

**TOWN OF SOUTH BETHANY
TOWN COUNCIL SPECIAL WORKSHOP MEETING MINUTES
APRIL 17, 2024
10:00 A.M.**

Meeting Called to Order

Mayor Saxton called the April 17, 2024, Town Council Special Workshop meeting to order at 10:01 a.m.

Attendance and Absences

In attendance were Mayor Tim Saxton and Councilmembers Randy Bartholomew, Bob Biciocchi, Edie Dondero, Chris Keefe, Tim Shaw, and Bob Shields; Town Manager Maureen Hartman, Town Code Enforcement Constable Joe Hinks, and Town Clerk Matt Amerling. Public attendees: 2. Virtual attendees: 3.

Public Comment

Nina Link, Elizabeth Way, stated she thinks most people are okay with the setbacks as they are, and she would like to preserve this community as the beach community it is versus turning into something more suburban. As of now, there's little space between lots and she thinks it would be detrimental to start changing setbacks even though it's ground level. She hopes and encourages Council to look out for the whole of the community versus the few people that maybe would want to benefit from it.

Rob Gensler, 806 S. Ocean Drive, stated he is against any change to the floor-to-area ratio (FAR), and the FAR and livable area ratio (LAR) are so intertwined with code and resiliency, and are under review of a bigger agenda, so he would implore people to let this be a part of that process.

Fred Reitzel, 135 Elizabeth Way, stated this issue of FAR all boils down to what kind of town and community we want to have in relation to building the big "Outer Banks-kind" of rental properties, and, personally, he would be against such a thing.

Discussion to amend Town Code §145-35 by adjusting the floor-to-area ratio (FAR) limitations to permit additional deck construction

Mayor Saxton stated he wanted to make it clear first that this is not about going into the setbacks, but, rather, building within the current footprint. Today's issue is really about how Council wants the Town to look, because the floor-to-area ratio (FAR) limitation was put in place years ago to limit the size of houses because Council did not want big box-looking structures in Town. Mayor Saxton stated property owners have to make choices when they're building, and the question for Council today is whether Council wants to say, "these are the Town rules and you have to build to what the Town rules are," or does Council want to keep adjusting the rules every time someone wants something different. He wants Council to understand if altering the FAR will have unintended consequences to other portions and aspects of the Code.

Town Code Enforcement Constable Joe Hinks stated the calculations for the FAR and livable area ratio (LAR) are very much interconnected. The FAR is a sum of the livable space and non-livable space. The Town Code explains it a little better that your livable space is the sum of the area from outside wall to outside wall; and, as for non-livable space, there is a definition of things, including decks and walkways, in the Code. The FAR is based on the structural square footage divided into your property size. Mr. Hinks stated basically, this means the more property one owns, one could in theory build a bigger home, although the Town does have a maximum limit of 5,500 square feet,

no matter what size property a person owns. Depending on the property owner's location, size of the property, and the choice of either a designer or an architect, these factors will largely dictate the usage of space. Seventy-one percent (71%) is your FAR area divided into your square footage of your lot, which will yield your maximum buildable space for the sum of livable and non-livable space; however, if you are building a style of home that is a square or rectangle and you stack that floor after floor, it takes no time to use the space up. If you miter the corners and change things to make them a little less square, you can get a lot of usable room on the same amount of lot. Years ago, when things were trending to look like a "box on box," and people had less computer assistance in design, it was much harder to utilize these ratios, but, today, with architects really drilling down those ratios in their computer software programs, Mr. Hinks finds there is incredible usage of space more so than ever before.

Councilman Tim Shaw asked if decking area is considered to be a part of the liveable space. Mr. Hinks stated no, it is a part of the FAR; and, regarding properties along the ocean front, Town zoning code is not the only thing that limits the size of a house, but those also fall under the purview of the Delaware Department of Natural Resources and Environmental Control (DNREC) limitations, which are based on their building restriction line and the attempt to compact those homes as much as possible because it's seaward of their building restriction line. Councilman Bob Biciocchi asked how deck limits are determined under the FAR. Mr. Hinks stated the wall-to-wall for decks would be the edge of the deck. Councilman Biciocchi asked if other decorative buttresses such as cornices would count under the FAR. Mr. Hinks stated no, items such as cornices, eaves or soffits would not count under the FAR.

Councilman Bob Shields stated he appreciates the Council taking the time to look into this, and the reason he introduced this item at the March 22 Council workshop meeting was from his experience building his house 4 years ago and working extensively with Mr. Hinks on it. Councilman Shields stated he doesn't have any personal benefit from this because he doesn't intend to modify his house, but it was a frustration that occurred during the building process, and Greg Hastings, who was here at the March 22 meeting, showed Councilman Shields some pictures that highlighted this issue with the FAR. This proposal doesn't affect any setbacks, but if you build your house to put your living space primarily on the top deck, and you have the accommodated deck up there, the way the FAR penalizes you, you cannot have enough deck space to put a deck underneath that deck on the first floor. Councilman Shields stated he wanted to do it at the time, and it didn't seem to him that it would cause any impact to anybody, because as long as you don't enclose it, it will not obstruct the view of the person who's behind you; and since people don't live on decks, it's not going to increase the amount of bedrooms or bathrooms or parking requirements. As Mr. Hastings showed with photographs provided to Council at the March 22 meeting, people end up putting up these long pilings, which are not very attractive to support the the roof on the second floor, and we saw people put skirting around it, but it would have been a much more attractive feature to be able to put a deck there instead. Councilman Shields would have liked to do that, and he's talked to other people since who said they really wish they could have done that as well. Councilman Shields checked with Mr. Hastings and he said if the 71% could go up to 74% on the FAR, and make sure it's only allowed for a deck, this would give you about an extra 150-square-feet of deck, which is about exactly where to fill in the space that Council sees in the photographs Mr. Hastings provided. Councilman Biciocchi asked if Councilman Shields was referring to a ground-level patio and upper floor deck. Councilman Shields stated he is only talking about filling in below the upper deck with another deck.

Mayor Saxton asked Mr. Hinks if the Town Code allows a ground-level deck as long as it is not greater than six inches high. Mr. Hinks stated yes, at the ground level, the Town Code permits a deck which could cover the entire property ground as long as it was not higher than six inches, even though it is the same as having an area covered with pervious pavers. Mr. Hinks stated in 2017, Council changed the Town ordinance to allow storage and parking to be pulled out of the FAR, so, of all the houses in Town with that space underneath, that space is no longer in the FAR, except the entry. Mr. Hinks stated the space is being used for decks and other things. Mr. Hinks stated he does take exception to the photographs Mr. Hastings provided because they show a

design flaw in that some of the photos have a swimming pool enclosed, which is not shown in the photos, as well as the mechanicals and storage area being utilized, all of which is not shown in the photographs. Mr. Hinks stated with the piling supporting certain amenities, it is a design choice, but when it comes to the oceanfront properties, they are not allowed to enclose the space underneath per DNREC, so even if Council were to give this consideration of increasing the FAR, Council would still be exempting a certain amount of Town property owners because of State regulation. Mayor Saxton stated with a typical lot, when the space was pulled out of the FAR, property owners were probably given at least 1,000 square feet and that is a lot to give back to let people to do what they want; and he just doesn't know how much more Council has to give. Mr. Hinks stated, regarding what he said before about a design flaw, he would like to retract that because it indicates that there's a deficiency in the construction. Mr. Hinks would rather say it's a design choice. A different design means a material change which would embed a very different picture, and also the addition of a swimming pool.

Councilman Shaw stated Council is trying to prevent what did happened several years ago, where there were two large cubes built, taking the walls out to the maximum and then later coming back, requesting to build decks off of the second floor, out and over to their parking area, to which Councilman Shaw was one of several people who denied the request. Councilman Shaw believes this is about choices with one's design, and he hasn't seen the FAR ratio as having created major problems for people; but instead seems more like there's a handful of folks who want something extra special, and they wanna be given the right to get it. Councilman Biciocchi stated one thing to keep in mind is this option of expanding the FAR does affect property values, so, if you have an expandable house all of a sudden, even if it's adding decks, you have to assume that people will optimize their property values at some point, or the property, when you sell it, now has more value. Councilman Biciocchi stated with someone's private property, they should have some basis to the free use of it – and the FAR and LAR doesn't really restrict what a property owner does but rather the extent to which you can do it. This is a good thing because residents live in a small town and not out on some farm. Councilman Biciocchi stated he was also reminded of Councilwoman Keefe's comments at the March 22 meeting regarding fires spreading rapidly between houses and with the density of these homes, the more we build there's a combustible element to this we have to keep in mind regarding fire safety.

Town Code Enforcement Constable Hinks stated this basis of the FAR and LAR were set back on March 12, 2004, and the summary of why these ratios were put into effect, were as follows, "it was an attempt to address the problem of overdevelopment, and possibly having the town filled with houses too big for the lots. Council insisted on a fair and reasonable solution to the problem, and spent many hours looking at sizes of houses in town, the sizes of lots, and compared the homes built in the next." The motion was made to adopt the percentages the Town has today, and the concluding remark was that if there was a situation that was unusual, the person who needed relief from the Code could always go to the Board of Adjustment (BOA) for a hearing. In 2017, Council granted more relief by taking the storage and parking out of those FAR calculations. Mr. Hinks stated Council must also be mindful of specific building materials such as cable rail which one can see through, but which makes a noise when hit by the wind at a certain speed and trajectory, and he has gotten actual complaints from this noise. If Council chooses to increase the FAR, thus allowing people to construct bigger decks, Mr. Hinks would ask that there'd be some consideration given to whether the Town wants to regulate what materials are allowed for deck construction, because the complaints are not going to stop. Councilwoman Edie Dondero stated she thinks the 2017 change made the Code very generous, and when she puts on her "resiliency hat" and looks at this through the "resiliency lens," she thinks what someone is permitted to build on their lot in South Bethany is very generous, given lot sizes, which is contributing somewhat to the Town's stormwater management issues. The Town is not getting a number of complaints about the FAR ratio, so she is of the mindset, "if it ain't broke, don't fix it," and she is struggling about how this would be written in Code to affect the many different lots and structures with their specific building standards. Councilwoman Dondero thinks that would be getting very complicated and very onerous on our Code enforcement department.

Councilwoman Chris Keefe stated she agrees with Mr. Hinks and all three audience members who spoke today, and if people want bigger homes, they can go live elsewhere. Her concern is changing the Code to allow for bigger houses and resulting in having a tunnel effect, with houses going straight up in the air, and losing the community effect which is why people bought her in the first place. Councilwoman Keefe agrees with Councilwoman Dondero that the Town was very generous in Council's 2017 decision, and the deck exemption Council is discussing today affects very few people; however, if increasing the FAR to allow for bigger decks does go forward, this most likely would lead to those spaces getting closed in with screens and, before we know it, the space would be a room. Councilman Randy Bartholomew stated he came in neutral on the issue, but at this point, after hearing Mr. Hinks points and the discussion today, he doesn't see the need for the Town to increase the FAR beyond 71%. Councilman Shields stated he hears what everybody is saying about not wanting to change the character and the nature of the Town, as well as increasing density and all of that, but he thinks putting a clear deck – and he thinks Code Enforcement can enforce not enclosing it – would not detract from the quality of the Town. Mayor Saxton stated his last comment is the more decks you add – and more deck space – the more noise there will be from people on those decks, and the noise will most likely annoy and frustrate neighbors.

There was a consensus by the Council to drop and table this item from being explored further. Mayor Saxton stated future Councils will have to accept the fact that eventually in Town, all of the cottages will be gone and there are going to be big houses here. They will have to think about what that might look like compared to where we are today, and is that where we want to be? Mayor Saxton stated he thinks the decision made today is good for the character of the Town and what we want to be as a Town.

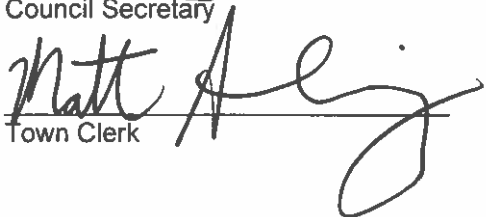
Adjournment

Motion by Councilman Shaw, second by Councilman Biciocchi, to adjourn the April 17, 2024, Town Council Special Workshop Meeting at 10:59 a.m. Motion carried 7-0.

Respectfully submitted,



Council Secretary



Town Clerk

5/10/2024
Date of Approval