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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 is 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)

1. 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 Busienss-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.

1 Applicant testimony

2 Elizabeth Cahall (106 Rodney). She has owned this property since 1995. It was initially used as a
3 residential rental, and then as her family grew, as a summer home for the past 11 years. The applicant and
4 family wants to be able to improve and expand to accommodate her/their family(s), while keeping as a
5 residential property without any businesses on the premises.
6

7 Elinor Winn Hughes (110, 112/114, and 116 Rodney). These properties have been in the family since
8 1953; becoming her parents' permanent home in 1970. When her mother died in 1999 she and her brother
9 actively managed this property as residential rentals – only to families (one family has been coming back
10 every year for 50 years). Her brother died in 2003 and she is now too old to actively manage this as
11 residential rentals and her 2 children have other careers. Now in her mid-seventies, she wants to retire
12 from the rental business. She has had a couple of inquires about buying the property; all expressed the
13 interest in maintaining and improving for residential use, but town code requires conversion to mixed use
14 upon any significant alteration/improvement (e.g., if they were to tear down the existing, outdated
15 structure(s) they would have to re-build for commercial- or mixed-use). She would like to be able to sell
16 and to see it remain residential – as it has been for the past 61 years as residential.
17

18 In her testimony Ms. Hughes noted that Rt 1 has a lot of commercial-use property that is empty and looks
19 run down; that the middle of a residential side street is not the ideal location for a business because it
20 would have no main-street presence, would be interspersed with residential use, and would have limited
21 customer parking. She would like to see the property maintained and improved in a manner so as to be
22 promoted as family-oriented, that is to say as residential use.
23

24 Chair King noted at this point that all these properties are currently non-conforming uses, and that as such
25 are eligible for a one-time not-to-exceed 50% expansion under the zoning code. Only when any
26 improvement exceeded 50% of the current habitable area would there be a requirement to convert, at
27 least, the first floor to business use. Since the current buildings are small, this severely limits what can be
28 built while remaining residential use only. He also provided historical context to the prior rezoning of this
29 area in 2009 (designated to be part of RB-1 in the 2007 Comprehensive Development Plan, and rezoned
30 in the 2009 Zoning Code update – both subject to a large number of meetings and public hearings. The
31 thinking regarding the RB-1 district zoning requirements was to provide opportunity and incentives to
32 create a town center at the old Ruddertowne). Prior to 2009 these lots were zoned Resort Business (RB), a
33 zoning designation that permitted pure residential-use development.
34

35 Ray Dawson (122/124/126 Rodney). The applicant's family has owned the property since 1947, and he
36 has been coming here his whole life. This property has always been occupied by families, as a residential-
37 use property. The property is, and always has been occupied by 3 mobile homes, which now serve his 6
38 children and 7 grandchildren. He would like the ability to see the mobile homes upgraded and replaced
39 with conforming residential structures to continue to serve his multi-generational family without the
40 requirement to incorporate business activities on the property, as would be required under the current RB-
41 1 zoning designation. He doesn't feel it is fair for a town or a board to say, "while this is what you were,
42 I'm sorry but this is what you're going to be" – the property has always been residential.
43

44 Public comment in support of this application

45 Dale Cooke (resident and property owner), would like to see as many properties as possible be able to
46 stay in residential use; bothered by the requirement to change the use of their properties after being in
47 residential use for so long.
48

49 Public comment opposed to this application

50 None
51

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

3
4
5 **2) Planning Commission Discussion and Possible Vote to Recommend Requested Zoning Change**
6 **for residential-use properties on the South side of the 100-block of Rodney Ave. (1:32 pm)**

7
8 Commissioner Seitz confirmed that the properties across Rodney Ave were residential-use properties
9 zoned Resort Residential (RR), and then stated he therefore felt this could not be challenged as spot
10 zoning since it was, effectively, moving the RR/RB-1 boundary ½ block south across Rodney Ave., and
11 involved five contiguous parcels.

12
13 Commissioner Dedes quoted parts of the comp plan in the demographics and population portion –
14 interpreted as a living document – that the Town take into considerations the age, gender and other
15 important demographic factors of residents and property owners when formulating public plans and
16 policies, and continue to monitor changes in demographics and populations when identifying and
17 addressing the public service needs of Town residents and property owners. This request for re-zoning
18 seems to fit into this objective (page 13). Commissioner Seitz voiced his concurrence: that there is a need
19 for the Town to continually monitor and amend its policies to address the changing nature of Town
20 demographics.

21
22 Vice Chair Paraskewich stated that in rezoning actions he generally looks for mistakes in the original
23 zoning map or inappropriateness of use, and that in this case he believes the incorporation of a portion of
24 a residential neighborhood into a town center zoning district was in error. Also, he noted that there is no
25 way the Town could have acquired the lands in this area to incorporate into a town center per se, even if
26 that was the vision of the plan. And so, in this regard he feels the plan was flawed.

27
28 Commissioner Gritti asked about the cost of a Preliminary Land Use System (PLUS) review for this
29 Plan/Code amendment. Attorney Townsend responded that he thought that the cost to the Town would be
30 minimal given the current use and character of the area, and his belief that the Office of State Planning
31 Coordination would not view passage of an amendment to re-designate these properties residential would
32 trigger the requirements of a major change to the Plan.

33
34 Commissioner Harmer state (initial) opposition to this request based on this area having been delineated
35 as a RB-1 zoning district in a public process in 2007-2009; that this area has always been zoned
36 “business” and he does not see the creation of a town center in this area as a mistake in the code; that
37 denying this application keeps the “town center” concept alive for possible future development – which is
38 lost if pieces of the RB-1 district are lost piecemeal; and that the applicants always have the right to take
39 their case before the Board of Adjustment to seek a use variance based on hardship. Ultimately, he
40 emphasized that he would like to keep the potential of a town center alive.

41
42 Commissioner McKinney noted that applicants did not ask for their properties to be re-zoned RB-1 in
43 2007/2009; and that the businesses in Dewey on the side streets do not, in general, do well (his marina as
44 a singular exception due to its nature and need to be by the bay) because they lack street presence and
45 don’t have customer parking. As specific examples he cited the two shops they have on their marina
46 property which do not do well – the larger facility is in current use for storage, not commerce. He
47 supports returning these residential-use properties to a zoning classification permitting future residential
48 development.

1 Commissioner Seitz noted that we already have substantial development in this area that can be
2 characterized as a town center (and therefore this objective of the compl plan has already been met), and
3 that the rest of the designated RB-1 district still offers lots of opportunity even without these properties.
4

5 Chair King cited a need to do what is best for the Town as a whole, and that a town center was an
6 important point in the comp plan for this two-block area. He provided information about parcel areas for
7 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
8 commercial properties (Rusty Rudder at about 68,000; Sea Esta hotel at about 15,000 s.f., and the
9 abutting portion of the Pierpoint marina at 24,000 s.f.) adjacent to them, and noted that there was still the
10 potential for creation of the 80,000 contiguous square feet required for qualifying for Planned Resort
11 Business – 1 zoning without these five residential-use.
12

13 In creation of the 2007 Comp Plan he said he felt the town was creating the opportunity for two or three
14 planned developments. The Town now has one with the new Ruddertowne development. The existing
15 Rusty Rudder property might form the basis for a second. However, when the Sea Esta hotel sold a few
16 years ago, there is no evidence that the owners of the Rusty Rudder were interested in purchasing this to
17 create such a planned development. Now, to get to 80,000 s.f. they would need to acquire two or three of
18 these residential properties. Doing this would create a little nipple of commercial activity that would
19 create a lot of street traffic on an-otherwise residential street, and otherwise be cut off from the main
20 development (on Dickenson Ave.). Rezoning these parcels to RR does not close the door on a planned
21 commercial/mixed-use development on the Dickenson Ave. side of this block.
22

23 Chair King agreed with the others that we need to address the changes in demographics and population –
24 an older generation giving way to the next generation with an expressed interest in keeping future
25 developments and improvements this area as residential by right, and that traffic on side streets and the
26 best use and highest value use of these parcels need to be considered – small first-floor businesses on a
27 side street, elevated 3' to 4' from grade to meet FEMA requirements, and with no nearby parking are
28 unlikely to do well.
29

30 Commissioner Harmer noted that he hadn't realized earlier that there would still be the potential for a
31 town center like development without these parcels. While he stated that the Town Commissioners need
32 to understand that each small deletion potentially weakens the town center vision, he doesn't think the
33 money for the development of a town center will ever be realized in a town with a 2 or 3 month seasonal
34 business cycle.
35

36 Commissioner Dedes noted that the Town is going to begin its 10-year comp plan update in the next year
37 or so. There are likely a lot of changes that are going to come up and the Town might decide at that time
38 that the town center objective has been achieved or is no longer relevant. The work we are doing today
39 likely fits into that updating process.
40

41 In response to a direct question by Commissioner Seitz, Attorney Townsend stated he saw no obvious
42 legal objection to this change in zoning district boundaries – expansion of an existing zone and not spot
43 zoning, – and read that portion of the Town code (Section 185-73) authorizing the Town Commissioners
44 to act to change the boundaries of a zoning district provided the proposed zoning is consistent with the
45 exiting character of the area.
46

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

1
2 There was a **motion** (Commissioner Seitz) to recommend to the Town Commissioners that these five
3 parcels on Rodney Ave. be rezoned from RB-1 to RR, as requested, and to recommend the draft
4 ordinance as a starting point for that change. This motion was seconded (Commissioner McKinney), the
5 relevant portions of the draft ordinance were read into the record, and the draft ordinance discussed.
6

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

- 9 1) there has been no evidence of interest or action by any developer or property owner in the
10 contingent RB-1 district over the past 6 years to consolidate these properties for creation of a
11 Planned Resort Business – 1 type development; indicating limited inherent value of these parcels
12 for commercial use;
- 13 2) testimony by the applicants that it is their intent to continue to maintain, improve and use these
14 properties for the enjoyment of their families – including the conversion of non-conforming
15 mobile homes into conforming residences, which could not be done if the properties were to
16 remain zoned as RB-1; and
- 17 3) these properties were originally developed for, and continuously occupied as residential use.
18

19 These friendly amendments were accepted by Commissioners Seitz (motion) and McKinney (second).
20 The motion to forward this amended ordinance to the Town Commissioners with the Planning
21 Commission's recommendation to support the applicants' request was passed by unanimous roll call vote
22 (7 for – 0 against) with the following comments:

- 23 • Commissioner McKinney. Support the application; not a good location for businesses on side
24 streets; always residential – keep as residential.
- 25 • Commissioner Harmer. Yes; further discussion clarified the continued potential for a town center
26 in this area; no evidence of interest in developing these properties as a PRB-1 development; this
27 is a small number of properties and not in a good business location
- 28 • Commissioner Seitz. Yes; as discussed; provides a clear path forward for the applicants (and
29 future property owners) to improve their properties and maintain current use and family
30 orientation.
- 31 • Commissioner Dedes. Yes; falls within the Comprehensive Plan demographics recommendations;
32 keeps the family friendly orientation; keeps both sides of Rodney Ave. zoned Resort Residential
33 – consistent with their uses;
- 34 • Vice Chair Paraskewich. Yes; original zoning map should have been built around the uses at the
35 time; uses of these parcels was always residential and should have been made residential in the
36 comp plan and new code. This returns the zoning to accommodate residential-only use;
- 37 • Commissioner Gritti. Yes; south side of this block of Rodney has always been residential use and
38 should remain so;
- 39 • Chair King. Supports the application; this change is important to support the health, safety and
40 well being of the neighborhood; it would be a mistake to turn these parcels into commercial use
41 in terms of traffic on the street in an otherwise residential area; commercial use is not a good use
42 in this neighborhood; it will be a good thing for the town and in promoting family friendly
43 activities.
44

45 Immediately after passage the Chair called for a five minute break.
46

47 **3) Planning Commission Discussions on a Draft Flood-loss prevention ordinance. (2:15 PM)** These
48 discussions are likely to focus on Section 7 Variances, Section 8 Enforcement, and a final decision on
49 recommendations on freeboard and substantial loss regulations.
50

1 This section of the meeting began with a review of effective & proposed Flood Insurance Rate Maps for
2 the Town, based on aerial photos provided by Vice Chair Paraskewich. These maps include topography
3 and show how FEMA-designated flood areas (based on NAVD88) are likely to change in March 2015:
4 for some properties this change will be from an AE to VE zone or from an AO to AE zone, and for some
5 from a VE to AE zone. Some of the changes are due to better topography, some due to better flooding
6 records and flood modeling. The net effect for many property owners – and relevant to subsequent
7 discussions of freeboard – will be an “actuarially safer from flooding” designation, by a foot or two –
8 counter to our intuition.
9

10 In general preliminary discussions it was noted that increases in freeboard are linked to Town policy
11 regarding increased height for those at-risk properties. But the Town requires a referendum to increase its
12 building height restriction and any potential height increase is unlikely to be approved prior to 2016, and
13 therefore any proposed increase in freeboard needs to be considered and recommended within the context
14 of the present height restriction. (Chair King noted one can always appeal to the Board of Adjustment for
15 a height variance).
16

17 Dale Cooke made the comment that for many properties, with the decrease in FEMA-required building
18 elevations in the preliminary FIRMs, a modest increase of 1’ in freeboard might not create a hardship for
19 the owners – for many but not all. Commissioner Dedes noted that this is not applicable to existing
20 buildings built on the ground and currently near 35’ high that might have to comply with the new FIRM
21 regulations.
22

23 Vice Chair Paraskewich noted that the new FIRMs show new risks associated with wave factors;
24 Commissioner McKinney confirmed wave damage is a real risk when the winds come out of the
25 Southwest.
26

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

- 29 • Authority for review and granting of flood loss reduction ordinances: vested in the Board of
30 Adjustment, with preliminary review and report by Planning Commission on its review of site
31 plans and applications for conformance to the Town’s zoning and flood loss requirements.
32 Although this adds another step, it is a valuable part of the Town’s due diligence in processing
33 any such application. (This is in keeping with the approach being taken in the review and
34 amendment of the Town’s administrative processes related to zoning.);
- 35 • Clarifications to indicate references to variances refer only to variances from regulations of the
36 new Chapter 101 and not elsewhere in the code;
- 37 • Clarification that certain application materials must be prepared by professional
38 surveyor/engineers;
- 39 • There was a question amongst some commissioners as to whether the language of this draft limits
40 the authority of the Board of Adjustment, and that the Board of Adjustment should have the
41 opportunity to review this language prior to our final review;
- 42 • To point to Section 185-69 for examples of types of limitations the BOA may impose on granting
43 a variance¹;
- 44 • Determine violations to be a civil offense, and to point to the pertinent parts of the code regarding
45 penalties & fines, and process, and to increase the fine at \$500 for the first offense. (This will
46 require a new penalty section in Chapter 80 Civil Violations.);
- 47 • Still need to scrub through the rest of Town Code to see what other sections might need to be
48 repealed along with the adoption of this amended ordinance;

¹This amendment as later deleted by DNREC consultant as being inappropriate.

- 1 • Item 13 on Page 16 still needs language describing these factors – Commissioner Harmer will
2 take care of;²
- 3 • In discussions related to the definition of “substantial damage”, there was consensus (6 to 1) to
4 adopt the weaker FEMA definition (one-time 50% damage threshold) over the current Town
5 definition in Chapter 101 (aggregated 30% loss over 10 years). Chair King noted that the more
6 stringent requirement provides for a safer community and therefore better flood-insurance rates.
7 Chair King was tasked to ask the DNREC contractor if this would harm the Town’s rating in the
8 Community Rating System;³
- 9 • In regard to freeboard (a safety factor to mitigate against future flood damage), despite Chair
10 King’s urging to increase the freeboard (perhaps to 18” in an AE zone and to 2’ in a VE zone),
11 there was a consensus (6 to 1) to retain 1’ in all flood zones until something is done to permit
12 corresponding increases in building height.

13
14 **Action Items**

- 15 • Chair King will send final draft to Chair of the Board of Adjustment for comment.
- 16 • Vice Chair Paraskewich will provide appropriate language for the penalty section, regarding
17 escalating fines and covering the requirement for correction and appeals.
- 18 • Chair King will arrange for the Town Commissioners to get a copy of FEMA bulletin P758 prior
19 to their review of this draft ordinance.
- 20
21

22 **Adjournment.**

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

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² 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.

³ 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.