

MEMORANDUM

DATE: FEBRUARY 7, 2015

TO: TOWN MANAGER, TOWN COMMISSIONERS AND FUTURE
COMPREHENSIVE PLAN WORKING GROUP

FROM: PLANNING COMMISSION

SUBJECT: Neighborhood Residential (NR) Zoning Issues

During 2014 and 2015 the Planning Commission held several meetings to garner public input and discuss, as requested by the Town Commissioners, whether or not the current zoning requirements for the Neighborhood Residential (NR) zoning district were sufficient to preserve the character of this community. The short answer is that it does not. But the answer is not simple and, because efforts for the 10-year **review and updating of the Town's Comprehensive Development Plan (Comp Plan)** are soon to begin, the Planning Commission decided to defer this rezoning task to the Comp Plan Working Group; rolling it into a comprehensive review and possible amendment of all zoning requirements in all zoning districts. (Excerpts from the relevant Planning Commission meeting minutes are attached as an Addendum.)

That said, the Planning Commission enlisted the aid of several volunteers to help prepare a white **paper describing the "character" of the NR zoning district. While this is still a work in progress**, this effort stimulated a lot of discussion about the rich variety of housing styles and community in the NR district, including:

- A fairly homogeneous uplands area (West of King Charles and North of Coastal Highway) of one and 1 ½ story houses built in the 1960s by DFD Inc. These houses were built around 5 similar floor plans with footprints in the 1,000 to 1,700 square feet range, many with large porches and screened central breeze ways, and are nestled among large pine trees.
- The ocean blocks of the NR district more closely resemble a barrier island ecosystem. The housing here is more varied and includes a large number of larger, 3 story homes and several condominiums, including Wilson Dunes. It also includes a Planned Residential zoning district (Sea Gate) with cluster/condominium-style housing, a club house, swimming pools and tennis courts, and extensive common areas, and a second large area originally developed under RR zoning standards (Sea Strand).
- A small triangle abutting the bayside RR zoning district lying between Houston, Bayard and Coastal Highway – cut off from the rest of the NR district by Coastal Highway. This area includes only about 18 lots, but there is a real mix of housing here, much of it resembling the blocks of RR-zoned housing directly South of this area.

Recommendations for protecting the existing communities in the NR district.

Below we outline a few recommendations for amending zoning district boundaries and requirements for your future consideration.

1. Consider amend NR and RR zoning district boundaries to incorporate the areas of the current NR district lying East of King Charles and South/West of Coastal Highway into the RR zoning district. This wraps the more RR-like areas of the existing NR district into the RR zoning district and results in a much more homogeneous NR zoning district.
2. Regardless of whether or not this recommendation is implemented, there was almost unanimous support among the almost 100 members of the public who provided input and the members of the Planning Commission to amend the NR district zoning requirements along the following lines:
 - a. Increase rear yard setbacks to reduce the canyon effect as additions and new construction lead to taller buildings. This could either be approached by a single rear yard setback of **15' or 18'**, or by implementing different setbacks for houses of different heights (**e.g., 15' for a one story building, 20' for a 2 story building**, etc).
 - b. Eliminate the 2 ½ story height requirement and replace with a reduced floor area ratio or maximum building floor area based on conditioned space. This approach both provides for architectural creativity and variation while prohibiting McMansionization. Some people felt that maximum building floor area should be around 3,500 sq. ft. of conditioned space while others felt it should be around 4,500 sq. ft. The existing floor-area-ratio FAR=1.0 (e.g., 5,000 sq. ft. floor area on a standard lot of 5,000 sq. ft. land area) includes some unconditioned spaces, e.g., covered porches and decks. Clearly there is work to be done on determining what should or should not be included in any maximum floor area requirement for such a tool to achieve its objective(s).
 - c. It is likely that more, larger and year-round homes will be built in the next 10 years, and this will lead to a critical need to do something about parking. It is likely that the off street parking requirements will need to be increased and that something will have to be done about the takings of potential on-street parking by various property owners.
 - d. While not a significant discussion item at these hearings, based on earlier controversy it is likely that zoning requirements for swimming pools should be revisited to prohibit them in areas in front of houses and in all required yards/setbacks.

ADDENDUM

EXCERPTS FROM PLANNING COMMISSION MINUTES

April 12, 2014

Zoning Code requirements for the Neighborhood Residential district. (4:15 pm) Does the current zoning code provide sufficient protections to preserve the character of the NR district – as stipulated in the 2007 Comprehensive Development Plan – in the face of recent increases in real-estate and re-development activity?

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

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

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

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

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

May 10, 2014

Zoning Code requirements for the Neighborhood Residential district. (3:53 pm) Does the current zoning code provide sufficient protections to preserve the character of the NR district – as stipulated in the 2007 Comprehensive Development Plan – in the face of recent increases in real-estate and re-development activity?

In 2007 the Comprehensive Plan Development Group didn't address land-lease properties because it was viewed as unlikely that they would be developed/re-developed prior to 2017 (when the Comp Plan is due for renewal). Consideration of the zoning in the NR district has now been forwarded to the Planning

Commission by the Town Commissioners. The comp plan sets, as one of the Town's goals, the definition of the architectural character of its various communities, including the NR district. The comp plan also says that the Town zoning code should encourage development in the NR district that is consistent with the existing architectural character, scale and density of the neighborhood, encourage development of single family homes of modest size, and to regulate and shape residential development. Current building heights are 35' and floor area ratio (FAR) of 1.0 – both much larger than neighboring communities.

To date there has been limited input, including: “35’ is too high, and is not consistent with the character of the neighborhood,” and issues related to floor-area ratio, front & rear setbacks, off-street parking, and swimming pools in the front yard. Bill Coulbourne and Tim Arnold, professional residential developers, are working on the Planning Commission’s behalf to define the “character” of this district. This is important data to guide future discussions on this topic. There was a consensus of the commission that it would be good to hear from the land owner (Rehoboth by the Sea Realty) about their plans and thoughts and from Coulbourne/Arnold characterizing the existing architecture, and for the Town to send a mailer out to property owners in this district to alert them to these discussions.

In all of this the Planning Commission needs to balance the trade-off between neighborhood character (a public benefit) and individual property rights.

June 7, 2014

Zoning Code requirements for the Neighborhood Residential district (65 minutes; 60-70 attendees).

What is the “architectural character” of the NR district, and does the current zoning code provide sufficient protections to preserve it – as stipulated in the 2007 Comprehensive Development Plan – in the face of recent increases in real-estate and re-development activity?

An important question was asked at the outset: do the Planning Commission and/or Town Commissioners have a bias toward increased density? Chair King and Vice Chair Paraskewich both responded that there is not; the commission is reaching out to the public to learn what the people want.

What is the current character? Bill Coulbourn presented preliminary results from a project he and Tim Arnold (volunteers) are working on to define the architectural character of the NR district (their **preliminary draft report will be posted on the Town’s website under the Planning Commission’s June and July events**):

- Most lots are 5,000 square feet; some are 7,500 or 10,000 square feet or larger;
- **Many of the existing houses were built in the 1960’s; are 1 or 1 ½ story with a footprint of 800 – 1,200 square feet;**
- Housing is nestled in a pine forest; typically mid-century beach cottage architecture on lots covered with large trees, which are an important contributor to the neighborhood and tower over the housing (in Google Earth images it is hard to see the houses);
- Mostly summer houses;
- Lot coverage generally below 25% resulting in lots of room for trees and plantings; and
- Except where recently replaced with much larger housing, typical habitable floor area ratios (FAR) are in the 0.15 to 0.30 range

Does the current code serve to protect this character in the face of increased development?

- Many voiced a concern that it will not.
- Many voiced the opinion that houses approaching 5,000 square feet floor area are likely to dwarf current housing stock, and that the FAR should be decreased.

- Some raised concerns that another Sea Gate or Sea Strand planned development would significantly impair the community, and that the code should be amended to prohibit future PR developments.

Questions and comments:

- On the one hand, economics are going to drive development: if someone pays \$1M for a lot, they are going to want to build the largest house on it that they can. On the other, the small summer-cottage character of Dewey is a strong draw and of high value.
- The current zoning code will not protect the character of the neighborhood – especially the ability to build a 5,000 square foot house on a 5,000 square foot lot. The current FAR is has to be reduced, possibly to 0.60.
- **Dewey’s NR district has stayed relatively** unchanged up to now due to the large number of leaseholds – many of which now have less than 10 years on their lease – because it is not worth **building “McMansions” on a leased lot.**
- A few people were opposed to downzoning properties where they have own the land (currently occupied with “tear downs”) for many, many years. **They felt the zoning regulations should be “reasonable”, and stated that they would never build an inappropriate building (even if permitted by code).** There was an implication in these comments, that there should be different zoning depending on how a property is owned.
- The owner of 20 Jersey St. stated that he is in the process of finishing a 4,900 square foot house on a 7,500 square foot lot (FAR = 0.65). They looked at comparables in Rehoboth & Indian Beach. They choose Dewey, spent about \$1.5M for the land and \$1.3 to build – and would have made the same decision if the FAR were 0.60 or 0.65 – because they like the character of the neighborhood.
- Rehoboth by the Sea owns the house & lot for over 40 properties; this may have some impact on the ability of a developer to assemble 100,000 square feet of contiguous space and build something like Sea Strand or Sea Gate.
- Many of the new houses – 4,000 to 5,000 square feet of habitable space – are too large and inappropriate to the community. There was some favorable comment about the two new houses on the corners of the south side of the second block of Cullen. The zoning for these lots is more restrictive on corner lots, resulting in 2 story houses with a buildable footprint of about 1,600 square feet.
- A general consensus was that FAR alone does not define a community, and that it will take more than just a reduction in the FAR to protect the neighborhood character. Increasing side-yard setbacks, **e.g., a minimum of 8’ on each side with a minimum aggregate side-yard setback of 23’** (like applicable to a corner property) might be an alternative or secondary tool to this end.
- Need to couple a reasonable FAR (0.50 – allowing for a reasonable home built on a 5,000 Square foot lot) with a maximum impervious-surface covering (e.g., 25% or 30% of the lot area) to provide protection for family activities, trees and open space.
- A few noted that it seems inappropriate to implement more restrictive code, when the Town **doesn’t seem to be enforcing the laws already on the books related to leveling trees, front yard parking/driveway entrances, and building height.** Given the amount of recent development it **might be time to strengthen the Town’s tree-preservation ordinance.**
- **A comment was made that 105 Jersey St., which is a newer 2 ½ story home, did not “overpower”** the adjacent, older 1 story cottages.
- About half of the members of the public own residential properties on leased land with short leases, and pretty much unanimously felt that the shortness of their leases precludes them making any long term investments in their property.
- The Neighborhood Residential district of Dewey Beach is not the right place for large houses. People come here for other reasons, **not for super large homes. Don’t reduce the height limit, but**

limit tear down/rebuilds to the existing footprint of the existing structure – this seems a simple way to maintain the integrity of the neighborhood.

- A simple way to visualize a 2 ½ story 5,000 square foot house on a 5,000 square foot lot (as **permitted by today's code**) would be **2,000 square feet on each of the first two floors and 1,000 square feet on the upper half floor**. This building footprint is more than twice the size of most of the existing houses in this community.
- Many speakers noted that a 5,000 square foot is too large; that something in the 2,500 to 4,000 square foot range might be more appropriate.
- A neighborhood is more than just a house; landscaping, sidewalks, trees and plantings; building materials and impervious surfaces all contribute to the character of the neighborhood.
- There are no storm drains in most of the NR district. Increasing impervious paving will worsen existing flooding issues.
- Significant increases in side yard setbacks might result a shift in the type of housing being built – changing from that of a bungalow (two rooms wide with a center hall or breezeway) to that of a townhouse (1 room wide).
- Some support for increasing rear yard setbacks – to provide a family gathering area and provide further separation between adjacent, back to back, housing.
- There are three categories of stakeholders: fee simple property owners, short-term land lease holders, and people with land leases of 40 to 60 years.

Process moving forward. The Planning Commission is gathering comments and will, through future public hearings and deliberations, and make a recommendation – based on what the community wants – to the Town Commissioners. Chair King asked that comments and suggestions be sent, preferably by email, to him and Town Manager Marc Appelbaum. All letters submitted on this issue will be posted on the Town website for all to view.

July 12, 2014

Zoning Code requirements for the Neighborhood Residential district (1:07). Compare and discuss all aspects of current zoning regulations pertaining to the NR district and the overall architectural character of the community.

Tim Arnold, who has been working with Bill Coulbourn for the Planning Commission on this issue presented an update of their work to define the NR zoning district.

An updated draft report was posted on the Town web site for this meeting. In his presentation Mr. Arnold noted that there are three defining characteristics: nestled in pine trees, 1 and 1 ½ story beach cottages, and low effective floor area ratio of existing residences. In the ensuing discussion the following questions and issues were raised:

- Current zoning permits a FAR of 1.0, including conditioned space and covered decks and porches (unconditioned space) but not garages. This was reduced in 2009 from a FAR of 1.2. This is much higher than many residential areas permit.
- Rick Judge expressed concerns – some of which were based on incorrect information – that many of the changes made to the zoning code in 2009 in response to the passage of the 2007 Comprehensive Development Plan made the zoning code more restrictive.
- Commissioners Paraskewich and Harmer asked what mistakes or factors are driving the current review of NR zoning. Chair King noted 1) the Town Commissioners felt the zoning code did not sufficiently protect the neighborhood character, 2) with leased lands now being sold and having leases extended there is likely to be a significant increase in building/redevelopment and that it would be prudent to re-evaluate NR zoning now, and 3) public and Town Commissioner concern

has been expressed about the ability in current code to build one or more planned residential developments on 100,000 square foot tracts of land in the NR district.

- Carter Willson, a member of Rehoboth By The Sea and builder in MD, noted: 1) with respect to trees, trees are a renewable resource not a permanent fixture – require tree planting (specific varieties) rather than strict prohibition on tree removal that would require a house to be designed around a tree; 2) much of the existing beach cottage housing is dilapidated, is not in compliance with modern building code, and does not address current family resort/vacation standards/needs; **3) cannot legislate “architectural character” because everyone’s definition of character is different.**
- **Vice Chair Paraskewich noted that there are different “neighborhoods” within the NR district.** For example, there is little tree-canopy cover in the ocean blocks, and there is more varied architecture in these blocks versus the area West of King Charles Highway, as exemplified by the Sea Gate development, Wilson Dunes, and many larger ocean-front houses.
- Mr. Willson noted that Montgomery County, MD uses a much lower lot coverage figure – 30% on a 5,000 square foot lot. He suggested reducing lot coverage, reducing the FAR a little, possibly to 0.75 which would provide a reasonable amount of space on a 5,000 sq. ft. but only include conditioned space, **increase the rear-yard setback to 18’ but keep the side-yard set backs at 8’.** Want to encourage a diversity of architecture; want to encourage porches.
- Vice Chair asked, given the differences of neighborhood character of the ocean block versus west of King Charles/Coastal Highway, should we divide the existing NR district into 2 distinct zoning districts, with a larger FAR in the ocean block?
- Mr. Judge noted that there are about 400 properties in the north end, about half are owned fee simple. Recently RBTS has released about 40 property and only a few of them built to the **maximum permitted by current zoning. He emphasized that he doesn’t want to see four hundred 5,000 sq. ft. houses in the north end, but that we don’t have them and he doesn’t think it is fair to restrict what one can build given that others have recently built that large.**
- There was some discussion of what should be included in the FAR – porches, garages, etc. A FAR of 1.0 as defined might be equivalent of a FAR of .8 that excludes porches.
- Several people noted that a larger rear yard set back would be more appropriate to a neighborhood. As currently defined, the height of **back-to-back houses are higher (35’) that the separation between them (24’). This is a very different experience that in most other neighborhood communities.**
- Marcia Sheick, owner of multiple properties with fee simple ownership and land leases, voiced the opinion that owners of short-term land leases (e.g., 10 – 12 years) do not have a long-term interest in the town and should not have a voice in this decision or discussions related to a 2017 **Comp Plan. Not an advocate of “down zoning” but supportive of increased rear-yard setbacks;** would not want to sit in her back yard with the canyon effect created by current setbacks.
- Len Read spoke about the \$200 million discount of land in Dewey versus Rehoboth, and asked **for zoning to encourage nice housing and more year ‘round ownership as a public safety consideration.**
- Commissioner McKinney reminded us all that we have still only heard from a small number of NR-district property owners.

August 9, 2014 Town Commissioner/Planning Commission Workshop
North End/Neighborhood Residential District Zoning

- a. Comprehensive Plan and why this is a topic of discussion now
- b. Summary of NR zoning regulations (Chapter 185 Table 2) and “character of NR district”**
- c. Written public input
- d. Summary of Planning Commission discussions and time-line thoughts

October 18, 2014

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

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

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

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

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

Vice Chair Paraskewich introduced the notion of amending the zoning code, at least for the western portion **to address the back yard “canyon” effect, by requiring a 12’ rear-yard setback for 1 story houses, 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.** This had some resonance with other members of the Planning Commission.

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

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

January 17, 2015

Planning Commission discussions on potential amendments to Chapter 185, Zoning, of the Town Code related to zoning standards in the Neighborhood Residential zoning district (10:50 AM) The **Planning Commission discussed how to approach the Town Commissioners’ request for review and recommendation** on potential amendments to Chapter 185, Zoning, regarding zoning standards for the Neighborhood Residential zoning district. After some discussion, the Planning Commissioners reached consensus to leave any such changes to the Comprehensive Plan Working Group and have Chair King draft a report to the Town Commissioners with some overarching observations that have come out of

several public hearings and Planning Commission meetings on this subject over the last year or so, and to include recommendations on a timeline and potential membership for the 2017 Comprehensive Plan Working Group.