: SEPTEMBER 25, 2014

SUBJECT: PLANNING COMMISSION REPORT AND RECOMMENDATION ON REQUEST FOR ZONING BOUNDARY CHANGE ON 100 BLOCK RODNEY AVE.

During its Saturday September 13, 2014 meeting, the Planning Commission held a duly-noticed Public Hearing on the request, forwarded by the Town Commissioners for its consideration, to change the zoning designation for the five parcels 106, 110, 112/114, 116, and 122/124/126 Rodney Ave to Resort Residential (RR) from Resort Business-1 (RB-1). All Planning Commission members were present, as was the Town Attorney, all applicants, and approximately 10 members of the public.

During the Public Hearing the Planning Commission heard testimony from the applicants, including Elizabeth Cahall, Elinor Winn Hughes, and Ray Dawson. In brief, their case rested on the facts that these properties were established and used exclusively for residential use, that they have been in the respective families for extended periods of time (61 years in the case of the Dawson family), and that the applicants would like to ensure, as they age and their respective families grow, that their families will continue to be able to maintain and improve these properties (including the replacement of non-conforming mobile homes on two of the lots) without the requirement to add commercial activity on the first floor.

After the applicants' presentations, ample opportunity was given for input from the public. Dale Cooke spoke in support of the application (essentially, that he would like to see properties be able to remain in residential use); no one spoke in opposition.

Following the closing of the Public Hearing the Planning Commission deliberated upon the request. During its deliberations, Attorney Townsend and Commissioner Seitz framed the issue: this is a shift in the RR/RB-1 boundary currently running down the center of this block of Rodney Ave., ½ block South to include all residential-use properties on the South side of the street and, as per 185-73, the Town Commissioners have the authority to act to change the boundaries of a zoning district.

There were two important foci of the general discussion:

- **Is this change consistent with the 2007 Comprehensive Development Plan?** Commission Dedes noted that the comp plan sets as an objective to monitor and adjust policy and plans to changes in the demographics and population. This is important, and relevant because the succession of aged residents by their younger, growing families results in additional needs to maintain and improve family homesteads/summer homes. With the Town's zoning changes in 2009, these applicants lost the ability to plan for the continued occupancy of their homesteads by their growing families.

Chair King noted that the driving force for the RB-1 district designation was to create potential for one or more town-center-like commercial developments; the Town currently has one such development in the new Ruddertowne area, and there is sufficient land available without these small residential parcels to amass the required 80,000 s.f. land area to create another, if there is any desire to do so.

Vice Chair Paraskewich challenged the validity of the 2007 comp plan and 2009 zoning changes, in that they included these residential properties in an incompatible zoning district (RB-1).

- **Is this beneficial for the Town?** Commissioner McKinney noted that residential side streets in Dewey, like Rodney Ave., are not good locations for business activities – these locations lack street presence and parking. It doesn't make any sense to require the development of additional businesses in poor business locations when there are empty store fronts on Coastal Highway. Residential use is the best and highest value use for these properties, but such use is harmed by the RB-1 zoning requirements. Former Town Commissioner Cooke and the applicants echoed the need for Town zoning to permit families to continue to improve and occupy their summer homes without the need to put commercial activity and patron parking in their front yard.

There was unanimous consent to support the applicants' request for the proposed change in zoning district boundary. In a roll call vote of 7 for – 0 against the Planning Commission voted to recommend to the Town Commissioners that these five parcels on Rodney Ave. be rezoned from RB-1 to RR, as requested, and to recommend the attached ordinance as a starting point for that change. For your convenience, draft minutes from the Planning Commission September 13, 2014 meeting are also attached.

ATTACHMENT 1 – RECOMMENDATION FOR ZONING AMENDMENT

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE ZONING MAP OF THE TOWN OF DEWEY BEACH, DE TO REZONE FIVE (5) CURRENT RESIDENTIAL-USE PARCELS ON THE SOUTH-SIDE OF THE 100 BLOCK OF RODNEY AVENUE TO RESORT RESIDENTIAL (RR) FROM RESORT BUSINESS-1 (RB-1).¹

WHEREAS, in order to promote the health, safety, and welfare of the present and future inhabitants of Dewey Beach it is appropriate from time to time to amend Town regulations regarding planning and zoning issues within the Town of Dewey Beach, DE; and

WHEREAS, the Town's Resort Business-1 (RB-1) zoning district regulations require commercial-use on the first floor, and therefore do not permit redevelopment or substantial improvements that are solely residential in use; and

WHEREAS, the Town has received requests to rezone five (5) parcels, known as:

106 Rodney Avenue (Tax I.D. Number 334-20.18-131.00)

110 Rodney Avenue (Tax I.D. Number 334-20.18-130.00)

112/114 Rodney Avenue (Tax I.D. Number 334-20.18-129.00)

116 Rodney Avenue (Tax I.D. Number 334-20.18-128.00)

122/124/126 Rodney Avenue (Tax I.D. Number 334-20.18-127.00)

which are located at the edge of the current RB-1 zoning district where it abuts a Resort Residential (RR) zoning district, and which were established and built for residential use, and which are currently exclusively in residential use; and

WHEREAS, the owners of said properties have stated the intent to substantially improve each of these properties for the residential use of their large and extensive families, and so desire to be able to continue to improve their properties and to continue to occupy as conforming vacation homes and/or primary residences; and

¹ **SYNOPSIS.** This ordinance amends the Town's Zoning Map to rezone five (5) residential-use parcels on the South side of the 100 block of Rodney Avenue, known as 106 – 126 Rodney Ave, to Resort Residential (RR) from Resort Business-1 (RB-1).

WHEREAS, no action has been taken by any adjacent property owner or developer to consolidate these properties to form a planned resort business district development in the past five years; and

WHEREAS, there was no opposition voiced to the proposed rezoning of these properties at a duly noticed Public Hearing before the Dewey Beach Planning Commission; and

WHEREAS, it is the desire of the Town Commissioners of the Town of Dewey Beach to support the ability of residential property owners in the Town to continue to occupy and improve their properties.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE TOWN
COMMISSIONERS OF THE TOWN OF DEWEY BEACH, DELAWARE IN SESSION
MET THIS ____ DAY OF _____, 2014, THAT:**

1. **SECTION 1. Amend the Town's Zoning Map.** The effective Zoning Map was adopted as Attachment 2 of Chapter 185 Zoning of the Town's Code on 1-10-2009 by Ordinance No. 634. This ordinance hereby amends the effective Zoning Map by rezoning the five (5) parcels circled in the inset below to Resort Residential (RR) from Resort Business -1 (RB-1). These five parcels are known as:

106 Rodney Avenue (Tax I.D. Number 334-20.18-131.00)

110 Rodney Avenue (Tax I.D. Number 334-20.18-130.00)

112/114 Rodney Avenue (Tax I.D. Number 334-20.18-129.00)

116 Rodney Avenue (Tax I.D. Number 334-20.18-128.00)

122/124/126 Rodney Avenue (Tax I.D. Number 334-20.18-127.00)



SECTION 2. Amend the Town's 2007 Comprehensive Development Plan. Immediately following adoption of this ordinance the Town shall prepare an application to the Delaware State Office of Planning Coordination to amend the Town's 2007 Comprehensive Development Plan by amending Map 8. Future Land Use and Map 9. Proposed Resort Business Districts to reflect the above zoning change.

SECTION 3. Effective date. Upon notification of approval of said zoning change from the State Office of Planning Coordination, the Town shall immediately modify the maps referenced in Sections 2 and 3 above and they shall become effective 30 calendar days following receipt of notification by the State Office of Planning Coordination of its approval of the Town's rezoning request.

SECTION 4. Severability. If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 5. Formatting and minor editorial changes. Minor changes of formatting, grammar, and typography may be made to assist incorporating these changes into the Town Code, including but not limited to redrawing of the Town's Official Zoning Map to incorporate these changes.

SECTION 6. Adoption. Enactment of this Ordinance shall require adoption by a majority vote of the Commissioners of the Town of Dewey Beach and shall be contingent upon and take effect immediately after appropriate amendment of the Town of Dewey Beach's 2007 Comprehensive Development Plan.

Adopted by at least a majority vote of all Commissioners of the Town of Dewey Beach on _____, 2014.

BY: _____
Mayor Diane Hanson

ATT: _____
Town Manager Marc Appelbaum

DRAFT
Meeting Minutes
Town of Dewey Beach Planning Commission Meeting
Meeting Date: September 13, 2014

Purpose. To conduct a Public Hearing and related Planning Commission regarding a requested zoning change for residential-use properties on the South side of the 100-block of Rodney Ave, and Planning Commission discussions related to a draft flood-loss prevention ordinance.

Chair's Meeting Summary and Comments.

- 1) The Planning Commission held a public hearing regarding an application from owners of five residential-use properties to re-zone their properties to Resort Residential from Resort Business – 1. After suitable deliberations, the Planning Commission voted unanimously (7 – 0) to support this request in its recommendation to the Town Commissioners, and amended a draft ordinance to serve as the vehicle for so doing.
- 2) The Planning Commission finished its first reading and mark up of the FEMA draft Flood Loss Reduction ordinance, and elected to retain a freeboard of 1' in all flood zones with an urging to the Town Commissioners to address increasing the Town's building height limit in some/all flood zones so that a future increase in freeboard would not pose a hardship.

Opening. The meeting was called to order by Chair David King (12:58 pm), followed by the Pledge of Allegiance and roll call. All Planning Commission members were present: Jim Dedes, Don Gritti, Mike Harmer, Chuck McKinney, Vice Chair Mike Paraskewich, and Marty Seitz. Also in attendance were the applicants for rezoning Elizabeth Cahall, Ray and Jeff Dawson, Elinor Winn Hughes, and Amy Mault, Town Commissioner Anna legates, Chris Flood, Georgia Leonhardt, Dale Cooke, Dave Davis, Elaine Bole, Kevin Monigle and others; the proceedings of the meeting were recorded (audio only; subsequently posted on the Town Website under this meeting event).

Prior meeting minutes. Following a motion and second, the minutes from the Commission's July 12, 2014 meeting were approved by unanimous voice vote.

Regular Agenda (1:00 pm)

2. **Public Hearing on Requested Zoning Change for residential-use properties on the South side of the 100-block of Rodney Ave. as per accompanying draft ordinance (1:05 pm)** Requests for rezoning to Resort Residential (RR) from Resort Business-1 (RB-1) were made by the owners of:

106 Rodney Avenue (Tax I.D. Number 334-20.18-131.00)

110 Rodney Avenue (Tax I.D. Number 334-20.18-130.00)

112/114 Rodney Avenue (Tax I.D. Number 334-20.18-129.00)

116 Rodney Avenue (Tax I.D. Number 334-20.18-128.00)

122/124/126 Rodney Avenue (Tax I.D. Number 334-20.18-127.00)

This rezoning issue was referred by the Town Commissioners to the Planning Commission for its review and report, as per Section 185-73 of the Town Code. Public input regarding the rezoning of these properties will be heard at this time.

Chair King indicated the process for this public hearing would be: testimony from the applicants, followed by public comments, first in support of the application and then in opposition.

Applicant testimony

Elizabeth Cahall (106 Rodney). She has owned this property since 1995. It was initially used as a residential rental, and then as her family grew, as a summer home for the past 11 years. The applicant and family wants to be able to improve and expand to accommodate her/their family(s), while keeping as a residential property without any businesses on the premises.

Elinor Winn Hughes (110, 112/114, and 116 Rodney). These properties have been in the family since 1953; becoming her parents' permanent home in 1970. When her mother died in 1999 she and her brother actively managed this property as residential rentals – only to families (one family has been coming back every year for 50 years). Her brother died in 2003 and she is now too old to actively manage this as residential rentals and her 2 children have other careers. Now in her mid-seventies, she wants to retire from the rental business. She has had a couple of inquiries about buying the property; all expressed the interest in maintaining and improving for residential use, but town code requires conversion to mixed use upon any significant alteration/improvement (e.g., if they were to tear down the existing, outdated structure(s) they would have to re-build for commercial- or mixed-use). She would like to be able to sell and to see it remain residential – as it has been for the past 61 years as residential.

In her testimony Ms. Hughes noted that Rt 1 has a lot of commercial-use property that is empty and looks run down; that the middle of a residential side street is not the ideal location for a business because it would have no main-street presence, would be interspersed with residential use, and would have limited customer parking. She would like to see the property maintained and improved in a manner so as to be promoted as family-oriented, that is to say as residential use.

Chair King noted at this point that all these properties are currently non-conforming uses, and that as such are eligible for a one-time not-to-exceed 50% expansion under the zoning code. Only when any improvement exceeded 50% of the current habitable area would there be a requirement to convert, at least, the first floor to business use. Since the current buildings are small, this severely limits what can be built while remaining residential use only. He also provided historical context to the prior rezoning of this area in 2009 (designated to be part of RB-1 in the 2007 Comprehensive Development Plan, and rezoned in the 2009 Zoning Code update – both subject to a large number of meetings and public hearings. The thinking regarding the RB-1 district zoning requirements was to provide opportunity and incentives to create a town center at the old Ruddertowne). Prior to 2009 these lots were zoned Resort Business (RB), a zoning designation that permitted pure residential-use development.

Ray Dawson (122/124/126 Rodney). The applicant's family has owned the property since 1947, and he has been coming here his whole life. This property has always been occupied by families, as a residential-use property. The property is, and always has been occupied by 3 mobile homes, which now serve his 6 children and 7 grandchildren. He would like the ability to see the mobile homes upgraded and replaced with conforming residential structures to continue to serve his multi-generational family without the requirement to incorporate business activities on the property, as would be required under the current RB-1 zoning designation. He doesn't feel it is fair for a town or a board to say, "while this is what you were, I'm sorry but this is what you're going to be" – the property has always been residential.

Public comment in support of this application

Dale Cooke (resident and property owner), would like to see as many properties as possible be able to stay in residential use; bothered by the requirement to change the use of their properties after being in residential use for so long.

Public comment opposed to this application

None

With no further public comment being offered, Chair King closed the public hearing and opened Planning Commission deliberations.

2) Planning Commission Discussion and Possible Vote to Recommend Requested Zoning Change for residential-use properties on the South side of the 100-block of Rodney Ave. (1:32 pm)

Commissioner Seitz confirmed that the properties across Rodney Ave were residential-use properties zoned Resort Residential (RR), and then stated he therefore felt this could not be challenged as spot zoning since it was, effectively, moving the RR/RB-1 boundary ½ block south across Rodney Ave., and involved five contiguous parcels.

Commissioner Dedes quoted parts of the comp plan in the demographics and population portion – interpreted as a living document – that the Town take into considerations the age, gender and other important demographic factors of residents and property owners when formulating public plans and policies, and continue to monitor changes in demographics and populations when identifying and addressing the public service needs of Town residents and property owners. This request for re-zoning seems to fit into this objective (page 13). Commissioner Seitz voiced his concurrence: that there is a need for the Town to continually monitor and amend its policies to address the changing nature of Town demographics.

Vice Chair Paraskewich stated that in rezoning actions he generally looks for mistakes in the original zoning map or inappropriateness of use, and that in this case he believes the incorporation of a portion of a residential neighborhood into a town center zoning district was in error. Also, he noted that there is no way the Town could have acquired the lands in this area to incorporate into a town center per se, even if that was the vision of the plan. And so, in this regard he feels the plan was flawed.

Commissioner Gritti asked about the cost of a Preliminary Land Use System (PLUS) review for this Plan/Code amendment. Attorney Townsend responded that he thought that the cost to the Town would be minimal given the current use and character of the area, and his belief that the Office of State Planning Coordination would not view passage of an amendment to re-designate these properties residential would trigger the requirements of a major change to the Plan.

Commissioner Harmer state (initial) opposition to this request based on this area having been delineated as a RB-1 zoning district in a public process in 2007-2009; that this area has always been zoned “business” and he does not see the creation of a town center in this area as a mistake in the code; that denying this application keeps the “town center” concept alive for possible future development – which is lost if pieces of the RB-1 district are lost piecemeal; and that the applicants always have the right to take their case before the Board of Adjustment to seek a use variance based on hardship. Ultimately, he emphasized that he would like to keep the potential of a town center alive.

Commissioner McKinney noted that applicants did not ask for their properties to be re-zoned RB-1 in 2007/2009; and that the businesses in Dewey on the side streets do not, in general, do well (his marina as a singular exception due to its nature and need to be by the bay) because they lack street presence and

don't have customer parking. As specific examples he cited the two shops they have on their marina property which do not do well – the larger facility is in current use for storage, not commerce. He supports returning these residential-use properties to a zoning classification permitting future residential development.

Commissioner Seitz noted that we already have substantial development in this area that can be characterized as a town center (and therefore this objective of the compl plan has already been met), and that the rest of the designated RB-1 district still offers lots of opportunity even without these properties.

Chair King cited a need to do what is best for the Town as a whole, and that a town center was an important point in the comp plan for this two-block area. He provided information about parcel areas for these residential lots (three lots at 6,250 s.f., one 5,125 s.f., and one a little over 12,000 s.f.) and the commercial properties (Rusty Rudder at about 68,000; Sea Esta hotel at about 15,000 s.f., and the abutting portion of the Pierpoint marina at 24,000 s.f.) adjacent to them, and noted that there was still the potential for creation of the 80,000 contiguous square feet required for qualifying for Planned Resort Business – 1 zoning without these five residential-use.

In creation of the 2007 Comp Plan he said he felt the town was creating the opportunity for two or three planned developments. The Town now has one with the new Ruddertowne development. The existing Rusty Rudder property might form the basis for a second. However, when the Sea Esta hotel sold a few years ago, there is no evidence that the owners of the Rusty Rudder were interested in purchasing this to create such a planned development. Now, to get to 80,000 s.f. they would need to acquire two or three of these residential properties. Doing this would create a little nipple of commercial activity that would create a lot of street traffic on an-otherwise residential street, and otherwise be cut off from the main development (on Dickenson Ave.). Rezoning these parcels to RR does not close the door on a planned commercial/mixed-use development on the Dickenson Ave. side of this block.

Chair King agreed with the others that we need to address the changes in demographics and population – an older generation giving way to the next generation with an expressed interest in keeping future developments and improvements this area as residential by right, and that traffic on side streets and the best use and highest value use of these parcels need to be considered – small first-floor businesses on a side street, elevated 3' to 4' from grade to meet FEMA requirements, and with no nearby parking are unlikely to do well.

Commissioner Harmer noted that he hadn't realized earlier that there would still be the potential for a town center like development without these parcels. While he stated that the Town Commissioners need to understand that each small deletion potentially weakens the town center vision, he doesn't think the money for the development of a town center will ever be realized in a town with a 2 or 3 month seasonal business cycle.

Commissioner Dedes noted that the Town is going to begin its 10-year comp plan update in the next year or so. There are likely a lot of changes that are going to come up and the Town might decide at that time that the town center objective has been achieved or is no longer relevant. The work we are doing today likely fits into that updating process.

In response to a direct question by Commissioner Seitz, Attorney Townsend stated he saw no obvious legal objection to this change in zoning district boundaries – expansion of an existing zone and not spot zoning, – and read that portion of the Town code (Section 185-73) authorizing the Town Commissioners to act to change the boundaries of a zoning district provided the proposed zoning is consistent with the exiting character of the area.

Chair King noted an apparent consensus of the Planning Commission to support this rezoning application, and asked Attorney Townsend if an appropriate path forward would be to consider the draft ordinance as a vehicle to frame the Planning Commission's recommendation to the Town Commissioners. To which question Attorney Townsend responded in the affirmative, and noted that final approval of the State Planning Office would be required.

There was a **motion** (Commissioner Seitz) to recommend to the Town Commissioners that these five parcels on Rodney Ave. be rezoned from RB-1 to RR, as requested, and to recommend the draft ordinance as a starting point for that change. This motion was seconded (Commissioner McKinney), the relevant portions of the draft ordinance were read into the record, and the draft ordinance discussed.

Following Commissioner discussion, amendments were made to the draft ordinance language in three whereas clauses to clarify the Commission's intent and discussions:

- 1) there has been no evidence of interest or action by any developer or property owner in the contingent RB-1 district over the past 6 years to consolidate these properties for creation of a Planned Resort Business – 1 type development; indicating limited inherent value of these parcels for commercial use;
- 2) testimony by the applicants that it is their intent to continue to maintain, improve and use these properties for the enjoyment of their families – including the conversion of non-conforming mobile homes into conforming residences, which could not be done if the properties were to remain zoned as RB-1; and
- 3) these properties were originally developed for, and continuously occupied as residential use.

These friendly amendments were accepted by Commissioners Seitz (motion) and McKinney (second). The motion to forward this amended ordinance to the Town Commissioners with the Planning Commission's recommendation to support the applicants' request was passed by unanimous roll call vote (7 for – 0 against) with the following comments:

- Commissioner McKinney. Support the application; not a good location for businesses on side streets; always residential – keep as residential.
- Commissioner Harmer. Yes; further discussion clarified the continued potential for a town center in this area; no evidence of interest in developing these properties as a PRB-1 development; this is a small number of properties and not in a good business location
- Commissioner Seitz. Yes; as discussed; provides a clear path forward for the applicants (and future property owners) to improve their properties and maintain current use and family orientation.
- Commissioner Dedes. Yes; falls within the Comprehensive Plan demographics recommendations; keeps the family friendly orientation; keeps both sides of Rodney Ave. zoned Resort Residential – consistent with their uses;
- Vice Chair Paraskewich. Yes; original zoning map should have been built around the uses at the time; uses of these parcels was always residential and should have been made residential in the comp plan and new code. This returns the zoning to accommodate residential-only use;
- Commissioner Gritti. Yes; south side of this block of Rodney has always been residential use and should remain so;
- Chair King. Supports the application; this change is important to support the health, safety and well being of the neighborhood; it would be a mistake to turn these parcels into commercial use in terms of traffic on the street in an otherwise residential area; commercial use is not a good use in this neighborhood; it will be a good thing for the town and in promoting family friendly activities.

Immediately after passage the Chair called for a five minute break.

3) Planning Commission Discussions on a Draft Flood-loss prevention ordinance. (2:15 PM) These discussions are likely to focus on Section 7 Variances, Section 8 Enforcement, and a final decision on recommendations on freeboard and substantial loss regulations.

This section of the meeting began with a review of effective & proposed Flood Insurance Rate Maps for the Town, based on aerial photos provided by Vice Chair Paraskewich. These maps include topography and show how FEMA-designated flood areas (based on NAVD88) are likely to change in March 2015: for some properties this change will be from an AE to VE zone or from an AO to AE zone, and for some from a VE to AE zone. Some of the changes are due to better topography, some due to better flooding records and flood modeling. The net effect for many property owners – and relevant to subsequent discussions of freeboard – will be an “actuarially safer from flooding” designation, by a foot or two – counter to our intuition.

In general preliminary discussions it was noted that increases in freeboard are linked to Town policy regarding increased height for those at-risk properties. But the Town requires a referendum to increase its building height restriction and any potential height increase is unlikely to be approved prior to 2016, and therefore any proposed increase in freeboard needs to be considered and recommended within the context of the present height restriction. (Chair King noted one can always appeal to the Board of Adjustment for a height variance).

Dale Cooke made the comment that for many properties, with the decrease in FEMA-required building elevations in the preliminary FIRMs, a modest increase of 1' in freeboard might not create a hardship for the owners – for many but not all. Commissioner Dedes noted that this is not applicable to existing buildings built on the ground and currently near 35' high that might have to comply with the new FIRM regulations.

Vice Chair Paraskewich noted that the new FIRMs show new risks associated with wave factors; Commissioner McKinney confirmed wave damage is a real risk when the winds come out of the Southwest.

Review of the FEMA draft ordinance began at Section 7 Variance. Discussion and possible amendments were related to:

- Authority for review and granting of flood loss reduction ordinances: vested in the Board of Adjustment, with preliminary review and report by Planning Commission on its review of site plans and applications for conformance to the Town’s zoning and flood loss requirements. Although this adds another step, it is a valuable part of the Town’s due diligence in processing any such application. (This is in keeping with the approach being taken in the review and amendment of the Town’s administrative processes related to zoning.);
- Clarifications to indicate references to variances refer only to variances from regulations of the new Chapter 101 and not elsewhere in the code;
- Clarification that certain application materials must be prepared by professional surveyor/engineers;
- There was a question amongst some commissioners as to whether the language of this draft limits the authority of the Board of Adjustment, and that the Board of Adjustment should have the opportunity to review this language prior to our final review;
- To point to Section 185-69 for examples of types of limitations the BOA may impose on granting a variance²;

² This amendment was later deleted by DNREC consultant as being inappropriate.

- Determine violations to be a civil offense, and to point to the pertinent parts of the code regarding penalties & fines, and process, and to increase the fine at \$500 for the first offense. (This will require a new penalty section in Chapter 80 Civil Violations.);
- Still need to scrub through the rest of Town Code to see what other sections might need to be repealed along with the adoption of this amended ordinance;
- Item 13 on Page 16 still needs language describing these factors – Commissioner Harmer will take care of;³
- In discussions related to the definition of “substantial damage”, there was consensus (6 to 1) to adopt the weaker FEMA definition (one-time 50% damage threshold) over the current Town definition in Chapter 101 (aggregated 30% loss over 10 years). Chair King noted that the more stringent requirement provides for a safer community and therefore better flood-insurance rates. Chair King was tasked to ask the DNREC contractor if this would harm the Town’s rating in the Community Rating System;⁴
- In regard to freeboard (a safety factor to mitigate against future flood damage), despite Chair King’s urging to increase the freeboard (perhaps to 18” in an AE zone and to 2’ in a VE zone), there was a consensus (6 to 1) to retain 1’ in all flood zones until something is done to permit corresponding increases in building height.

Action Items

- Chair King will send final draft to Chair of the Board of Adjustment for comment.
- Vice Chair Paraskewich will provide appropriate language for the penalty section, regarding escalating fines and covering the requirement for correction and appeals.
- Chair King will arrange for the Town Commissioners to get a copy of FEMA bulletin P758 prior to their review of this draft ordinance.

Adjournment.

Prior to adjournment meeting dates and tentative agenda items were discussed. The next meeting was scheduled for Saturday October 18th at 10:00 am. Following a motion, second and unanimous voice vote, the meeting was adjourned at 3:38 pm.

³ In a follow up email, Commissioner Harmer stated that these requirements would likely be looked at by other agencies and would not be required here.

⁴ Rebecca Quinn responded that this change would likely reduce the Town’s overall CRS score and, therefore, might reduce town-wide flood insurance discounts, but did not know to what extent.