

Meeting Minutes
Town of Dewey Beach Planning Commission Meeting
Meeting Date: November 7, 2014

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Purpose. To discuss possible changes to how building height is measured in flood zones, possible amendments to Articles XI (Administrative Procedures) and X (Board of Adjustment) of the Town's Zoning Code, and possible amendments to Chapter 1 General Provisions Sections 1-15 and 1-16 Definitions.

Chair's Meeting Summary and Comments.

Opening. The meeting was called to order by Chair David King (7:00 pm), followed by the Pledge of Allegiance and roll call. Planning Commission members present: Jim Dedes, Don Gritti, Mike Harmer, and Chuck McKinney. Also in attendance were Town Manager Marc Appelbaum, Gary Talley, Georgia Leonhart, Len Read, Chris Flood and others; the proceedings of the meeting were recorded (audio only) and will be posted on the Town Website under this meeting event.

Prior meeting minutes. Following a motion and second, the draft minutes from the Commission's October 18, 2014 meeting were approved by unanimous voice vote.

Regular Agenda (7:05 pm)

1. Planning Commission discussions on a White Paper and Strawman Proposal to modify how building heights are measured in flood zones. (7:05 PM). The Planning Commission will discuss a White Paper and Strawman Proposal(s) regarding a recommendation to the Town Commissioners to amend Chapter 1 General Provisions and/or Chapter 185 Zoning of the Town Code to change how building heights are measured in various flood zones. The results of this discussion might result in a Draft Ordinance that would then proceed to a Public Hearing before the Planning Commission and subsequent deliberation by the Planning Commission prior to recommendation to the Town Commissioners for further action.

Chair King began with a presentation (see Addendum) describing a model that might be suitable to replace the current definition of "building height" for structures in a flood zone. The driving force behind this effort has been to enhance the safety of all new buildings in response to rising sea levels and more severe flooding. This model would measure height from some minimum, flood-level based elevation and provide for a maximum vertical building envelope (VBE being herein defined as the distance from the finished floor of the lowest level to the top of the structure), rather than the current 35' foot building height measured from grade (the crown of the roadway in front of the property).

Some points made by Chair King during his presentation included:

- Currently height is a ground-based measurement; 35' from grade.
- In an AO (El 2) flood zone (flooding from sheet flow) Dewey's floodplain management regulations require the finished level of the lowest floor to be 3' (2' from the FEMA base flood elevation of the "100-year storm" plus 1' of town freeboard) above the elevation of the highest adjacent ground. In an AE (El 6) zone (flooding from rising waters, i.e., Rehoboth Bay), these requirements are for the finished level of the lowest floor to be at an elevation of 7' above "sea level" (actually above the local mean higher high tide level). In a VE (El 12) zone (danger of damage due to high velocity wave action in addition to rising waters), these requirements are for the bottom of the lowest horizontal supports, e.g., floor joists, to be 13' above sea level.

- 1 • In the AO(EI 2) flood zone, one’s base building elevation is 3’ above highest adjacent ground
2 (HAG). Since “grade” and ground are essentially the same elevation, this creates a vertical
3 building envelope VBE = 32’ on average under current code.
- 4 • The proposed model ties building height to sea level or base flood level – not ground elevation –
5 plus some vertical building envelope. If maximum VBE is set at 32’ there is no change in average
6 or typical elevation of building roof lines in the AO (EI 2) zone. This flood zone includes about
7 40% of all Dewey properties in a flood zone.
- 8 • In the AE(EI 6) flood zone the zero-point for measuring building height would be an elevation of
9 7’ (6’ from FEMA’s base flood elevation plus one foot of town mandatory freeboard). Since the
10 average elevation of grade in this flood zone is about 3’, building tops would max-out at an
11 average elevation of about 38’. In the proposed model with VBE = 32’, the tops of all buildings
12 in this zone would max-out at 39’. This would be an average increase of a foot in “height” – some
13 would be higher than now and some lower. Along the 4’ elevation iso-contour (see map) there
14 would be no difference between current and proposed approaches to measuring building height.
15 This zone includes about 40% of all Dewey properties a flood zone.
- 16 • In VE zones, FEMA’s base flood elevation is referenced to the bottom of the lowest horizontal
17 building supports, which typically lie about 12” below the finished floor level – so to provide a
18 VBE of 32’, the “height measurement” would be 33’ BFE from FEMA plus freeboard to the top
19 of building. There is the ocean-side VE(EI 12) which has maybe 50 to 60 houses and a typical
20 grade elevation of 10’. In the new FIRMs becoming effective March 2015 most of these
21 properties will be reclassified into the AO(EI 2) zone. Those that remain in a VE designation will
22 be reclassified as VE(EI 10) or VE(EI 11). Buildings in a VE(EI 10) zone would have the same
23 max roof levels under the current code and the proposed model with a VBE standard of 32’.
- 24 • This model gives 32’ from the designated flood elevation (FEMA plus mandatory freeboard) the
25 top of the building. If one wants to build to a higher voluntary freeboard, such a decision would
26 be at a sacrifice/trade off of VBE, and does not garner the individual any additional roof
27 elevation.
- 28 • From a simple code perspective, would like a single value for the proposed maximum vertical
29 building envelope.
- 30 • This all deals with new construction, and substantial improvement and repairs to substantial
31 damage. It does not apply to existing properties (until meeting the substantial
32 improvement/damage threshold). However, this model does resolve the current conflict of what
33 would happen if a building already near 35’ in height suffers substantial damage and needs to be
34 elevated to current FEMA plus freeboard standards.

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36 In summary:

Flood Zone	Range of grade	“Roof” elevation today	“Roof” elevation in Model with VBE = 32’	Impact	Comments
AO(2)	4’ – 9’	39’ – 44’	39’ – 44’	“no change”	>40% of concern
AE(6)	2’ – 4’	37’ – 39’	39’	On average +1’	>40% of concern
AE(7)	1’ – 2’	36’ – 37’	40’	+ 3’ to + 4’	Few houses, at high risk
VE(12)	8’ – 10’	43’ – 45’	46’	+ 2’ to + 3’	Most houses in AO(2) or VE(10) in new flood map; on average no change for AO(2) or VE(10)

1 Commission discussion was in general supportive of the model – to move away from a ground-based
2 metric. Specific comments included:

- 3 • There was a lot of concern and discussion about possibly taking something away from some
4 individuals. While the notion of permitting individual property owners to chose between building
5 to either a) current or b) proposed building height models, the commission consensus was to have
6 a single measurement definition in the code.
- 7 • In essentially all areas of all flood zones, grade is lower than the base-flood elevation plus
8 freeboard.
- 9 • If this new model imposes a hardship on any individual property owner, there is always the
10 option to go before the Board of Adjustment to request a variance to the building height standard
11 and/or mandatory freeboard requirement based on said hardship.
- 12 • Currently use 35’ to define “maximum height” all over town. Should consider keeping the
13 maximum height number at 35’ but just change the point from which this is measured in any
14 flood zone. Would a) maintain the “35’ height limit” and b) ensure that no one individual is
15 harmed by this transition.
- 16 • Commissioner McKinney noted that when the town was incorporated the height limit was set at
17 35’ from grade, at a time when people built on the ground (or a single row of cinderblocks).
18 Whether we keep it at 35’ or lower to 32’, we should make this fair and give everyone the same
19 vertical building envelope.
- 20 • Commission Dedes noted that setting the VBE at 35’ deals with current housing that is currently
21 close to 35’ high and is substantially damaged. These could be elevated to FEMA plus freeboard
22 without raising concerns regarding broaching some maximum building height limit based on
23 grade.

24
25 The general consensus of the Planning Commission was to promote this model with a VBE of 35’.

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27 **Action Item:** Chair King will create a draft ordinance with two options for VBE = 32’ and VBE = 35’,
28 for the next meeting.

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31 **2. Planning Commission discussions on draft amendments to Chapter 185 Zoning of the Town**
32 **Code related to Administrative Provisions and Board of Adjustment procedures. (7:42 PM)** The
33 Planning Commission will discuss preliminary draft amendments to Chapter 185 Zoning as regarding
34 Administrative Procedures (Article XI) and the Board of Adjustment (Article X). The results of this
35 discussion would likely lead to subsequent discussion on any proposed amendment(s), possibly in the
36 form of a draft ordinance.

37
38 Chair King began the discussions on Article X Board of Adjustment by stating that this is a strawman for
39 the purpose of stimulating discussion and that it was created following language in the State code,
40 Rehoboth Beach’s BOA code, Dewey’s existing code and the BOA’s rules and procedures.

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42 Article X needs to be amended as the result of new language in the DNREC/FEMA flood damage
43 reduction ordinance (replacing Chapter 101 of the Town Code). This ordinance identifies the BOA as the
44 responsible party for deciding on variances to that chapter of code, but the BOA authorization in Chapter
45 185 does not provide for this authority. Looking at current language in Article X, there are a number of
46 weaknesses in this section (including what the BOA is authorized to do and ambiguities in specific areas),
47 and out of alignment with the changes being considered for Article XI Administrative Procedures.

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49 In general all Planning Commissioners were supportive of the proposed direction of this first draft, but
50 wanted to get input from the Board of Adjustment.

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2 BOA Chair indicated that they have adopted new procedures and that most of the board's members were
3 against having their procedures dictated to them. He cited two areas where the draft Article X differed
4 from their new procedures: term limits of members and public testimony; and that this was the first he had
5 not seen earlier draft versions of the proposed amendments to Article X. Chair King responded stating
6 that this is the first meeting at which this strawman proposal had come before the Planning Commission;
7 that term limits and other regulations within Chapter 185 are policy, for which the responsibility for
8 change vests with the Town Commissioners following recommendations by the Planning Commission;
9 and, that once opening up Article X for amendments triggered by the anticipated adoption of the new
10 Chapter 101 Flood Damage Reduction ordinance it made sense to correct the many flaws currently in it,
11 being asked over and over by the Town Commissioners to "fix" Town Code.

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13 **Action item:** The Town Manager will schedule a joint workshop with BOA, Planning Commission and
14 Town Commission members to discuss issues regarding amendments to Chapter 185 Article X.

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17 **3. Planning Commission discussions on draft amendments to Chapter 1 General Provisions**
18 **Sections 1-15 and 1-16 Definitions. (7:56 PM)** The Planning Commission will discuss draft
19 amendments recommended to the Town Commissioners by the Planning Commission in 2008 but not
20 acted on by the Town Commissioners.

21
22 A comparison between the 2008 Planning Commission recommendation and current code (the 2008
23 recommended amendments were never taken up by the Town Commissioners in approving amendments
24 to Chapter 185 Zoning) serves as the document under consideration. Chair King suggested moving those
25 definitions relevant only to Chapter 185 into Chapter 185. Following commission discussion there was a
26 consensus to move in the direction of incorporating all definitions in a single place in Town Code:
27 Chapter 1 General Provisions Article III Definitions.

28
29 Chair King also asked if we really need all of these definitions, for "example automated teller machine"
30 and "alley", and suggested we should consider the approach of pointing to a standard planning and zoning
31 reference book for general zoning definitions.

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33 **Action item** for all commission members: Review all definitions currently in the code and in the 2008
34 recommendation and ask, "do we need this in the code, what is a reasonable definition, is there a standard
35 reference book we could point to, should we possibly include a picture", and to get back to Chair King
36 with input by 11/23. Chair King will aggregate such input and post by 11/28 (one week prior to the next
37 meeting).

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39 **Action item** for Chair King: distribute the 2013 comp plan progress report by 11/28 and ask members to
40 come to the 12/6 meetings with their thoughts on updating for 2014.

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42 Possible topics mentioned for the next meeting:

- 43 • Comp plan progress update
- 44 • Height model draft ordinance
- 45 • Commercial activity on beaches
- 46 • Zoning amendments for the NR district

1 **Comments**

2 Town manager asked for review and clarification of sections 185-79 (Certificate of Occupancy) & 185-82
3 A. (filing fees) Article XI, and to make recommendations on regulations for commercial activities on the
4 beaches so as to get them before the town commissioners by January.

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7 **Adjournment.**

8 Prior to adjournment meeting dates and tentative agenda items were discussed. The next meeting is
9 scheduled for Saturday December 6 at 10:00 am. Following a motion, second and unanimous voice vote,
10 the meeting was adjourned (8:20 pm).

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