

Meeting Minutes
Town of Dewey Beach Planning Commission
Meeting Date: September 28, 2013

The meeting was called to Order by Chair Harry Wilson (2:00 pm), followed by the Pledge of Allegiance and Roll Call. All Planning Commission members were present: Jim Dedes, Don Gritti, David King, Chuck McKinney, Mike Paraskewich, and Marty Seitz. Town Building Official Bill Mears was present in his official capacity; also in attendance were Mayor Diane Hanson and Commissioners Ellen Danaher and Gary Mauler, Georgia Leonhart, Dale Cooke, and Ed Beste.

The following materials were provided to the public at the meeting: meeting agenda, draft minutes of the Planning Commission's August 24 meeting, sea-level rise scenario map prepared by the Delaware Coastal Programs, a synopsis of "A Sea-Level Rise Adaptation Toolkit", updated preliminary flood insurance risk map for Dewey Beach, draft proposed code amendments and actions to mitigate flood loss, and a list of definitions.

Chair's Comments. Chairman Wilson said the purpose of this meeting and public hearing was to discuss adaptation strategies and potential amendments to Town code in the face of sea- and bay-level rise, to mitigate future flood loss. This is the third in a series of Planning Commission meetings on these topics. No formal recommendations are anticipated coming out of this meeting; rather fuller discussions that might lead to draft language to be considered in future meetings for recommendation to the Town Commissioners as strategies and priorities.

Minutes. Draft minutes for the Planning Commission's August 24, 2013 meeting were approved, with minor clerical corrections, by unanimous voice vote.

Public Hearing and Planning Commission discussion. Almost 2 hours of discussion were held, mainly on the first 8 topics on the distributed list of draft amendments and actions.

David started the discussion by noting the four adaptation strategies, discussed in "A Sea-Level Rise Adaptation Toolkit", to improve a community's resilience to sea-level rise (SLR) include balancing:

Protection of people, property and infrastructure;

Adaptation in where and how one builds;

(Planned) retreat from areas of high risk of flooding; and

Preservation of natural resources.

He also noted that FEMA's 2012 flood modeling puts the 1%-annual chance flooding level on Dewey Beach's bayside at 4.8' to 5.0' (NAVD88); Oceanside at 7.4' to 7.9' (NAVD88). By comparison, the bay level recorded on the USGS tide gauge at Head of the Bay for Super storm Sandy in 2012 was 4.56' (NAVD88 adjusted) and the Storm of 1962 left flood marks at a maximum elevation of 6.22' (NAVD88 adjusted). For comparison, the elevation of Coastal Highway around Dickenson Ave is approximately 5', increasing to approximately 5 ½' at Salisbury St.

General tenets. The discussions brought out several overarching principles that planning commission members felt should guide their decision making and recommendations:

- It is a proper role of the Planning Commission to develop planning and zoning strategies for dealing with sea-level rise for recommendation to the Town Commissioners;
- Regulations should provide mechanisms and pathways for residential property owners to continue to occupy their homes;
- Regulations should provide mechanisms and pathways for residential property owners to continue to invest in their properties, e.g., for improvements and flood abatement;

- Any resulting change(s) in zoning and flood plain management should provide a set of code that is simple, clear and readily understandable by the Town's citizens and improve the resilience of Dewey Beach to increasing sea-level rise;
- Code changes should be driven by what is best for the Town, and not by individual case-by-case considerations. Such changes should provide a pathway for rebuilding from a substantial loss;
- Not ready at this time to support or recommend broaching the current 35' Town-wide height limit;
- Need to inventory the number of properties potentially effected by any proposed change;
- While owners of a non-conforming structure can always go to the Board of Adjustment for zoning relief, this should be the last resort;
- Where possible, the zoning code should provide a pathway for non-conforming properties to become conforming;
- Maintain the quality and characteristics of the town and its buildings that contribute to what makes the town special.

Specific recommendations (keyed to discussion points).

1. Amend 101-6. Coastal Floodplain Area sub-sections A., B. and C., 101- 4 Definitions, and elsewhere in the code where appropriate to clarify that "coastal high hazard area" designates all VE zones(as designated in the current and future FEMA FIRMs); "general floodplain areas", all AE zones; and "areas of shallow flooding", all AO zones, and that "coastal floodplain areas" include VE and AE zones.
2. Defer discussions on increased freeboard for new construction or substantial improvements to existing structures in the flood plain to the Comprehensive Plan revisions, since this will affect a large number of properties in Town, to get broader citizen input.
3. Amend 185-60 B, "A building which does not conform to the required setbacks in any respect shall not be expanded either vertically or horizontally in the setback area", to permit a residential structure encroaching in a required setback and located in a flood zone to be elevated to FEMA/NFIP/Town base elevation standards.
 - Commissioner Danaher asked: How many properties fit this description? Bill Mears responded, saying he would estimate a lot of homes encroach on side, front/rear and inter-building setbacks based on the number of structures on sub-standard lots in the bay basin area. Bill also noted that most buildings in town do not meet FEMA flood elevation standards and with the 2009 changes to the zoning code, only a handful of structures in Town meet required front-yard setbacks.
 - Bill also clarified that "over 50% damage" triggers requirements 1) to bring the entire structure up to current building codes and 2) to bring entire structure up to FEMA/NFIP/Town base elevation requirements.
 - Initial commission discussions were focused on limiting this **zoning relief** to residential structures encroaching in a required setback, located in a flood plain and having suffered substantial damage "by fire, storm, infestation or other peril not caused intentionally by the property owner."
 - Dale Cooke commented that the rationale to allow a non-conforming structure to be modified is to have it eventually become conforming, and that the Town should not accommodate non-conforming properties by allowing them to stay non-conforming as this will subvert future planning goals. There is always the legal pathway for non-conforming properties to state their case to retain a quality of life (e.g., appeal to the Board of Adjustment, and subsequent legal appeals).

- Mike Paraskewich noted that some DE jurisdictions provide the Building Official with the authority to permit rebuilding consistent with the character of the neighboring homes. Front-yard setback averaging was removed from the Dewey code in the 2009 revision (out of a desire to bring older, non-conforming homes into conformity with current zoning regulations and because newer homes were being built higher). This might be worth revisiting as a mechanism to allow continued occupancy.
- Jim Dedes took an action item to look at language in other neighboring towns related to expansion of non-conforming homes encroaching in a setback and located in a flood plain. He also agreed to get a list of National Flood Insurance Program damage claims for the commission's next meeting.

Ultimately, the Planning Commission reached a consensus to provide relief in the zoning and floodplain management code to the owners of residential structures in a coastal flood plain that encroach in any required setback— whether damaged or not – to raise these structures to FEMA/NFIP/Town flood elevation standards (currently: FEMA's 1% annual flood level plus the Town's 1' freeboard requirement) to make people safe and protect property, conditioned upon:

- If the structure can be relocated or rebuilt in substantially the same configuration (other than base elevation) so as not to encroach in any required setback, it must do so and cannot be elevated in place – such action would be regulated under existing building, zoning and flood plain management code;
- If the structure is not located on a buildable lot or if the character of the lot is such that it cannot be elevated/rebuilt without encroaching in required setbacks, and the structure is substantially damaged or the owners wish to proactively elevate to the FEMA/NFIP/Town base flood elevation, the owners must follow a process that includes 1) site plan review and a recommendation by the Planning Commission (related to building and zoning standards, i.e., possible trade-offs in encroachment of side versus front/rear yards or confirmation of “essentially same configuration”), and 2) application to the Board of Adjustment for determination of any hardship;
- Zoning code relief to be provided for the bare minimum of elevation to meet required FEMA/NFIP/Town base elevation requirements (plus some nominal variance);
- If substantially damaged, the structure must be rebuilt to “essentially the same configuration”: cannot increase habitable square footage and cannot add any new floors. Rebuilt areas must meet current building codes, and therefore may be to standard minimum 7'6” room heights;
- Similar zoning relief/constraints would be provided to/imposed on residential structures in this category (located in a flood plain and cannot be elevated without encroaching in a required setback) that have suffered a less than 50% loss or are being elevated proactively. In cases of mild damage or proactive elevation of an older residential structure, the entire structure may be rebuilt to “essentially the same configuration” using modern building materials and meeting current building codes;
- Under no circumstance can the elevated/rebuilt structure broach the Town-wide 35' height limit unless approved by BOA based on demonstrated hardship.

4. Amend 185-59 as suggested, and replace “must be completed within” with start the building permit application process within”. This is largely a clarification of current requirements to rebuild to FEMA/NFIP/Town base elevation requirements. Need to be cognizant of the timing required for dealing with insurance carriers and the need to require rebuilding within a timely manner.
 - Because Dewey is a participant in the NFIP CRS program, all structures must be covered with flood insurance, cannot not have flood insurance ¹
5. Do nothing at this time regarding 101-15 A. The State owns all bay- and ocean-side property up to the mean high-tide line, and is unlikely to permit anyone to expand or enlarge a structure on its property. This mean-high tide line is one’s property line, and therefore one cannot build within a distance of the required front/side/rear setback requirement from the mean high-tide line. On the ocean side, the dune line limits inundation on a regular basis and DNR has delineated a building restriction line.
6. Clarify 101-15 B. and all appropriate locations that “substantial” damage is defined by “exceeds a cumulative total amount of 50% of said market value within a period of ten years” (as per 101-4 Definitions and FEMA regulations), but do not reduce to 30% for any single event.
7. Anti-dumping ordinance more appropriately belongs in the civil code, not zoning.
8. Waive half of building permit fees in 185-20 for repair of flood damage and retrofit projects improving resilience to sea-level rise, to 1.5%. Jim will survey other town’s for their policy related to this type of loss.

Next steps. Provide an interim report to the Town Commissioners at the October Town Meeting, to make sure they are supportive of the guiding principles being adopted by the Planning Commission at this point in time, leading to a joint workshop/public hearing on this subject.

Adjournment. There was a motion to adjourn; seconded and passed by unanimous voice vote (4:15 pm). The next Planning Commission meeting – possibly a joint meeting with the Town Commissioners – to continue the discussion of SLR was scheduled for 10:00 am Saturday November 16, 2013, at the Life Saving Station.

¹ Errata: While this statement had been made at the meeting on September 28, and approved as part of that meeting’s minutes, it was later noted that this statement is in error. NFIP does not require third-party flood insurance. However, Dewey Beach’s participation in NFIP does require the elevation of all structures undergoing substantial improvement or repair; whether insured under NFIP or not.