

Max B. Walton  
TEL (302) 888-6297  
FAX (302) 757-7299  
EMAIL [mwalton@connollygallagher.com](mailto:mwalton@connollygallagher.com)  
REPLY TO 267 East Main Street  
Newark, DE 19711

June 28, 2013

**By Electronic Mail**

Laura Simmons  
Office of State Planning  
540 South DuPont Highway  
Dover, DE 19901

**Re: Request for Preliminary Land Use Service (PLUS) Review  
Town of Bethany Beach, Delaware - Proposed Rezoning And Proposed  
Change To Comprehensive Development Plan**

Dear Ms. Simmons:

This office acts as special counsel to the Town of Bethany Beach, Delaware with respect to proposed changes to the Town's certified Comprehensive Development Plan ("Comp Plan"). Under the Town's current Comp Plan, the Town has designated Lot # 1 in Block 106 located at the corner of Atlantic Avenue and the north side of Hollywood Street as commercial and Lots # 9, 10, 11, 12 in Block 110, located at the corner of Atlantic Avenue and the south side of Hollywood Street (collectively, the "Lots") as residential. Although zoned and designated residential, non-conforming apartment type structures are located on Lots # 9, 10, 11, 12 in Block 110. Excepting Lot 12, the Lots comprise the Bethany Arms Motel property.

The Town is seeking authorization to amend its Comp Plan to designate the Lots as commercial on the future land use map (current Figure 8). If the Town adopts the proposed change to the future land use map, the Town will also add text language to the Comp Plan to allow the creation of a new zoning district – CL-1 – which will be a commercial lodging district. If the proposed changes to the Comp Plan are adopted by the Town Council, the Town will immediately thereafter consider ordinances to rezone the Lots in accordance with the new CL-1 designation.

The proposal for the Comp Plan and proposed code changes were initiated by the Town Council, which referred the proposal to the Town's Planning Commission for review. At that time, the Town Council authorized the Planning Commission, in its discretion, to send the proposed changes to the Comp Plan and the proposed changes to the Town Code to PLUS for review. On June 22, 2013, the Planning Commission authorized PLUS review of the proposal for the Lots.



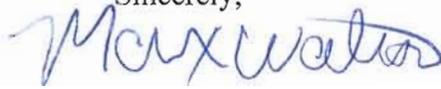
Laura Simmons  
June 28, 2013  
Page 2

To facilitate PLUS review, attached please find: (1) the PLUS application; (2) a draft ordinance to amend the Comp Plan; (3) a draft ordinance to create the CL-1 district; (4) a draft ordinance to rezone the Lots to CL-1; (5) a proposed revised future land use map; (6) a smaller detail map of the area in question (considered by the Planning Commission); and (7) a potential future zoning map for the Town. We ask that all of these documents be considered as a component of PLUS review for the proposal for the Lots.

We thank you for your consideration of this submission, and we ask that this proposal be placed on the agenda for the July PLUS meeting.

As always, if you have any questions, please feel free to contact me.

Sincerely,



Max B. Walton

cc: Town of Bethany Beach (by electronic mail; w/enc.)

**Preliminary Land Use Service (PLUS)  
Comprehensive Plan Amendments and Municipal Ordinances**

Delaware State Planning Coordination  
122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

<b>Name of Municipality: Town of Bethany Beach</b>	
<b>Address:</b>  Town of Bethany Beach 214 Garfield Parkway Bethany Beach, DE 19930 302-537-3771	<b>Contact Person: Max B. Walton, Esquire</b>
	<b>Phone Number: (302) 888-6297</b>
	<b>Fax Number: (302) 757-7299</b>
	<b>E-mail Address:</b> mwalton@connollygallagher.com

**Date of Most Recently Certified Comprehensive Plan: April 2011**  
**Application Type:**

**Comprehensive Plan Amendment:** \_\_\_\_\_ **X** \_\_\_\_\_

**Ordinance:** \_\_\_\_\_ **X** \_\_\_\_\_

**Other:** \_\_\_\_\_

**Link to the proposed ordinance: See Exhibit 1**

<b>Comprehensive Plan Amendment or Municipal Ordinance prepared by: Connolly Gallagher LLP</b>	
<b>Address:</b>  Connolly Gallagher LLP 267 East Main Street Newark, DE 19711	<b>Contact Person: Max B. Walton, Esquire</b>
	<b>Phone Number: (302) 888-6297</b>
	<b>Fax Number: (302) 757-7299</b>
	<b>E-mail Address:</b> mwalton@connollygallagher.com

<b>Maps Prepared by: University of Delaware (revisions by Kercher Engineering)</b>	
<b>Address:</b>  254 Chapman Road, Suite 202  Newark, DE 19702	<b>Contact Person: Aaron D. Gerber, P.E.</b>
	<b>Phone Number: 302-894-1098 ext. 309</b>
	<b>Fax Number: 302-894-1099</b>
	<b>E-mail Address: adg@kercherei.com</b>

**Preliminary Land Use Service (PLUS)  
Comprehensive Plan Amendments and Municipal Ordinances**

Delaware State Planning Coordination  
122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

**Please describe the submission: See Cover Letter, Exhibit 2, and Exhibit 3 contains various maps**

Exhibit 1

Sponsor: \_\_\_\_\_

Introduction: \_\_\_\_\_

Public Notice: \_\_\_\_\_

Public Hearing: \_\_\_\_\_

**An Ordinance to Approve Amendment to Recommendation 1 Contained in the Bethany Beach 2010 to 2020 Comprehensive Plan**

BE IT HEREBY ORDAINED by the Town Council of the Town of Bethany Beach, a majority thereof concurring in Council duly met, following a public hearing and the recommendation of the Planning Commission, that the Bethany Beach 2010 to 2020 Comprehensive Plan (hereinafter referred to as the "Comprehensive Plan") be and hereby is amended as follows:

Section 1.       Addition of the following language to *Recommendation 1: Maintain Land Uses and Promote Appropriate Redevelopment*

The Town currently has a large motel establishment, the Bethany Arms Motel, which is located adjacent to the beach, just south of Garfield Parkway (the "Bethany Arms Property"). A portion of the Bethany Arms Property is currently zoned R-1 Residential while the remainder is zoned C-1 Commercial. Notwithstanding the inconsistent zoning classification, the Bethany Arms Motel has historically operated as an integrated commercial lodging establishment on the Bethany Arms Property.

The Town of Bethany Beach ("Town") should consider adopting a new zoning classification for large motel/hotel establishments, such as the Bethany Arms Property. This recommendation may be implemented by creating a new zoning district limited to commercial lodging (CL-1), and it is recommended that the entirety of the Bethany Arms Property be rezoned to the new commercial lodging classification if adopted. In addition, it is recommended that the new CL-1 zoning district, if adopted, could allow for certain permitted uses that would be complimentary to the primary use of the district for commercial lodging, but would limit other commercial uses in the district.

Providing the same zoning classification for large motel/hotel establishments and the creation of a new zoning district for these uses (such as the Bethany Arms Property) and limiting primary uses to commercial lodging (if the new CL-1 District is adopted) is consistent with the goals of the Comprehensive Plan. A new commercial lodging district furthers the desire of the Town to insure that the existing commercial districts do not turn into residential districts while, at the same time, avoiding the dramatic intensification of commercial uses in areas where only large motel/hotel establishments are desired. The future land use map (Figure 8) is amended to designate the entire Bethany Arms Property (including the residential portion) as a commercial designation to allow for the implementation of the CL-1 district.

Section 2. Amendment to Figure 8: Future Land Use Map, Bethany Beach to reflect entirety of Bethany Arms Property as Commercial, as attached hereto as Exhibit A. Upon adoption of this Ordinance, the map attached hereto as Exhibit A shall be the future land use map of the Town's Comprehensive Plan.

Prior Laws. Upon adoption of this Ordinance, with the exception of the amendments set forth in Sections 1 and 2 above, the Town Council readopts the Comprehensive Plan previously adopted, and all portions of the Comprehensive Plan not expressly amended by this Ordinance shall remain in full force and effect.

Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the Town Council's intent.

Synopsis. This ordinance will authorize an amendment to the Comprehensive Plan to permit the Town Council to approve, if it so determines after future consideration in accordance with existing procedures, requirements and guidelines, the rezoning of and/or creation of a new zoning district for commercial lodging (CL-1).

Effective Date. This Ordinance shall take effect immediately upon adoption.

This shall certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Bethany Beach at a duly noticed and convened meeting at which a quorum was present on \_\_\_\_\_, 2013.

Attest:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor

Sponsor: \_\_\_\_\_  
Planning Review Commission: \_\_\_\_\_  
Public Notice: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_

**AN ORDINANCE TO AMEND SECTION 425 OF THE BETHANY BEACH TOWN CODE AND RELATED APPENDICES TO CREATE A COMMERCIAL LODGING DISTRICT**

**WHEREAS**, the Town of Bethany Beach has a duly enacted Zoning Code;

**WHEREAS**, the Town Council has decided to create a new zoning district, to be referred to as the Commercial Lodging District (CL-1), to allow the establishment of hotels and/or motels and related on-site amenities while, at the same time preserving, the residential character of those neighborhoods that are in close proximity to new zoning district;

**WHEREAS**, the Planning Commission has reviewed and recommended the proposed changes for the addition of the Commercial Lodging District (CL-1), and the Town Council has held a duly noticed public meeting on the proposed change to the zoning code;

**WHEREAS**, the proposed amendments contemplated by this ordinance are consistent with the Town's Comprehensive Development Plan (as amended); and

**WHEREAS**, the Town Council believes that adoption of the Commercial Lodging District (CL-1) is in the best interest of the Town and adopts this ordinance for the health, safety and welfare of the community at large.

**AND NOW BE IT HEREBY ORDAINED BY** the Town Council of the Town of Bethany Beach, a majority thereof concurring in Council duly met, that Section 425 of the Bethany Beach Town Code is hereby amended as follows:

**Section 1.** Amend Section 425-2 by adding the following definition for "Commercial Lodging."

**Commercial Lodging**

Hotels or motels, in a building or group of buildings, offering transient lodging accommodations on a daily rate to the general public. Additional services to be provided may include restaurants, meeting rooms, and recreational facilities.

**Section 2.** Amend Section 425-22 by inserting a new subparagraph (D) as follows:

- (D) A commercial lodging room within the CL-1 Zoning District shall have no less than 200 square feet of livable floor area.

**Section 3.** Add a new Article XIII(A) to Section 425 as follows:

## Article 13(A): Commercial Lodging District (CL-1)

\*All land, buildings and structures now or hereafter located on any parcel of land in the CL-1 Commercial Lodging District are subject to the “Bethany Beach Nonresidential Design Guidelines, dated August 15, 2008” attached as Appendix 4 to the Town Zoning Code (as such guidelines as may from time to time be revised or amended by the Town Council); except that commercial lodging shall be permitted on street level spaces. Any person or entity contemplating the construction, reconstruction, alteration, or modification of any such land, building or structure within the CL-1 Commercial Lodging District should refer to such guidelines prior to commencing work, including the preparation of architectural, engineering, or landscaping plans.

### §425-77(A) Legislative Purpose

The purpose of this district is to provide for an area within the Town for the establishment of hotels and/or motels whose facilities and amenities may include recreational and/or fitness facilities, conference centers, meeting rooms and other auxiliary uses primarily for use by hotel guests, while at the same time preserving the residential character of those neighborhoods that are in close proximity to this district.

### §425-77(B) Dimensional Requirements

- A. Minimum lot area: 5,000 square feet in area with a minimum of 300 square feet of lot area provided for each commercial lodging unit.
- B. Minimum Street Frontage: 40 feet for each inside lot and 50 feet for each corner lot.
- C. Maximum lot coverage by buildings: Total lot area, less the required off-street parking and loading requirements as well as the yard setbacks as required herein.
- D. Yard setbacks:
  - (1) Front yard setback: zero (0) feet for buildings and structures.
  - (2) Rear yard setback: fifteen (15) feet for buildings and structures.
  - (3) Side yard setback: zero (0) feet for buildings and structures, unless the buildings or structures adjoin a residential district. In such case, a side yard setback of not less than seven (7) feet is required.
- E. Facades. Flat front facades longer than forty (40) feet without interruptions by a setback, porch, or bay window are prohibited.

§425-77(C) Permitted Uses:

The following uses are permitted within the CL-1 Commercial Lodging District:

- A. Commercial lodging.
- B. Accessory uses and permitted amenities for commercial lodging include only:
  - (1) On site restaurants, comprising less than 15% of the total floor area of the commercial lodging rooms, serving food and beverages located within hotels and motels or on adjoining patios, which use shall be subject to all other provisions of the Bethany Beach Code, including, but not limited to, Section 217 governing alcoholic beverages, provided at the restaurant.
  - (2) Conference rooms, theaters, banquet facilities, or other public or semi-public facilities, comprising less than 15% of the total floor area of the commercial lodging rooms, which shall be subject to all other provisions of the Bethany Beach Code.
  - (3) Gift shops, flower shops and convenience stores (offering magazines, books, beverages, candy, sundries, etc.), which use shall be subject to all other provisions of the Bethany Beach Code.
  - (4) Hair stylists.
  - (5) Art galleries.

§425-77(D) Prohibited Uses

- A. Uses not specifically permitted under § 425-77(C) or which are not commonly recognized as a clearly integral and harmonious component of such specifically permitted uses are prohibited.
- B. Establishments for the sale of alcoholic liquors for on-premises consumption or for off-premises consumption, except as a component of a restaurant permitted by 425-77(C) (1), are not clearly integral and harmonious component of any use permitted in the CL-1 Commercial Lodging District and are therefore prohibited. By way of illustration, establishments selling alcoholic liquors for consumption on premises that are not “restaurants,” commonly referred to as “taprooms,” “bars,” “cabarets,” “clubs” or “lounges”, are expressly prohibited in the CL-1 Commercial Lodging District.
- C. Any use which is not a commercial lodging (hotel or motel) use.

§425-77(E) Compliance With State Law

All commercial lodging establishments located on or near the beaches of the Atlantic Ocean must comply with Title 7, Chapter 68 of the Delaware Code, and all federal, state and local requirements. All properties in the CL-1 Commercial Lodging District shall be deemed “commercial areas” as that term is used in 7 Del. Code Ann. tit. 7, § 6802(4).

§425-77(F) Other Applicable Standards.

All building, subdivision, setback, design standards, design guidelines, laws, and regulations applicable to the Central Commercial District (C-1) which are not in conflict with the provisions of this Article 13(A) shall apply in the CL-1 Commercial Lodging District.

**Section 4:** Amend Appendix 3 of Section 425 as to reflect addition of Commercial Lodging District (CL-1) as follows:

A. Amend existing table by addition of the following:

District	Minimum Lot Area (square foot)	Minimum Street Frontage (feet)	Maximum Lot Coverage by Buildings (a) (percent)	Maximum Yard Depth (setback) (n)			Maximum Height (p) (q)	
				Front (feet)	Rear (feet)	Side (feet)	Main (feet)	Accessory (feet)
CL-1 (Commercial Lodging)	5,000 per lot 300 per commercial lodging unit	40 per lot, interior 50 per lot, corner	(s)	0	15	(0)(g)	31(t)	15

B. Amend “Notes” by replacing existing Note (q) with the following:

(q) All land, buildings and structures now or hereinafter located on any parcel of land in the C-1 Central Commercial, C-2 Neighborhood Commercial or CL-1 Commercial Lodging Districts are subject to the “Bethany Beach Nonresidential Design Guidelines, dated August 15, 2004” attached as Appendix 4 to the Town Zoning Code (as such guidelines may from time to time be revised or amended by the Town Council). Any person or entity contemplating the construction, reconstruction, alteration, or modification of any such land, building or structure with the C-1 Central Commercial, C-2 Neighborhood Commercial or CL-1 Commercial Lodging Zoning District shall refer to such Guidelines prior to commencing work, including the preparation of architectural, engineering and landscaping plans.

C. Amend “Notes” by addition of the following:

- (s) Total lot area less the required off-street parking and loading requirements and requisite yard setbacks.
- (t) Allowable maximum height of the top plate/eave is thirty-one (31) feet, with a maximum of three stories. The height of non-habitable sloping roof elements may extend to a maximum height of thirty-five (35) feet with the approval of the Non-Residential Design Review Committee (NRDRC). No flat roofs are permitted above thirty-one (31) feet. Height shall be measured from FEMA Base Flood Elevation or Average Grade whichever is higher. HVAC equipment shall be allowed up to a maximum height of thirty-five (35) feet with the approval of the NRDRC. Cupolas not larger than four (4) feet by four (4) feet may extend to a maximum height of thirty-seven (37) feet above base flood level with the approval of the NRDRC.

**Section 5: Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the Town Council’s intent.

Synopsis. This ordinance will authorize an amendment to Town’s Code to create a Commercial Lodging District (CL-1) and to delineate the associated zoning requirements therein.

Effective Date: This Ordinance shall take effect immediately upon adoption.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Bethany Beach at a duly noticed and convened meeting at which a quorum was present on \_\_\_\_\_, 2013.

Attest:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor

Sponsor: \_\_\_\_\_  
Planning Review Commission: \_\_\_\_\_  
Public Notice: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_

**AN ORDINANCE TO REZONE CERTAIN LOTS FROM C-1 COMMERCIAL AND R-1 RESIDENTIAL TO CL-1 COMMERCIAL LODGING**

**WHEREAS**, the Town of Bethany Beach has a duly enacted Zoning Code;

**WHEREAS**, the Town Council has decided to create a new zoning district, to be referred to as the Commercial Lodging District (CL-1), to allow the establishment of hotels and/or motels and related on-site amenities while, at the same time preserving, the residential character of those neighborhoods that are in close proximity to new zoning district;

**WHEREAS**, the Town Council, following a duly noticed public hearing, has determined that Lot # 1 in Block 106 located at the corner of Atlantic Avenue and the north side of Hollywood Street and Lots # 9, 10, 11, 12 in Block 110, located at the corner of Atlantic Avenue and the south side of Hollywood Street (collectively, the "Lots") should be zoned CL-1 Commercial Lodging;

**WHEREAS**, the Planning Commission has recommended this proposed zoning change;

**WHEREAS**, the Town Council hereby finds that rezoning the Lots from C-1 Commercial and R-1 Residential, respectively, to CL-1 Commercial Lodging is in accordance with the Bethany Beach 2010 to 2020 Comprehensive Plan, as amended on \_\_\_\_\_, 2013;

**WHEREAS**, the Town Council further finds that the rezoning of the Lots to CL-1 Commercial Lodging will promote health and general welfare, and is consistent with the characteristics of the district and encourages the appropriate use of land within the Town; and

**WHEREAS**, the Town Council has determined that the Official Zoning Map of the Town of Bethany Beach shall be updated to reflect the rezoning of the Lots to CL-1 Commercial Lodging immediately upon the passage of this ordinance.

**AND NOW, BE IT HEREBY ORDAINED BY** the Town Council of the Town of Bethany Beach, a majority thereof concurring in Council duly met, that:

1. Lot 1 in Block 106 located at the corner of Atlantic Avenue and the north side of Hollywood Street shall, and hereby is, rezoned from C-1 Commercial to CL-1 Commercial Lodging.
2. Lots 9, 10, 11 and 12 in Block 110 located at the corner of Atlantic Avenue and the south side of Hollywood Street shall, and hereby is, rezoned from R-1 Residential to CL-1 Commercial Lodging.

3. The Official Zoning Map of the Town of Bethany Beach shall be immediately updated to reflect the rezoning of the Lots as set forth herein.

Synopsis.

This ordinance will authorize the rezoning of certain lots from C-1 Commercial and R-1 Residential to CL-1 Commercial Lodging.

Effective Date:

This ordinance shall take effect immediately upon the filing of the Official Zoning Map of the Town of Bethany Beach in Town Hall, as revised pursuant hereto.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Bethany Beach at a duly noticed and convened meeting at which a quorum was present on \_\_\_\_\_, 2013.

Attest:

---

Exhibit 2

The Town of Bethany Beach (the “Town”) seeks to amend the Bethany Beach 2010 to 2020 Comprehensive Plan (the “Plan”), as adopted by the Town in April, 2011 to provide the Town with the flexibility to (a) correct existing incongruous zoning of certain real property lots, (b) create a new zoning district for commercial lodging and (c) rezone certain real property lots to fall within the new commercial lodging district.<sup>1</sup> Although the Town believes that these zoning efforts are consistent with the desires expressed by the Town in the Plan in its current form, the specific language of the Plan and reference to existing zoning maps prevents the Town from making the proposed modifications.

By way of background, the current iteration of the Plan acknowledges the existence of four primary land uses within the municipal boundaries: (1) residential, (2) commercial, (3) institutional and (4) parks and open spaces. *See* Plan, pg. 30. With respect to the commercial land use category, there are two commercial districts. The C-1 Central Commercial District is identified as the larger and more prominent of the two commercial districts. This district contains a wide variety of commercial land use types and intensities. *See* Plan, pg. 31. The C-1 Central Commercial District is located within the “Downtown Bethany Beach” area. *See* Plan, pg. 25. This area contains approximately 450 structures including commercial buildings, multi-family complexes and large single-family beach homes. *See* Plan, pg. 25.

Among the commercial buildings located in the C-1 Central Commercial District is the Bethany Arms Motel, which is the Town’s only remaining hotel establishment. The Bethany Arms Motel is located at Lot # 1 in Block 106 located at the corner of Atlantic Avenue within the C-1 Central Commercial District. However, the Bethany Arms Motel is also located on the south side of Hollywood Street and Lots # 9, 10, and 11 in Block 110, which are zoned R-1 Residential. The lots located in Block 110 house ten (10) apartments, which are rented by the Bethany Arms Motel as hotel apartments, have operated as such pursuant to a variance dating to the 1950’s. The hotel units located within the C-1 Central Commercial District and the hotel apartment units located within the R-1 Residential District have, historically, operated as a single motel lodging complex (i.e., the Bethany Arms Motel). The remaining parcel subject to the proposed change is Lot 12 in Block 110, which is not part of the Bethany Arms Motel. Lot 12 is developed with a multi-dwelling structure, which does not meet current requirements (lot coverage or setbacks) for the R-1 district.

In considering the issue surrounding the inconsistent zoning of the Bethany Arms Motel, the Town determined that a new zoning district devoted solely to commercial lodging may be beneficial to the Town. The creation of a commercial lodging district would further the desire of the Town to insure that the dramatic intensification of commercial uses in areas where only hotel/motel establishments are desired does not occur. Because the Bethany Arms Motel already operates as a single motel lodging complex within what is largely a commercial district, a commercial lodging district will have very little, if any, impact on the current zoning footprint of the Town. Moreover, as demonstrated by the proposed ordinances attached hereto as Exhibit

---

<sup>1</sup> By motion, on June 21, 2013, the Town Council referred the proposals in this application to the Planning Commission (the “Motion”). This application is being submitted in accordance with the Motion, which authorized the Planning Commission of the Town to refer this matter to PLUS for review.

1, the proposed permitted uses within a commercial lodging district are narrowly tailored such that it will not expand upon the commercial uses that would otherwise be permitted under current zoning ordinances. While the creation of a commercial lodging district and proposed rezoning of the area would reclassify certain lots from residential to commercial (albeit commercial lodging), the effect would be minimal as the lots have historically served a commercial lodging purpose rather than a residential purpose. Indeed, only a very minor change to the Future Land Use map contained in the Plan is necessary to facilitate the change.

In order to accomplish the proposed zoning changes, the Plan must be amended to provide the Town with the flexibility to consider the creation of a new zoning district as well as the flexibility to rezone existing parcels of property accordingly. As set forth above, the Plan currently recognizes only four (4) primary land uses, and provides for the maintenance of the residential and commercial areas in the Town as set forth on the Future Land Use map contained therein. Accordingly, the Town is seeking to add replace “Recommendation 1” regarding future land use in the Plan with the following:

*Recommendation 1: Maintain Land Uses and Promote Appropriate Redevelopment*

The Town currently has one motel establishment, the Bethany Arms Motel, which is located adjacent to the beach, just south of Garfield Parkway (the “Bethany Arms Property”). A portion of the Bethany Arms Property is currently zoned R-1 Residential while the remainder is zoned C-1 Commercial. Notwithstanding the inconsistent zoning classification, the Bethany Arms Motel has historically operated as an integrated commercial lodging establishment on the Bethany Arms Property. Similarly, Lot 12, contiguous to the Bethany Arms, is a non-conforming structure containing apartments.

The Town should consider adopting a new zoning classification for motel/hotel establishments, such as the Bethany Arms Property and Block 110, Lot 12. This recommendation may be implemented by creating a new zoning district limited to commercial lodging (CL-1), and it is recommended that the entirety of the Bethany Arms Property and Lot 12 be rezoned to the new commercial lodging classification if adopted. In addition, it is recommended that the new CL-1 zoning district, if adopted, could allow for certain permitted uses that would be complimentary to the primary use of the district for commercial lodging, but would limit other commercial uses in the district.

Providing the same zoning classification for motel/hotel establishments and the creation of a new zoning district for these uses (such as the Bethany Arms Property) and limiting primary uses to commercial lodging (if the new CL-1 District is adopted) is consistent with the goals of the Comprehensive Plan. A new commercial lodging district furthers the desire of the Town to insure that the existing commercial districts do not turn into residential districts while, at the same time, avoiding the dramatic intensification of commercial uses in areas where only motel/hotel establishments are desired. The future land use map (Figure 8) is amended to designate the entire Bethany Arms Property (including the residential portion) and Lot 12 as a commercial designation to allow for the implementation of the CL-1 district.

Additionally, the Town seeks to replace “Figure 8: Future Land Use Map, Bethany Beach” with a new map that will reflect the entirety of Bethany Arms Property and Lot 12 as

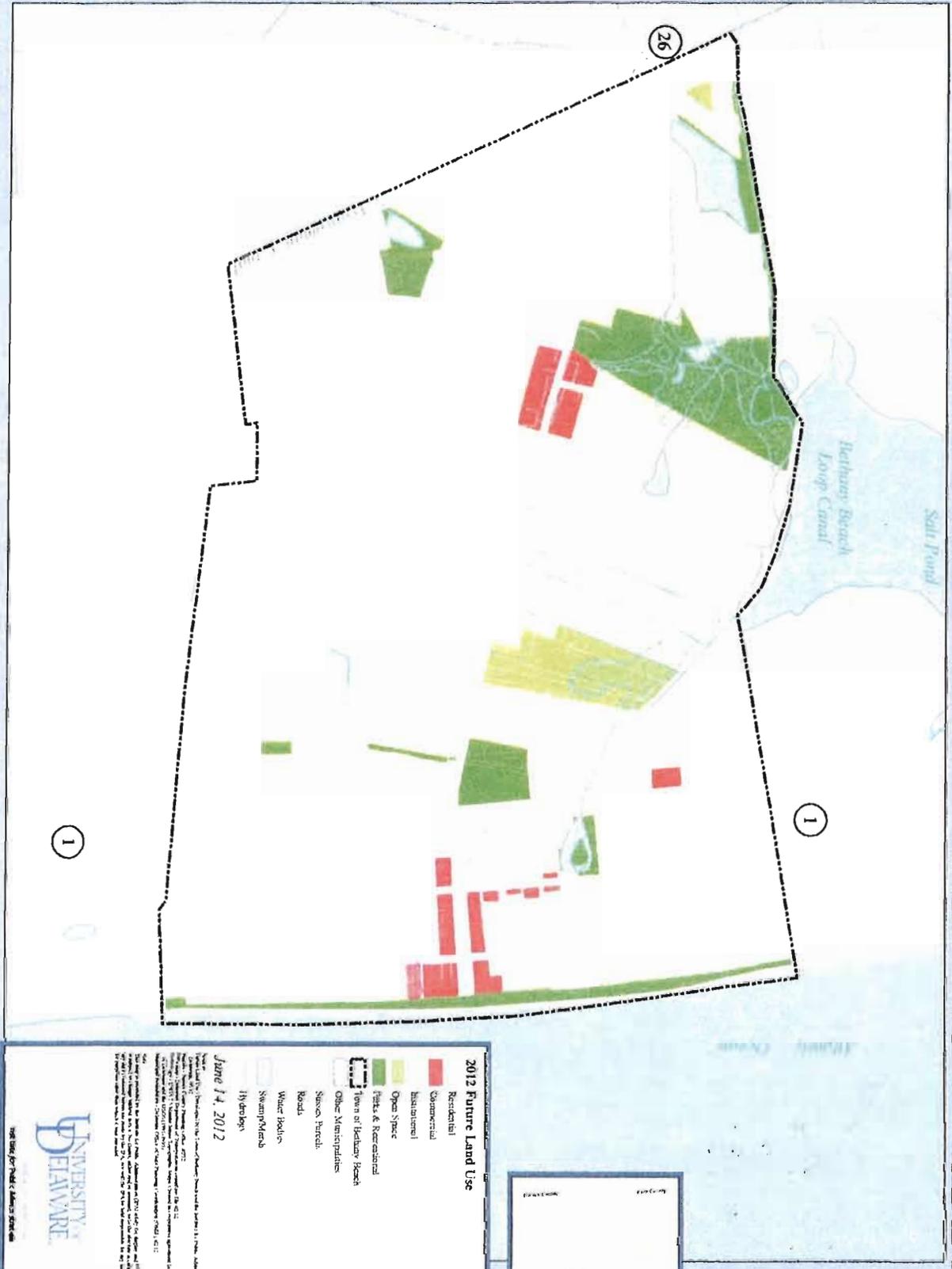
Commercial. Again, the requisite change is very minor and impacts only a portion of the Bethany Arms Property and Lot 12.

It should be noted that the Town Council has not yet voted on the proposed changes to the Plan, the proposed zoning changes, the potential rezoning of the Bethany Arms Property and Lot 12 and/or the proposed ordinances attached hereto as Exhibit 1 and, as such, the changes requested herein to the Plan may not be implemented. However, the Town nevertheless seeks approval of the proposed amended Plan so that it may promptly move forward with its zoning endeavors if necessary. A proposed future land use map, a future zoning map, and a map reviewed by the Planning Commission are attached as Exhibit 3.

Exhibit 3

# Town of Bethany Beach, Delaware

## Figure 8. Future Land Use



**2012 Future Land Use**

- Residential
- Commercial
- Historical
- Open Space
- Parks & Recreational
- Town of Bethany Beach
- Other Municipalities
- Schools, Parks
- Roads
- Water Bodies
- Swamps/Marsh
- Hydrology

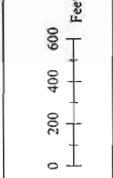
June 14, 2012

**UNIVERSITY OF DELAWARE**

1000 University Hall, Newark, DE 19716  
 302-837-3000  
 www.udel.edu



Prepared by  
**KERCHER ENGINEERING, INC.**  
 Engineers Planners Surveyors  
 13017 Rte. 108  
 Middletown, DE 19966  
 Phone: 410-326-5000  
 Fax: 410-326-5001  
 August 18, 2006  
 Page 26 of 29  
 1:5,000



**FUTURE LAND USE MAP**  
**TOWN OF BETHANY BEACH, SUSSEX COUNTY, DELAWARE**



**ZONING**

R-1	R-2	CL-1
R-1A	C-1	MORE
R-1B	R-1B	C-2

The Official Zoning Map of the Town of Bethany Beach, Delaware, adopted by the Town Council on \_\_\_\_\_ Date \_\_\_\_\_ by Resolution \_\_\_\_\_

SAYOR \_\_\_\_\_

VICE MAYOR \_\_\_\_\_

SECRETARY/TREASURER \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

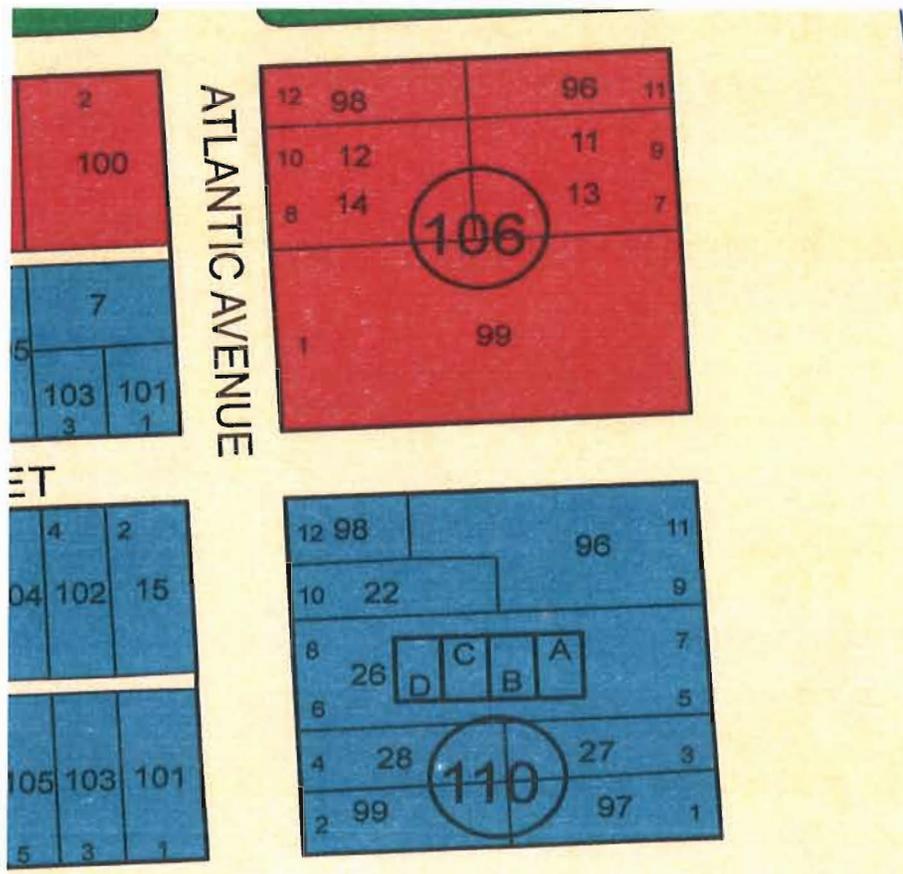
## Proposed New Commercial Lodging Zoning District (CL-1) (Draft A: 09 June 2013)

### Purpose and Intent:

It is the purpose and intent of creating the Commercial Lodging Zoning District (CL-1) to allow the establishment of hotels/motels including related recreational and/or fitness facilities, conference centers, meeting rooms and other auxiliary uses primarily for use by hotel guests, while at the same time preserving the residential character of those neighborhoods that are in close proximity to the proposed CL-1 Zoning District.

### Location of the Commercial Lodging District (CL-1):

The Commercial Lodging Zoning District (CL-1) encompasses Lot # 1 in Block 106 located at the corner of Atlantic Avenue and the north side of Hollywood Street (currently zoned C-1) and Lots # 9,10, 11,12 in Block 110 (currently zoned R-1) located at the corner of Atlantic Avenue and the south side of Hollywood Street.



### **Permitted Uses:**

The following uses shall be allowed in the CL-1 Zoning District

- A. Hotels and motels that provide commercial lodging units;
- B. Restaurants serving food and beverages only within buildings and/or adjoining patios subject to provisions of the Town's Code;
- C. Conference rooms, theaters, banquet facilities, or other public or semi-public facilities subject to provisions of the Town's Code;
- D. Art galleries, Gift shops, Flower shops;
- E. Hair stylists, Convenience stores (offering magazines, books, beverages, candy, sundries, etc.);
- F. Other uses that in the opinion of the Planning Commission, are consistent with the intent and purpose of this chapter.

### **Minimum Lot Area (Square Feet):**

- A. All buildings containing commercial lodging units shall be provided with a minimum lot area of 5,000 square feet with a minimum of 300 square feet of lot area provided for each commercial lodging unit.
- B. Each commercial lodging unit must provide a minimum of 200 square feet of livable floor area.

### **Minimum Street Frontage (Feet):**

- A. 40 feet per interior lot and 50 feet per corner lot.
- B. An 8-foot front property line setback of walls above 24 feet in height, except as part of a dormer or gable element of no greater than 25% of the building width is highly encouraged.
- C. Flat front facades longer than 40 feet without interruptions by a setback, porch or bay window.

### **Maximum Lot Coverage By Buildings:**

- A. Total lot area, less the required off-street parking and loading requirements as well as the yard setbacks as required by the Town Code.
- B. No construction of any building/structure shall be permitted within seven feet of the eastern property line of any lot fronting the beach or strand abutting the Atlantic Ocean, provided that this setback shall not prohibit any structure, device or facility devoted to the enhancement, preservation and protection of beaches, the sole jurisdiction over which has been delegated exclusively to DNREC, or the construction of any boardwalk or deck.

### **Minimum Yard Setbacks:**

- A. Front: 10 feet
- B. Rear: 15 feet
- C. Side: None required unless the building(s) adjoins a residential district. In such cases a side yard of not less 7 feet is required.

### **Height Regulations:**

- A. Allowable maximum height of the top plate/eave is thirty-one (31) feet, with a maximum of three stories in the CL-1 Zoning District.
- B. The height of non-habitable sloping roof elements may extend to a maximum height of thirty-five (35) feet with the approval of the Non-Residential Design Review Committee (NRDRC). No flat roofs are permitted above thirty-one (31) feet.
- C. Height shall be measured from FEMA Base Flood Elevation or Average Grade whichever is higher.
- D. HVAC equipment (which shall be attractively well screened) shall be allowed up to a maximum height of thirty-five (35) feet with the approval of the NRDRC.
- E. Cupolas not larger than four (4) feet by four (4) feet may extend to a maximum height of thirty-seven (37) feet above base flood level with the approval of the NRDRC.
- F. Maximum height of accessory structures is 15 feet.

### **Miscellaneous Requirements:**

- A. Regulations for the CL-1 Zoning District are required to architecturally blend in with the surrounding existing structures in the neighborhood as well as controlling activities of a retail commercial nature to make sure that they are harmonious with the surrounding residential areas.
- B. All land, buildings and structures now or hereafter located on any parcel of land in the CL-1 Zoning District are subject to the Bethany Beach Non-Residential Design Guidelines. Any person or entity contemplating the construction, reconstruction, alteration, or modification of any such land, building or structure with the CL-1 Commercial Lodging Zoning District shall refer to such Guidelines prior to commencing work, including the preparation of architectural, engineering and landscaping plans.