

**TOWN OF SOUTH BETHANY
TOWN COUNCIL WORKSHOP MEETING MINUTES
JULY 24, 2014**

MEETING CALLED TO ORDER

Mayor Voveris called the July 24, 2014, Town Council Workshop Meeting to order at 5:00 p.m.

ATTENDANCE

PRESENT: Council Members Sue Callaway, Tony Caputo, Jim Gross, George Junkin, Al Rae, Tim Saxton, and Mayor Pat Voveris; Town Manager Melvin Cusick; Code Enforcement Constable Joe Hinks; and Administrative Assistant Pam Smith

APPROVAL AND VOTE OF THE AGENDA

A motion was made by Councilman Junkin, seconded by Councilwoman Callaway, to accept the agenda. Councilman Gross commented that if time is not needed between Item 6 and Item 11 to retype the wording of Ordinance 172-14 for the second reading, it will be better to run those two items consecutively. Mayor Voveris agreed. The motion was unanimously carried.

PRESENTATION ON COMPROMISE POSITION FOR ORDINANCE 172-14, TO AMEND CHAPTER 145, ZONING, ARTICLE III, "DEFINITIONS", ARTICLE X, "DIMENSIONAL REQUIREMENTS", AND ARTICLE XI, "SETBACK REQUIREMENTS", TO MAKE AN OPTION FOR HIGHER MAXIMUM HOUSE HEIGHT WHERE FREEBOARD OF TWO FEET OR MORE IS PROVIDED

Councilman Junkin presented the following PowerPoint Presentation:

Slide 1

Presentation on compromise position

for Ordinance 172-14, to amend Chapter 145, Zoning, Article III, "Definitions", Article X, "Dimensional Requirements", and Article XI, "Setback Requirements",

**to make an option
for higher maximum house height
where freeboard of two feet or more is provided**

Slide 2

Words from First reading – Jim’s Approach

§ 145-35. J. Maximum building height:

(1) **main: *Principal building: thirty-two (32) feet; accessory building: fifteen (15) feet, measured from center line of street, except as provided in § 145-38E(2). Minimum roof pitch: 4/12.***

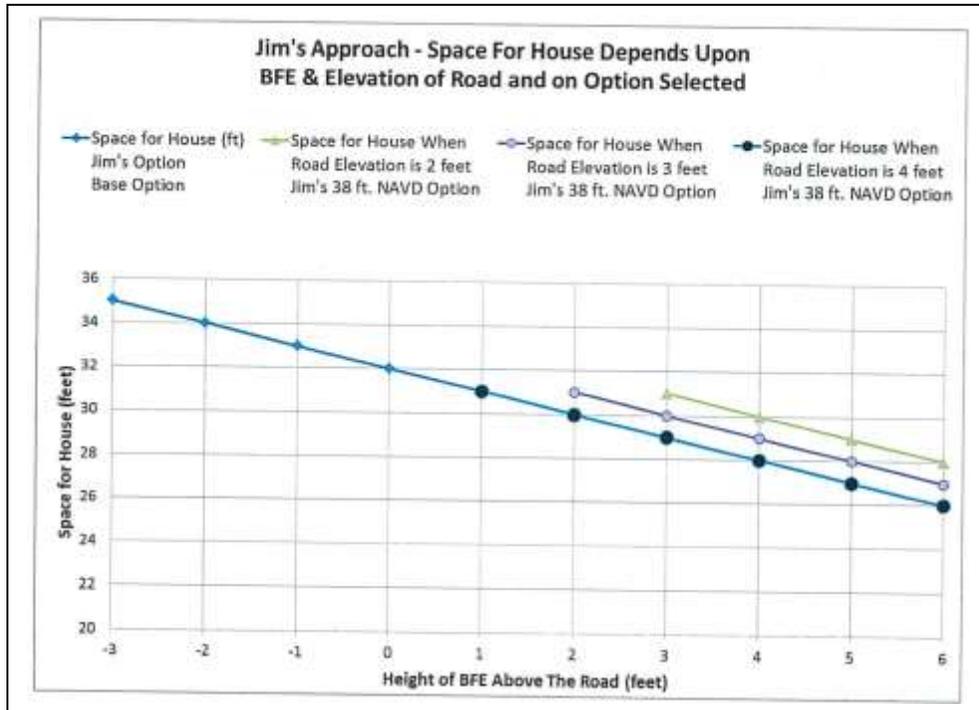
(2) ***Notwithstanding § 145-35J(1) above, where the principal building has a freeboard equal to or greater than two (2) feet above the Base Flood Elevation (BFE), the principal building maximum height may be the higher of thirty-four (34) feet measured from center line of the street or thirty-eight (38) feet based on NAVD 88. Minimum roof pitch: 4/12.***

§ 145-38. E. (2) ~~House elevation is~~ **Building height:**

(a) ***Principal building is thirty-two (32) feet, to be figured from the mean level of the lot with six sightings. These six sightings shall be taken as follows: one at each of two rear corners of such lot; one at each of two front corners of such lot; and one each at the midpoint between the two side property lines of such lot, such that no point is in a ditch but is as close as practical to the intended point. Minimum roof pitch: 4/12.***

(b) ***Notwithstanding anything herein to the contrary, where the house has a freeboard equal to or greater than two (2) feet above the Base Flood Elevation (BFE), the house elevation may be thirty-eight (38) feet based on NAVD 88 or thirty-four (34) feet above the mean level of the lot as calculated in subsection (a) above. Minimum roof pitch: 4/12.***

Slide 3



Slide 4

George's Suggested Words – Referenced to BFE

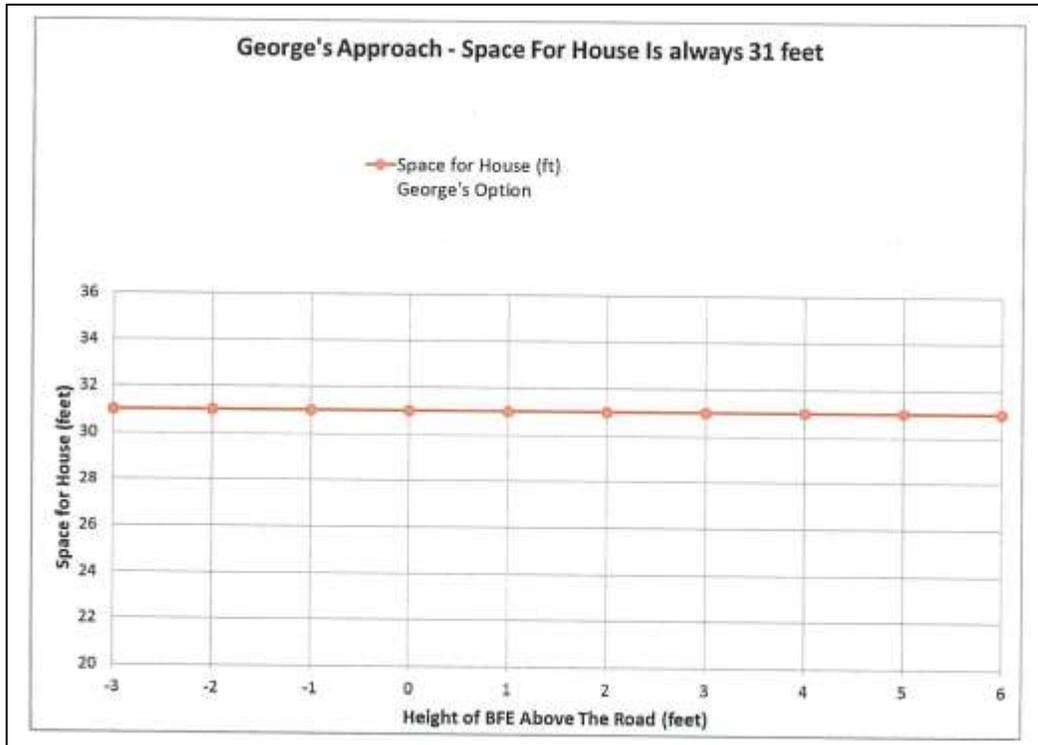
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- (1) **main:** *Principal building: thirty-two (32) feet; accessory building: fifteen (15) feet, measured from center line of street, except as provided in § 145-38E(2). Minimum roof pitch: 4/12.*
- (2) *Notwithstanding § 145-35J(1) above, where the principal building has a freeboard equal to or greater than two (2) feet above the Base Flood Elevation (BFE), the principal building maximum height may be at a height of thirty-three (33) feet above BFE. Minimum roof pitch: 4/12.*

§ 145-38. E. (2) ~~House elevation is~~ **Building height:**

- (a) *Principal building is thirty-two (32) feet, to be figured from the mean level of the lot with six sightings. These six sightings shall be taken as follows: one at each of two rear corners of such lot; one at each of two front corners of such lot; and one each at the midpoint between the two side property lines of such lot, such that no point is in a ditch but is as close as practical to the intended point. Minimum roof pitch: 4/12.*
- (b) *Notwithstanding anything herein to the contrary, where the house has a freeboard equal to or greater than two (2) feet above the Base Flood Elevation (BFE), the principal building maximum height may be at a height of thirty-three (33) feet above BFE. Minimum roof pitch: 4/12.*

Slide 5



Slide 6

Compromise Words – Use the Higher of the Two Approaches

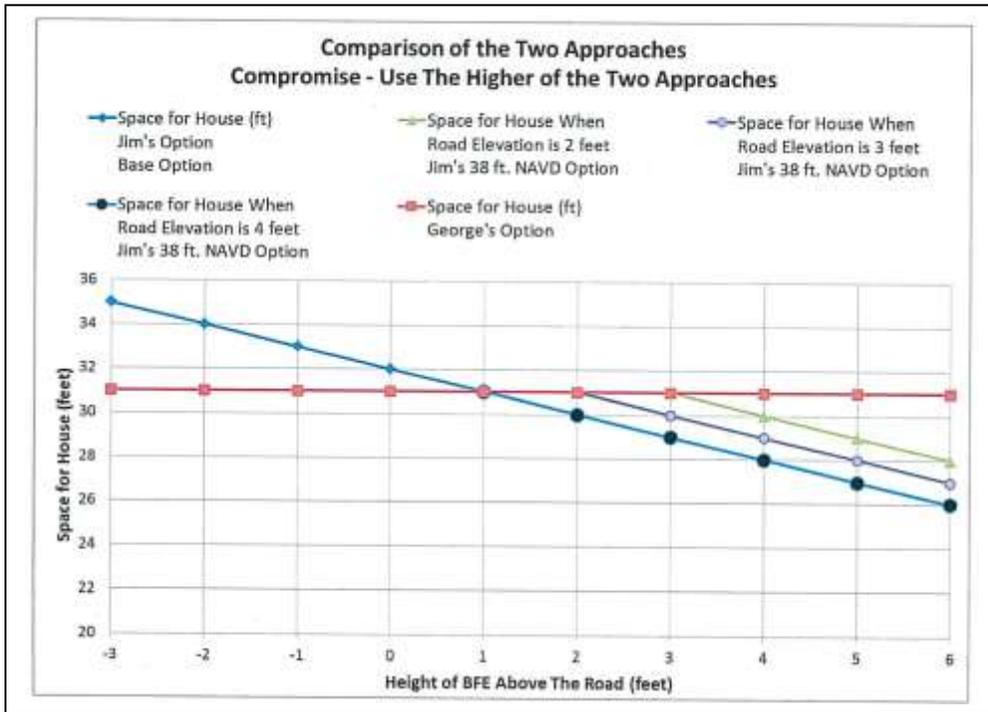
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- (2) *Notwithstanding § 145-35J(1) above, where the principal building has a freeboard equal to or greater than two (2) feet above the Base Flood Elevation (BFE), the principal building maximum height may be thirty-four (34) feet measured from center line of the street or thirty-three (33) feet above BFE whichever is the higher. Minimum roof pitch: 4/12.*

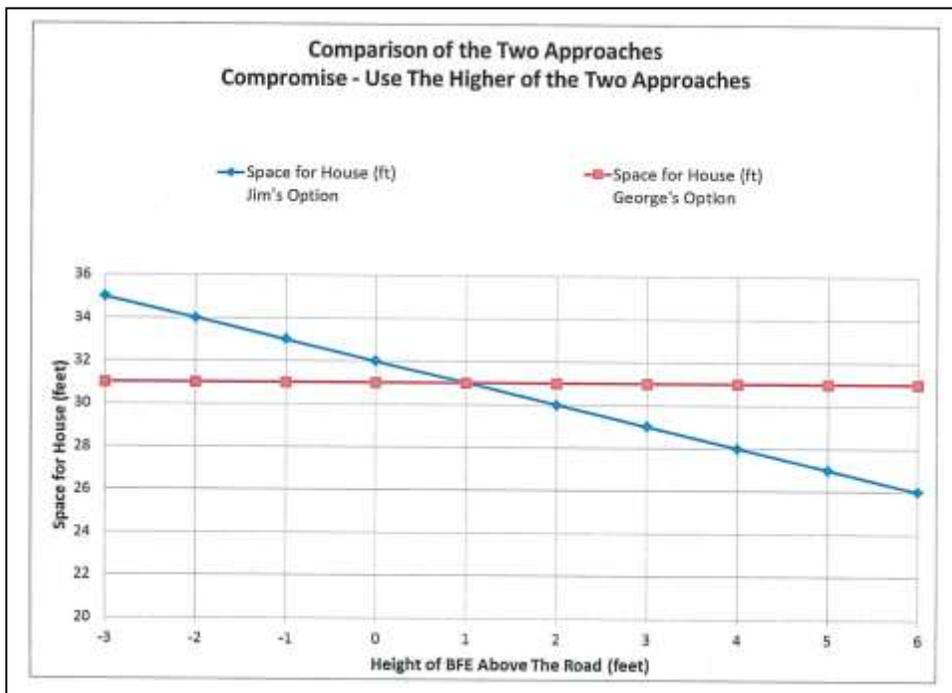
§ 145-38. E. (2) **House elevation is Building height:**

- (a) *Principal building is thirty-two (32) feet, to be figured from the mean level of the lot with six sightings. These six sightings shall be taken as follows: one at each of two rear corners of such lot; one at each of two front corners of such lot; and one each at the midpoint between the two side property lines of such lot, such that no point is in a ditch but is as close as practical to the intended point. Minimum roof pitch: 4/12.*
- (b) *Notwithstanding anything herein to the contrary, where the house has a freeboard equal to or greater than two (2) feet above the Base Flood Elevation (BFE), the principal building maximum height may be thirty-four (34) feet above the mean level of the lot as calculated in subsection (a) above or be thirty-three (33) feet above BFE whichever is the higher. Minimum roof pitch: 4/12.*

Slide 7



Slide 8



Councilman Junkin made the following comments during his PowerPoint Presentation:

Regarding Slide 2, Councilman Junkin said that the words 34 feet above center line of road or 38 feet based on NAVD88 says that the higher the road is relative to BFE the more space there is for the house.

Councilman Junkin said his option and Councilman Gross' option is the same today for properties in BFE 5 Zone that have street elevations of four feet or less. The options for those properties will change by a foot when it goes up to BFE 6 next March.

Councilman Junkin agreed that when BFE is below the level of the dirt, Councilman Gross' approach has to be followed. Councilman Junkin took his option out of Council's consideration because he does not think his option makes sense when BFE is below the level of the dirt. Councilman Junkin stated that Councilman Gross' option (Slide 2) or the compromise option (Slide 6) is what Council has to decide on for the wording of the second reading.

Councilman Junkin said he wants the space for the house to follow where FEMA says BFE is unless FEMA says BFE is below the level of the dirt. If FEMA says BFE is below the level of the dirt, than the space for the house would be measured from the road so that people are not penalized for FEMA making a mistake and making BFE below the dirt.

Councilman Junkin said the difference between his and Councilman Gross' option is that he is trying to allow people to have 31 feet to build a house and Councilman Gross is trying to keep the houses from being higher when BFE goes up. Councilman Junkin thinks the two options are different by about a foot.

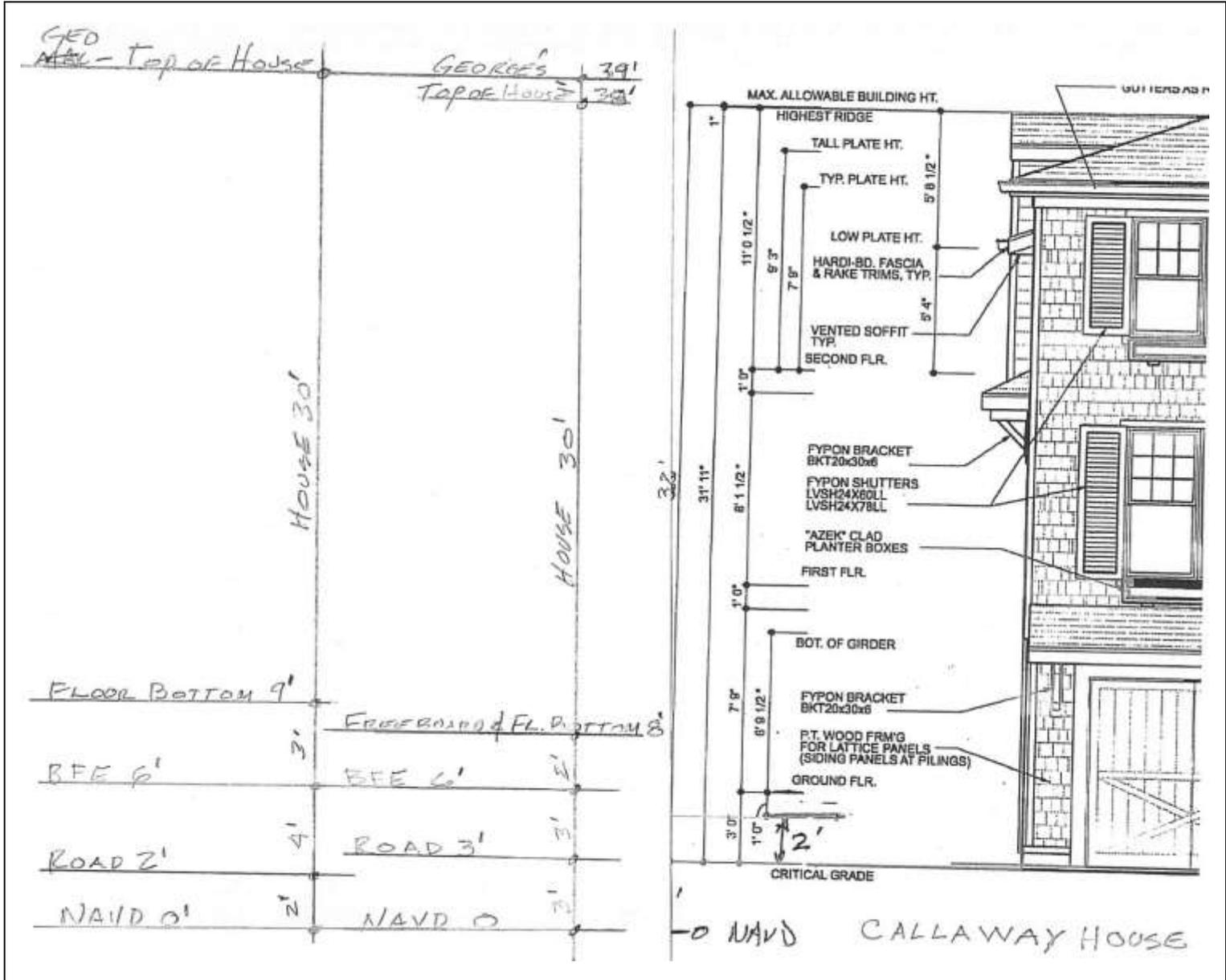
Councilman Gross distributed copies of the following handouts to Council.

Handout #1

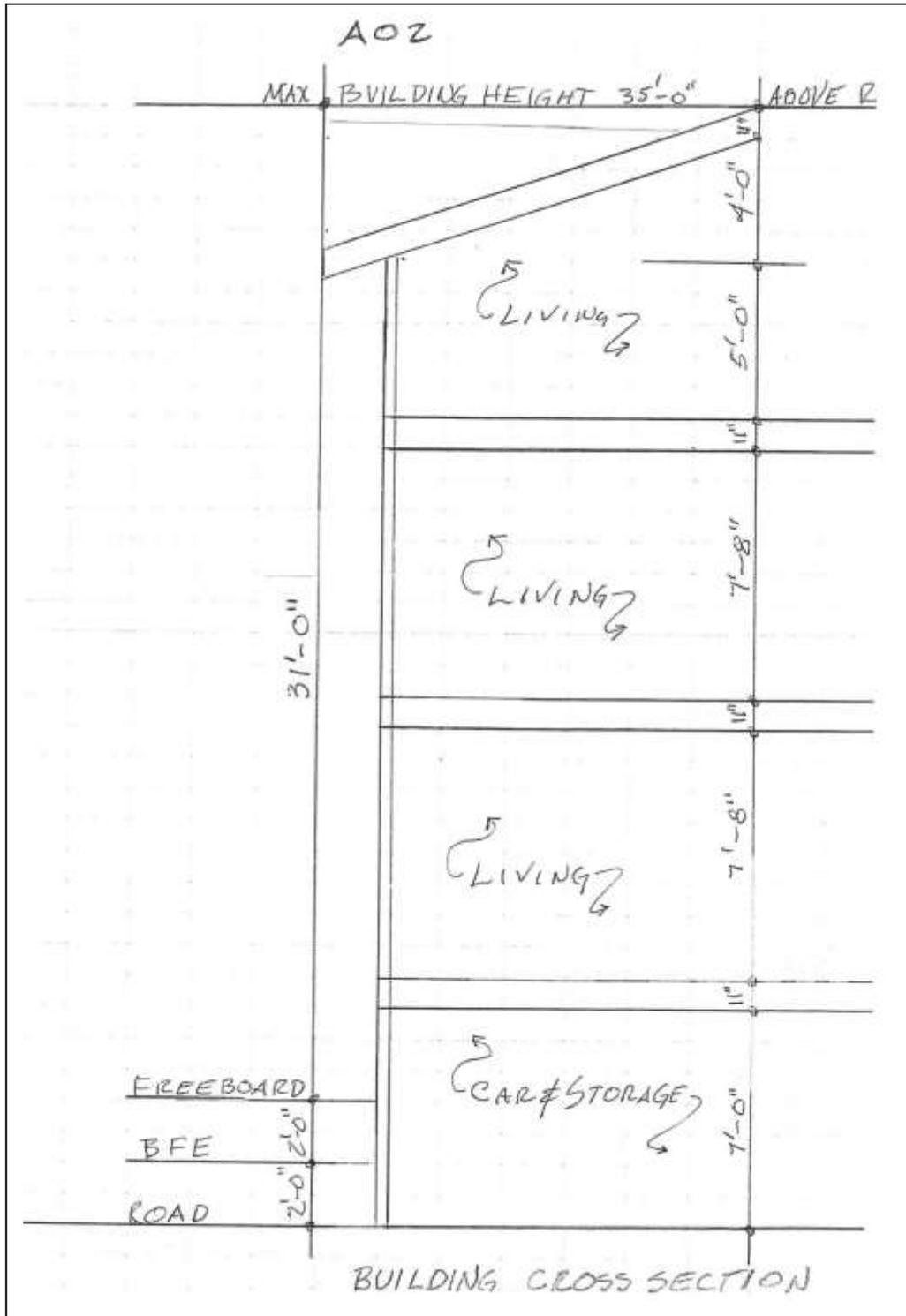
Governing Code	Maximum Height (feet)	Referenced To
Sussex County	42	Grade or BFE
Fenwick Island	30	Crown of Road
Bethany Beach	31	Grade or BFE with 5/12 <i>P</i>
South Bethany (Current)	32	Grade or Crown of Road
South Bethany (with freeboard)	34	Grade or Crown of Road
South Bethany (with freeboard)	33	BFE
Dewey Beach	35 <i>≤ 3 ST</i>	Crown of Road

Stories

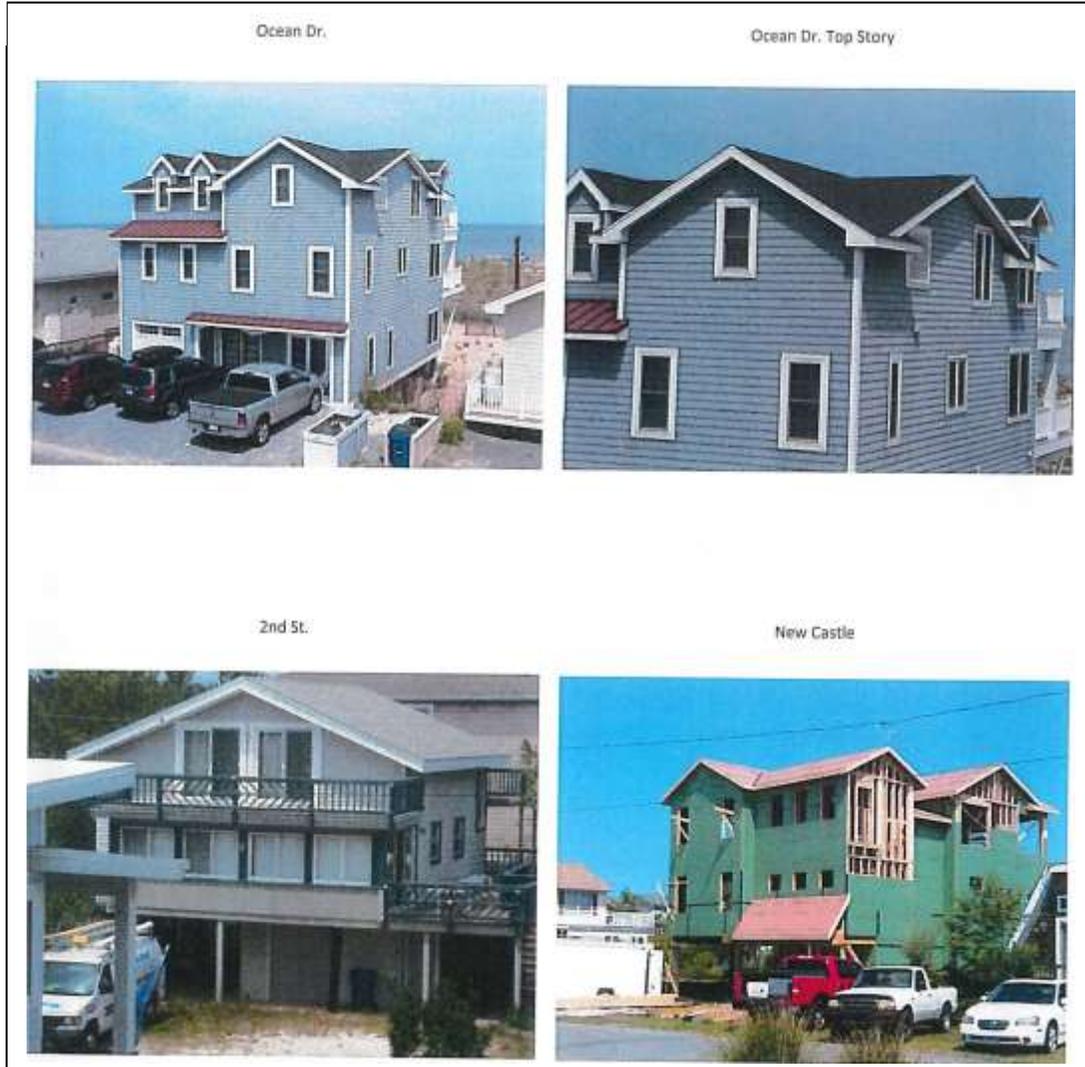
Handout #2



Handout #3



Handout #4



Councilman Gross stated that he has problems with Councilman Junkin's compromise proposal. Councilman Gross said he does not understand why Councilman Junkin wants to allow everyone to have the same space (height) to build their home in. Regarding Councilman Junkin referencing 31 feet of space to build a home in, Councilman Gross said it is the vertical distance from the underside of the livable area to the peak. Councilman Junkin agreed.

Councilman Gross noted that the Sea Level Rise and Storm Surge Committee has never considered the compromise proposal.

Councilman Gross reviewed Handout #1 which showed the governing code for Sussex County and nearby towns regarding maximum house height in feet and what it is referenced to.

Councilman Gross reviewed Handout #2 and Handout #3 to show how in effect (with a garage and storage underneath being the first story) four story houses could be built in South Bethany using the compromise words. Handout #2 applies to some areas west of Route 1 and Handout #3 applies to the east/west streets east of Route 1.

Councilman Junkin stated that in AO2 it is one foot difference in the height of the house between Councilman Gross' approach and the compromise approach. Councilman Gross agreed.

Councilman Gross believes keeping the low-rise residential character of South Bethany is important. Councilman Gross stated that having the same dimension of 31 feet height for all properties is not consistent with the way the Town has done the height in the past, and it is not consistent with the way the Town does other dimensional requirements. Councilman Gross' opinion is that the compromise approach is not good for this town.

Mayor Voveris stated that the Town has used the center line of the road concept for quite a while. It has been successful and there are other towns that are using it too. Mayor Voveris said it seems to her Council obtains its objective by using two feet of freeboard for two feet of height. Mayor Voveris believes this approach is simpler, clean, and understandable. The Code Enforcement Constable, Joe Hinks, stated that residents (between six and eight) he has encountered while making his rounds through the town are confused on the term Base Flood Elevation (BFE). Also the residents' impressions are that some of the houses being built now are too tall and they question him if the height of the houses violates the code. He added that most people can't relate to an invisible line (BFE), but when they stand at the road and look up at a house it looks big. Mr. Hinks stated that he is neutral on this issue and whatever Council adopts he will be happy to enforce.

Referring to Councilman Junkin's proposal to allow 31 feet for the house height for all properties, Mayor Voveris stated that she likes the idea of everybody having the same "building envelope", but the possibility of a four level house is cause for concern.

Councilman Rae stated that the BFE is not an invisible line. On some of the houses that were flooded during Hurricane Sandy you can still see where the water level was. Councilman Rae stated that the reason for the proposed changes to the Code was the fact that eight or nine hundred houses flooded during Hurricane Sandy, and the Town is trying to do something that prevents that in the future. Councilman Rae said he has no problem with 31 feet for every house and added that some of them are going to start higher because the flood level is higher. Councilman Rae thinks that is fundamental to what Council started out to do. Councilman Caputo agreed.

For the record, Councilman Saxton stated that his property is where the two approaches intersect. Either approach is the same result regarding his property. Councilman Saxton believes that eventually the Town needs to put a package together that includes all of the dimensional requirements. Councilman Saxton said he believes Council should make this simple for this go around, and then another change should be part of an all comprehensive change in how we build in this town. Councilman Saxton believes there are other things that probably need to be changed to make the town year round friendly.

PUBLIC COMMENT PERIOD

Bob Cestone stated that he agrees with Councilman Gross and with what Councilman Saxton was saying. Mr. Cestone suggested that because Council knows everybody more or less agreed to the 34 feet above the road, go ahead with that for now and then in the Comprehensive Plan survey that goes out in the next year or so include questions regarding this issue.

Jack Whitney stated that everyone he has talked to is concerned about the inequities regarding the height of the house you can build based on the current code. Mr. Whitney reminded Council that he had proposed an option that was canned. Mr. Whitney said he is more in favor of what Councilman Junkin has presented than what Councilman Gross has presented. Mr. Whitney believes the equity and the amount of height that you can build your house in should be equal throughout South Bethany. Mr. Whitney stated that the center line of road probably started when the first codes were written in South Bethany. They were fine at that time. We were not worried

about sea level rise then. We are worried about sea level rise now. We have bought into the FEMA program, the FIRM, and the Base Flood Elevation, and we have said to FEMA yes we will require all new houses and substantial renovations to meet their criteria. Therefore Base Flood Elevation is the important criteria. Mr. Whitney suggested using the option he presented at the July 11 Public Hearing. He said it is similar to Councilman Junkin's compromise words, but the compromise words allow some inequities that he does not agree with. Mr. Whitney stated that Council Members have to decide if sea level rise is important to the town, and if it is important, then Council has to act accordingly. Mr. Whitney does not think Council should be talking about how many stories a house can have because the code dictates what the minimum heights are for a floor and if a person wants to build all their floors at a minimum height that is their choice. Mr. Whitney thinks Council has to decide if it is concerned about sea level rise or not and Council has to be concerned about equity for all of our property owners. Regarding concerns about housing heights on Ocean Dr., Mr. Whitney believes something could be written in very easily and he has drafted a proposal for that too. Mr. Whitney said he was proposing to add a sentence about buildings in the VE zone shall be dealt at or above the elevation of twelve feet and that would take care of the concern of the 10 feet versus 12 feet.

CONSIDERATION AND POSSIBLE VOTE ON THE WORDING OF ORDINANCE 172-14, TO AMEND CHAPTER 145, ZONING, ARTICLE III, "DEFINITIONS", ARTICLE X, "DIMENSIONAL REQUIREMENTS", AND ARTICLE XI, "SETBACK REQUIREMENTS", TO MAKE AN OPTION FOR HIGHER MAXIMUM HOUSE HEIGHT WHERE FREEBOARD OF TWO FEET OR MORE IS PROVIDED

After further Council discussion, a motion was made by Councilman Junkin, seconded by Councilman Caputo, that Council accept the compromise words as shown in Slide 6 of the PowerPoint Presentation. After more Council discussion, the voting was as follows:

FOR THE MOTION: Councilpersons Caputo, Junkin, and Rae

AGAINST THE MOTION: Councilpersons Callaway, Gross, and Mayor Voveris

ABSTAINED: Councilman Saxton

The voting result was 3 in favor and 3 against. The motion was defeated.

A motion was made by Councilman Gross, seconded by Councilman Junkin, that Council move forward with the wording that was in the first reading (Slide 2 of the PowerPoint Presentation). The voting was as follows:

FOR THE MOTION: Councilpersons Callaway, Caputo, Gross, Junkin, Rae, and Mayor Voveris

AGAINST THE MOTION: None

ABSTAINED: Councilman Saxton

The motion carried with a 6-0 vote.

Councilwoman Callaway thanked Councilman Junkin and Councilman Gross for all of the hard work they have done regarding this ordinance. Councilman Saxton agreed and complimented both Councilman Junkin and Councilman Gross on the fantastic job they did. Councilman Gross said he was remiss - he was going to start his conversation by complimenting and thanking Councilman Junkin for the work he has done compiling information for hours beyond what anyone else on Council has spent. Councilman Gross said that without Councilman Junkin's work Council would not be where they are today. Councilman Gross said this is not a personal thing. Councilman Junkin agreed that it was not a personal thing. Councilman Junkin said that both he

and Councilman Gross took this seriously, both did a lot of work, and both were trying to get people to have two feet of freeboard. Mayor Voveris said Council accomplished that today as a cohesive group. Mayor Voveris said this is a work in progress and Council will continue to work and continue to assess the issue.

ORDINANCES/RESOLUTIONS – SECOND READING OF ORDINANCE 172-14, TO AMEND CHAPTER 145, ZONING, ARTICLE III, "DEFINITIONS", ARTICLE X, "DIMENSIONAL REQUIREMENTS", AND ARTICLE XI, "SETBACK REQUIREMENTS", TO MAKE AN OPTION FOR HIGHER MAXIMUM HOUSE HEIGHT WHERE FREEBOARD OF TWO FEET OR MORE IS PROVIDED

Because Ordinance 172-14 was discussed extensively in the previous agenda items, and at the suggestion of Councilman Junkin and Councilman Gross, Mayor Voveris declared this the second reading of Ordinance 172-14.

CONSIDERATION AND POSSIBLE VOTE ON APPLYING FOR A POTENTIAL WATER QUALITY GRANT TO ESTABLISH RAIN GARDENS AROUND STORM DRAINS IN SANDPIPER PINES

Councilman Junkin stated that he met with Chris Bason from the Center for the Inland Bays (CIB) regarding an opportunity for another grant. Councilman Junkin said the maximum grant is \$150,000. In past grants that the Town received with the CIB, the Town has put in about \$10,000. Councilman Junkin said as a sign of good faith that the Town is really interested in this project, he believes the Town should put in \$10,000 for this grant proposal. The project involves a total of 14 rain gardens and stone diaphragms which are like French drains. Councilman Junkin stated that a lot of the drains are on private property. Councilman Junkin has talked to about half of the property owners and most of them were amenable to the drains for stormwater management. During discussion Mr. Cestone stated that he has seen the drawings for Sandpiper Pines (plot plans for the whole development) that show there is a 10 foot easement in front of every house in Sandpiper Pines. Mr. Cestone said he believes the drawings are in the Town's files. Councilwoman Callaway asked what percentage of the drains are on property owners properties. Councilman Junkin said it may be more than half. Councilman Junkin said the project will cost under \$150,000 but he does not think it will be under \$100,000.

Councilwoman Callaway asked if the maintenance of the rain gardens would fall on the property owner. Councilman Junkin said not necessarily. Councilman Junkin said the Town might have to maintain them like the Town maintains the other rain gardens, but some property owners said they would maintain them. Mayor Voveris asked if the Town would have to have permission to go on the property. Councilman Junkin said yes unless the Town has the easement. Councilman Saxton noted that property changes hands so he believes the Town has to be prepared to maintain them if it has to in the long haul. Councilman Saxton believes that when these types of proposals are brought forward Council should have an idea of what long-term maintenance looks like before voting on it. Later in the discussion Councilman Gross added that he believes it does strengthen the proposal to say the Town is prepared to maintain this and it is going to cost X number of dollars every year. Councilman Junkin agreed.

A motion was made by Councilman Junkin, seconded by Councilman Gross, that Council go forward with this proposal. Councilman Junkin clarified that the money is not FY 15 money it is FY 16 money. Mayor Voveris said Council will not vote on the money today. Council will vote on the money at the August Town Council Regular Meeting. Mayor Voveris called for a vote. The motion was unanimously carried.

DISCUSSION AND POSSIBLE VOTE TO MOVE FORWARD ON AN ORDINANCE TO AMEND CHAPTER 104, PROPERTY MAINTENANCE, TO: 1) DELETE EXCEPTION OF RESPONSIBILITY FOR PROPERTY OWNERS OF OCEANFRONT LOTS TO CUT GRASS AND WEEDS, AND 2) REINSTATE THREE MEMBER TOWN HEARING BOARD TO HEAR APPEALS, INADVERTENTLY OMITTED UNDER ORDINANCE 168-13.

Councilman Gross stated that last summer he and the Town Manager met with state officials regarding the section of the Town's code which prohibited the Town from requiring the cutting of weeds on oceanfront properties. The state officials said the Town could require the cutting of weeds on oceanfront properties. Councilman Gross reviewed a draft ordinance that would allow the Town to require that. To eliminate exempting the oceanfront lots from requiring the cutting of weeds, delete "oceanfront sand dune lots and" from § 104-7, Duty to mow and trim.

Councilman Gross also suggested adding a Hearing Board to §104-19 Enforcement procedures: notice, penalties, appeals that was inadvertently omitted, "The Hearing Board shall consist of three Council Members appointed by the Mayor and approved by the Council." Councilman Junkin asked if the Hearing Board would always be the same three Council Members. Councilman Gross said it would not always be the same three Council Members. His idea is that it would depend upon the expertise on the Council to address what the issue is.

Mayor Voveris asked if in the last sentence of § 104-8B and the first sentence of § 104-8D if "lien upon" should be changed to "lien against". Councilman Rae said he thinks that is a question for the lawyer.

Mayor Voveris believes the ordinance should be consistent and always use Town Council and Town Hearing Board rather than just Council and just Hearing Board. Councilman Gross agreed to correct that.

In § 104-19D Mayor Voveris noted that Town Manager is repeated. Councilman Gross said he is aware of that and they can fix that.

Councilwoman Callaway stated that she is uncomfortable with the phrase "except wooded lots" in § 104-7. She said it almost sounds like people who own wooded lots are not responsible for maintaining it. Councilwoman Callaway noted that there is a separate ordinance that addresses wooded lots, and this almost seems in conflict with it. Councilman Gross told Councilwoman Callaway to give it a little more thought. Mayor Voveris said before the first reading Council Members should email any suggestions they have to Councilman Gross.

EXECUTIVE SESSION – DISCUSSION OF INDIVIDUAL CITIZEN'S QUALIFICATIONS AS POTENTIAL CANDIDATE TO FILL BOARD OF ADJUSTMENT VACANCY

Council agreed that an Executive Session was not needed.

ADMINISTRATIVE MATTERS – CONSIDERATION AND POSSIBLE VOTE TO APPOINT BOARD OF ADJUSTMENT MEMBER

Council had a copy of Steve Bunoski's resume. Mayor Voveris said she knows Mr. Bunoski personally and she noted that he is a lawyer. Mayor Voveris stated that the Chair of the Board of Adjustment is very much in support of Mr. Bunoski.

Mayor Voveris stated that she would like to appoint Steve Bunoski to be on the Board of Adjustment. A motion was made by Councilman Gross, seconded by Councilman Junkin, that Council approve the recommendation of the Mayor. The motion was unanimously carried.

Councilwoman Callaway suggested that for future appointments an announcement that a BOA member has resigned should be made to the Council so that Council Members have an opportunity to make a nomination. Councilmen Caputo and Rae agreed.

PUBLIC COMMENT PERIOD

There were no comments from the public.

ADJOURNMENT

A motion was made by Councilman Junkin, seconded by Councilman Gross, to adjourn the July 24, 2014, Town Council Workshop Meeting at 6:55 p.m.

phs:Workshop Minutes 7 24 14 Amended and Adopted 8 28 14