

Meeting Minutes
Town of Dewey Beach Planning Commission Meeting
Meeting Date: October 18, 2014

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Purpose. To hold a Public Hearing and subsequent Commission deliberation and possible vote on recommending to the Town Commissioners an ordinance to amend Chapter 101 Floodplain Management of the Town Code; discussion on a draft white paper and strawman proposal for amending how building height is measured in various flood zones and possible related amendments to Chapters 1 General Provisions and/or Chapter 185 Zoning of the Town Code; discussions on amendments to Chapter 185 Zoning of the Town Code related to Administrative Provisions and Board of Adjustment procedures; and discussion of draft white paper describing the character of the Neighborhood Residential zoning district.

Chair’s Meeting Summary and Comments.

1. There was no actionable input received during the public hearing of the draft ordinance.
2. The draft flood damage reduction ordinance was approved unanimously for recommendation to the Town Commissioners with two minor amendments.
3. There was consensus to proceed with the development of an alternative methodology to define building height in flood zones based on base flood elevation, and Chair King was asked to provide some specific examples of how this might affect “building heights”.

Opening. The meeting was called to order by Chair David King (10:00 am), followed by the Pledge of Allegiance and roll call. Planning Commission members present: Don Gritti, Mike Harmer, Chuck McKinney, Vice Chair Mike Paraskewich, and Marty Seitz. Also in attendance were Mayor Hanson and Town Commissioner Courtney Riordan, Gary Talley, Brian Good, Bill Seitzinger, Edith Pandolfino, Bill Lower, Georgia Leonhart, 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 September 13, 2014 meeting were approved with editorial amendments by unanimous voice vote.

Regular Agenda (10:05 am)

1. **PUBLIC HEARING on a draft ordinance to amend Chapter 101 Floodplain Management of the Town Code. (10:05 am)** A Public Hearing will be held on a draft ordinance to amend Chapter 101 Floodplain Management of the Town Code by deleting the current Chapter 101 in its entirety and replacing with a new Chapter 101 Flood Loss Reduction based on language recommended by the Federal Emergency Management Agency (FEMA). Adoption of a Flood Loss Reduction Ordinance acceptable to FEMA by March 2015 is required to provide Town property owners continued access to flood insurance through the National Flood Insurance Program.

Public Input

There was a general question about accessing preliminary Flood Insurance Rate Maps, which was answered, and a request to post current and proposed FIRMs on the Town website. There were no comments or input related to the proposed draft ordinance and the public hearing was closed.

2. **Planning Commission DISCUSSION AND POSSIBLE VOTE on recommending to the Town Commissioners an ordinance to amend Chapter 101 Floodplain Management of the Town Code (10:10 am).**

1 Chair King began the discussions by providing a brief history and background on how the Planning
2 Commission got to this point and the evolution of the proposed draft.

3
4 The Planning Commission had been working on amending town ordinances in the face of increased storm
5 severity and rising sea level for over a year. This effort has been focused on an amended flood damage
6 reduction ordinance – based on draft language provided by FEMA – since April. The differences between
7 the draft in front of the commission at this point and the FEMA language include:

- 8 • Administrative amendments, including identification of the Town of Dewey Beach and its
9 floodplain manager, clarifying certain submission requirements, deletion of definitions in our
10 current Chapter 101 that do not appear in the draft ordinance, and establishment of a life time to
11 building permits;
- 12 • Inclusion of language from the Town’s current Chapter 101-1.4(F) and 101-3.3(B);
- 13 • Incorporation of current Town restrictions on elevating encroaching structures and building
14 height;
- 15 • Inclusion of a review by the Planning Commission and report to the Board of Adjustment as part
16 of the process for granting a variance from the regulations of this ordinance.

17 A major change from current Town Code proposed herein is the adoption of the less restrictive FEMA
18 definitions of “substantial improvement” and “substantial damage”. FEMA requires the elevation of any
19 building that has been substantially improved/damage to current base flood elevation standards, and
20 defines substantial improvement/damage as improvements/damage repairs that cost more than 50% of
21 the value of the existing structure prior to such improvement/damage. The current Town code sets these
22 thresholds at 50% cumulative over 10 years for “substantial improvement” and 30% cumulative over 10
23 years for “substantial damage”.¹

24
25 In general the Planning Commissioners expressed comfort with the current draft and satisfaction with the
26 way freeboard was treated – providing an extra measure of flood safety while preserving the ability to
27 enforce a 35’ building height regulation townwide.

28
29 The only significant point of discussion was related to the granting of variances. It was the sense of the
30 Planning Commission that the Town Board of Adjustment should be able to grant a variance from Town
31 code, but not from Federal code, and there was consensus to amend the draft language in sections 101-5.2
32 (A) (4) (b) ii, 101-5.3 (A) (4) (b) ii, and 101-6.3 (B) (4) (b) ii to “the applicant may seek a variance from
33 the freeboard but not base flood elevation required by this chapter...” (The base flood elevation is a
34 FEMA requirement and 101-7.1 states the Town “shall have the power to authorize ... such variances
35 from the requirements of these regulations, not inconsistent with Federal regulations...”)²

36
37 The only other minor amendment for which there was consensus was to amend 101-1.2 (O) so as to
38 include commercial-use structures.

39
40 A motion was made to approve this draft for recommendation to the Town Commissioners for adoption
41 pursuant to a) incorporation of those amendments discussed at this meeting that gained consensus
42 approval, b) minor administrative clean up, and c) incorporation of any amendments suggested by
43 subsequent DNREC review that might be required for FEMA approval provide the Planning Commission

¹ Ed. Note: Although the change related to defining “substantial improvement” was not specifically mentioned during the meeting, it is included here for completeness and to avoid future confusion.

² Ed. Note: Upon DNREC review this language was changed to “the applicant may seek a variance from the additional building elevation above base flood elevation required by this chapter ...” because the relevant FEMA language reads “be elevated to or above the base flood elevation plus ...” and freeboard is not used anywhere in this Chapter other than in the definitions.

1 Chair felt such amendment(s) were minor and would not be contrary to the sense of this commission. This
 2 motion was seconded and passed by unanimous voice vote: 6 for – 0 opposed.

- 3
 4
 5 **3. Planning Commission DISCUSSION on a White Paper and Strawman Proposal to modify how**
 6 **building heights are measured in flood zones. (10:40 am).** The Planning Commission will discuss a
 7 White Paper and Strawman Proposal(s) regarding circumstances under which it, the Planning
 8 Commission, would recommend to the Town Commissioners amendments to Chapter 1 General
 9 Provisions and/or Chapter 185 Zoning of the Town Code to amend how building heights are
 10 measured in various flood zones. The results of this discussion might result in a Draft Ordinance that
 11 would then proceed to a Public Hearing before the Planning Commission and subsequent
 12 deliberation(s) by the Planning Commission prior to recommendation to the Town Commissioners for
 13 further action.

14
 15 Chair King discussed the origins and intent of the whitepaper and strawman proposal. This proposal came
 16 in response to concerns over increased storm severity and rising sea levels, and an expectation that Town-
 17 required freeboard and FEMA designated base flood elevations would increase over the coming decades.
 18 And while the members of the Planning Commission believe increases in freeboard would provide
 19 additional flood safety they also reduce the available vertical building envelope and hence penalize
 20 property owners in the future. The concepts in the proposal were based on prior Planning Commission
 21 discussions over the past year and intended to focus discussion on this important issue.

22
 23 Issues raised:

- 24 • Sea levels and storm surge are going to increase over the coming decades and a house built to
 25 today's elevation requirements is unlikely to be safe and dry 30 to 60 years from now;
- 26 • While one could propose an increase in building height using the current definition, perhaps
 27 to 37' from grade, this challenges sensitivities to broaching 35' and doesn't address future
 28 sea-level rise;
- 29 • Rather than a ground based metric (grade) go to a floating metric basing building height
 30 measurements in a flood zone on the FEMA 1% annual flood elevation plus Town freeboard.
 31 In this approach, as sea level and/or freeboard increase the available vertical building
 32 envelope is not squeezed down;
- 33 • Rather than continually declining vertical envelope, this would give a fixed vertical envelope;
- 34 • 32' feet from the finished level of the lowest floor to the highest point of the structure is
 35 likely the right envelope. This number is an average based on the large number of housing in
 36 the Town's AO (2) flood zone – which is subject to intermittent sheet flow. In the AO(2)
 37 flood zone the finished level of a building's lowest floor must be elevated at least 3' above
 38 the elevation of the highest adjacent ground. In this fairly flat area the elevations of ground
 39 and grade (crown of the road) are approximately equal, and so most houses are situated with
 40 their lowest floors 3' above ground/grade and therefore have 32' to work with between this
 41 finished floor level and the top of structure;
- 42 • If sea level goes up or down, the point of measurement similarly goes up or down, but the
 43 vertical envelope doesn't change;.
- 44 • In an AE zone, FEMA regulates the elevation of the finished level of the lowest floor – so we
 45 would use same metric as in an AO zone;
- 46 • In a VE zone, FEMA regulates the elevation of the bottom of the lowest horizontal support,
 47 which is about 12" lower than the finished floor level. Since measuring from a lower point,
 48 we would allow 33' above the FEMA + freeboard required elevation, which would
 49 essentially give 32' from the finished lower floor to top of structure;

- 1 • If one wanted to build to a higher freeboard elevation, they could but would trade a higher
- 2 base building elevation off against a smaller vertical building envelope;
- 3 • This approach is more sophisticated/responsible and fairer than the current definition;
- 4 • In the pre-2009 code a provision was made for housing in the NR zoning district in a flood
- 5 zone to have an additional foot of building height.³ Also, there is some question as to whether
- 6 or not the Town used alternative methods for determining height in the past, for example in
- 7 the construction of the Gold Leaf Hotel.

8
9 Vice Chair Paraskewich indicated that there is new, better data that will result in a change in the vertical
10 datum, which will likely become effective in the 2020 time frame. So it is likely there will be a change in
11 flood maps in the mid-2020s.

12
13 Commissioner Seitz commented that we need to make sure that, if adopted, such an approach is
14 enforceable. Also, while this change moves us to a more sophisticated measurement process we need to
15 see how this changes individual property rights.

16
17 Chair King noted that it is likely some properties will see small increases and some small decreases in
18 what can be built on them, but that it provides a level of fairness or uniformity across all properties. And,
19 that it provides a vehicle for increasing freeboard to provide a level of safety for the next 40 to 60 years
20 for houses built today, and to accommodate sea level rise for houses to be built in the future.

21
22 The Planning Commissioners wrestled with how “high” a house built to this proposed definition of
23 building height as compared to one built based on the current definition. In generalities, it seemed that
24 this might add a foot to the roof elevation in the bay-side AE (6) zone; in the current ocean side VE(12)
25 zone the roof elevation might be 38’ above grade, but in the new FIRMs this zone becomes a VE(10) and
26 this difference will be reduced to only about a foot above the current 35’ definition.

27
28 Wrapping up the discussion there was consensus amongst the Planning Commission members that this is
29 a model worth pursuing, and it was suggested that Chair King work through actual numbers for a couple
30 of specific properties to show how this change in height definition might workout relative to the current
31 definition.

- 32
33
34 **4. Planning Commission DISCUSSIONS regarding a Draft White Paper defining the character of**
35 **the Neighborhood Residential (NR) zoning district. (11:15 am)** The Planning Commission will
36 discuss possible amendments to a white paper attempting to describe the character of the NR zoning
37 district, as part of its efforts to ensure that NR zoning regulations serve to preserve and protect this
38 district’s character.

39
40 Chair King introduced this item with a brief history and status report. This effort is in response to a charge
41 from the Town Commissioners to evaluate whether or not the current zoning code will serve to protect the
42 character of this zoning district. And, of course, one cannot make that assessment without clearly defining
43 what it is that one is trying to protect. From prior meetings it has been clear that there are three distinct
44 types of communities in this zoning district:

³ Ed. Note: 185-23 G.(3) of the pre-2009 code reads, “Maximum height requirements: 35 feet above grade – three stories. In the event that any substantially improved structure is required to be elevated on foot above the one-hundred-year-flood elevation as set forth in Chapter 101 [section] 101-11A, the maximum height elevation shall be raised by a maximum of one foot. [Amended 11-13-1999 by Ord. No. 416]

- 1 • the ocean block that is a continuation of the barrier island ecosystem of the more southerly
- 2 portion of Dewey and which has diverse architecture, some old and some new, cottages and
- 3 larger buildings;
- 4 • the part west of King Charles that takes on the look of a lowland or headland environmental niche
- 5 with an overhead tree canopy, with pine trees growing to 20-30 feet near King Charles and rising
- 6 to 70 feet or more just one block further west at Bayard. Most of the housing in this community
- 7 are 1 and 1 1/2 story cottages dating back to the 1960s; and
- 8 • two gated communities on the ocean side with a planned residential feel, very homogeneous
- 9 housing and “no trespassing” signs.

10 We need to incorporate all three communities in this white paper.

11
 12 There has been some thought to splitting the existing NR district into 2 zoning districts: East versus West
 13 of King Charles. Otherwise, if we zone to protect the western NR community we will be doing a
 14 disservice to the eastern NR community. Commissioner Seitz expressed reluctance to create any new
 15 residential zones for such a small town, and that any argument to do so would have to be compelling.

16
 17 Vice Chair Paraskewich introduced the notion of amending the zoning code, at least for the western
 18 portion to address the back yard “canyon” effect, by requiring a 12’ rear-yard setback for 1 story houses,
 19 with an increase to a 20’ rear yard for a 2 story house and 25’ rear yard set back for a 2 ½ story house.
 20 This had some resonance with other members of the Planning Commission.

21
 22 Commissioner Seitz noted that the Marketing Committee is already using the current draft white paper as
 23 a means to learn about some of the houses in the NR district for planned guided walking tours.

24
 25 As two action items: Chair King will reach out to Tim & Bill, and to Rehoboth-By-The-Sea for any
 26 additional input; and the other members of the commission will provide him constructive input for the
 27 evolving white paper by the end of the coming week.

28
 29
 30 **5. Planning Commission DISCUSSIONS on preliminary draft amendments to Chapter 185**
 31 **Zoning of the Town Code related to Administrative Provisions and Board of Adjustment**
 32 **procedures. (11:35 am)** The Planning Commission will discuss preliminary draft amendments to
 33 Chapter 185 Zoning as regarding administrative procedures and Board of Adjustment procedures. The
 34 results of this discussion would likely lead to subsequent discussion(s) on proposed amendments,
 35 possibly in the form of a draft ordinance.

36
 37 Chair King introduced this item, saying that the objective was to simplify the code, make it more up to
 38 date, more user friendly, and consistent with the operation of more sophisticated planning commissions.
 39 Vice Chair Paraskewich went on to explain his objectives to make the code simpler & easier to enforce, to
 40 have it provide step-by-step instructions for the submission and review processes, to take a new look at
 41 engineering and filing fees, and include increased review and fact finding by the Planning Commission in
 42 manners that would be beneficial to the Town Commissioners.

43
 44 Commissioner Harmer: Moving in right direction. Has a number of comments, including:

- 45 • On page 5 missing a requirement for a water & sewer availability certificate to make sure the
- 46 property has been vetted through the county w&s department. This requirement should also be
- 47 included for single family developments because when a very large house is replacing a smaller
- 48 one it can stress existing water and sewer lines. Not that Dewey will be doing the certification,
- 49 but will just be making sure that the County has done its due diligence.

- 1 • Mike asked if there is a < \$1,000 cost of building materials exemption on getting a building
2 permit, and noted that if there is such a provision it should be specifically included as an
3 exemption here.
- 4 • On page 10 in section 185-81 plats, the language says “all applications ...”, but we really
5 probably only want plat submissions for exterior modifications.
- 6 • On page 9 we need to think more about fees for renewal of building permits; such fees need to be
7 set based on original fees and cost of renewal, and cannot be arbitrary & capricious.
- 8 • Need to simplify the size requirements for plat and plan submission; establish a single standard
9 for hardcopy submission (for review by the building official, public and archiving) and require
10 electronic submission (for review by the approving agency)
- 11 • Need to think what we want for a process for “two or more dwellings on a single lot”, so to not
12 create so much work that it overwhelms the Town’s review capability.
13

14 Chair King noted that he doesn’t want the Planning Community to be inventing anything new, but to
15 borrow best practices from other communities. Also, that he would like to see perhaps three levels of
16 checklist: single family homes, duplexes and single mixed use parcels such as along Coastal Highway,
17 and developments exceeding 20,000 s.f. land area (or some other appropriate size)
18

19 Chair King noted that in a parallel effort he has begun a similar update to Chapter 185 Article X Board of
20 Adjustment. This effort was stimulated by the need to bring the contents of this article into conformance
21 with the new language regarding authority and operations of the Board of Adjustment incorporated in the
22 proposed amendments to Chapter 101 Flood Damage Reduction and to simplify and clarify the code
23 overall.
24

25 **Action items:** Commissioner Harmer will provide samples of appropriate checklists for consideration and
26 possible inclusion; the other commission members are to send their comments to Vice Chair Paraskewich
27 for inclusion in his revisions for the next meeting.
28

29
30 **Adjournment.**

31 Prior to adjournment meeting dates and tentative agenda items were discussed. The next meeting is
32 scheduled for Friday November 7th at 7:00 pm. Following a motion, second and unanimous voice vote,
33 the meeting was adjourned at 11:55 am.
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