

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**March 13, 2015**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:32 p.m. by Chairman David Mellen on Friday, March 13, 2015 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Francis Markert called the roll:

Present:           Mr. Brian Patterson  
                      Mr. Harvey Shulman  
                      Mr. Paull Hubbard  
                      Ms. Joyce Lussier  
                      Mr. David Mellen  
                      Mr. Francis Markert, Jr.  
                      Mrs. Jan Konesey  
                      Ms. Lynn Wilson

Absent:             Mr. Michael Strange

Also Present:     Mr. Glenn Mandalas, City Solicitor  
                      Ms. Terri Sullivan, Chief Building Inspector  
                      Mr. Kyle Gulbranson, Planner from AECOM (formerly URS Corporation)

A quorum was present.

**VERIFICATION OF MEETING NOTICE**

Ms. Ann Womack, City Secretary, had forwarded the verifications to Chairman Mellen prior to the meeting. Ms. Womack has verified that the Agenda was posted at City Hall, Building and Licensing Department and City website on March 5, 2015. The Agenda was faxed to Cape Gazette, Coast Press and Delaware State News on March 5, 2015. The Public Notice for Preliminary Review of the Partitioning Application No. 1114-03 was posted at City Hall and Building and Licensing Department on February 20, 2015. The Public Notice was advertised in the Cape Gazette on February 24, 2015 and February 27, 2015, Coast Press on March 11, 2015 and Delaware State News on February 25, 2015 and February 26, 2015. A mailing of the Public Notice to property owners was sent out, and signage was posted on the property.

**APPROVAL OF MINUTES**

Minutes of the August 8, 2014, September 12, 2014 and October 1, 2014 Planning Commission Regular Meetings were distributed prior to the meeting. Minutes of the January 9, 2015 Planning Commission Regular Meetings were not available for approval.

Ms. Lynn Wilson made a motion, seconded by Mr. Paull Hubbard, to approved the August 8, 2014 Planning Commission Regular Meeting minutes as written. (Patterson – abstained, Shulman – abstained, Lussier – abstained, Mellen – aye, Markert – aye, Konesey – abstained, Hubbard – aye, Wilson – aye.) Motion failed. Ms. Wilson retracted the motion to approve.

All Minutes were deferred to the next meeting.

**CORRESPONDENCE**

There was none.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

Chairman Mellen called for the Preliminary Review of Partitioning Application 0115-01 for the property located at 101 & 105 Columbia Avenue consisting of the westerly portion of Lot No. 75 and Lot Nos. 77, 79 & 81, Block Columbia, into two (2) lots with the westerly portion of Lot No. 75, Lot No. 77 and the easterly portion of Lot

No. 79 becoming one (1) lot of 10,000 square feet, and the westerly portion of Lot No. 79 and Lot No. 81 becoming one (1) lot of 7,500 square feet. The Partitioning has been requested by Vincent G. Robertson, Esq. of the law firm Griffin & Robertson P.A. on behalf of Katherine Ahearn of the Northern Trust Company and Trustee of the Carol I. Hastings Revocable Trust, owner of the property. Chairman Mellen provided the Preliminary Review procedures.

Building Inspector Terri Sullivan read her report with exhibits.

Exhibit A – Application packet which includes:

1. Application
2. (2) Planning Commission Affidavits
3. Photographs
  - a. 101 Columbia Avenue from across Columbia Avenue
  - b. Property to the east of 101 Columbia Avenue
  - c. Western side of 101 Columbia Avenue
  - d. 105 Columbia Avenue from across Columbia Avenue
  - e. Eastern side of 105 Columbia Avenue
  - f. Western side of 105 Columbia Avenue
  - g. Across Columbia Avenue from 105 Columbia Avenue
  - h. Across Columbia Avenue from 105 Columbia Avenue
  - i. Across Columbia Avenue from 101 Columbia Avenue
  - j. Across Columbia Avenue from 101 Columbia Avenue
  - k. Across Columbia Avenue from 101 Columbia Avenue
  - l. Across Columbia Avenue (eastward) from 101 Columbia Avenue
  - m. Rear yard of 101 Columbia Avenue
  - n. Rear yard of 101 Columbia Avenue (including portion of garage)
  - o. Rear yard of 101 Columbia Avenue between garage and accessory structure
  - p. Rear yard of 105 Columbia Avenue
  - q. Rear yard of 105 Columbia Avenue
  - r. Rear yard of 105 Columbia Avenue (looking northwest)
4. Boundary Survey & Partitioning Plan
5. Tree Survey
6. Deed for Lot No. 77 and the westerly portion of Lot No. 75
7. Deed for Lot Nos. 79 & 81

The owner wishes to partition a portion of Lot No. 75, all of Lot Nos. 77, 79 & 81 into two lots with Lot No. 81 and part of Lot No. 79 becoming one lot known as 105 Columbia Avenue and consisting of 7,500 square feet and part of Lot No. 75, all of Lot No. 77 and part of Lot No. 79 becoming one lot known as 101 Columbia Avenue and consisting of 10,000 square feet. All structures are to be retained. Changing the lot line will make the lot more conforming as 101 Columbia Avenue currently has two dwellings on a 7,500 square foot lot, and the Code requires 5,000 square feet per dwelling. Currently, there are 26 trees located on the property, and no trees are being proposed to be removed. Thirteen trees will be on 101 Columbia Avenue, and thirteen trees will be on 105 Columbia Avenue. Based on the survey submitted, both proposed lots can fully contain a 4,000 square foot rectangle. Both proposed lots have a lot size of at least 5,000 square feet and have at least 50 feet of frontage on a street.

Mr. Vincent G. Robertson, Esq. of the law firm Griffin & Robertson P.A., represented the owners of the property who were not in attendance at the meeting. New lots would be created in the sense that they are not lots that previously existed to the current configuration. No new additional lots would be created. The lot line would be moved 25 feet so that 101 Columbia Avenue would be 100 feet x 100 feet, and 105 Columbia Avenue would be 75 feet x 100 feet. The Applicant, Ms. Carol Hastings, would like to renovate 105 Columbia Avenue and move the lot line away from 101 Columbia Avenue so there is more yard on the side, which would bring it more into conformity. There are no plans for new curb-cuts. Nothing will happen to 101 Columbia Avenue. After the partitioning, the shed on 105 Columbia Avenue would be shown on the survey for the 101 Columbia Avenue property. The deeds would be recorded to conform with the surveys.

Mr. Harvey Shulman noted that in this situation, there is one main building and two accessory structures which are a garage apartment and a separate shed. On an R-1 lot, there can only be one primary structure. A garage apartment would be considered an accessory structure to the main building. The garage apartment would be a grandfathered use. Ms. Sullivan acknowledged that there would not be any problem with 101 Columbia Avenue having one main structure with two separate accessory structures. The 101 Columbia Avenue property would have an aggregate of 32 feet for the side yard setback.

Attorney Robertson will have the surveyor verify the dimension from the western lot line to the western wall of the dwelling unit and the dimension indicating the depth of the enclosed porch attached to the dwelling unit on the western lot.

There was no correspondence and no public comment.

City Solicitor Mandalas read the Resolution with the following condition: 1. The Applicant shall revise the Boundary Survey & Partitioning Plan to include a dimension indicating the distance from the western lot line of the western lot to the western wall of the dwelling unit and a dimension indicating the depth of the enclosed porch attached to the dwelling unit on the western lot.

Mr. Shulman made a motion, seconded by Mrs. Jan Konesey, to adopt the Resolution to move the Application to Public Hearing. Motion carried unanimously.

## **OTHER BUSINESS**

Chairman Mellen called to continue to discuss plans and timeline for review and documentation of the required 5-year update of the Comprehensive Development Plan (CDP).

Chairman Mellen noted the purpose of the spreadsheet is to give the Planning Commission a feel of what is in the CDP and what has been completed to date and not completed to date. After the items are prioritized, the Planning Commission will decide how to move forward and complete the documentation required by the State.

Mr. Kyle Gulbranson of AECOM (formerly URS Corporation), noted that at the City Commissioner level, there has been thought about changes to deal with the development issues occurring in the City. Those changes would include updating the City's noise ordinance. A proposed noise ordinance was drafted based on several sample ordinances. After a lot of discussion, it was determined that the current noise ordinance functions well with regard to the commercial districts. The proposed noise ordinance will update the existing noise ordinance and will hone in on providing criteria for residential noise. Residential noise would be treated in the plainly audible standard as opposed to a decibel standard. Equipment noise will be incorporated into the ordinance. Any plainly audible noise will be in violation. There is a section in the proposed ordinance that a decibel meter can be used in certain areas in the residential districts, such as mechanical equipment. In the proposed ordinance, any plainly audible noise at any time of the day will be a violation. After 11:00 p.m., no outdoor music or noise will be allowed. As part of the proposed pool ordinance, pool equipment will need to be fully enclosed in a structure for any new pool that is constructed.

Mr. Shulman noted that a report has been written on plainly audible which deals with every type of noise and how different cities have applied the plainly audible standard to them.

Ms. Sullivan said that noise from HVAC and pool equipment will be measured at the property line.

City Solicitor Mandalas noted that in the proposed ordinance, plainly audible would be defined as any noise for which the informational content of that noise is unambiguously communicated to the listener such as but not limited to understandable spoken speech, comprehensible musical rhythm, base tones which are repetitive and impulsive sound. A person will not be in violation of the noise ordinance until there is a noise disturbance. Noise disturbance is defined as any sound which (a) endangers or injures the safety or health of humans or animals or (b) a noise that disturbs a reasonable person with normal sensitivities or (c) jeopardizes the value of property and erodes the integrity of the environment or (d) interferes with the peaceful enjoyment of neighboring properties or (e) is an excess of the allowable noise level established in Section 189-4 (decibel readings). In any residential district, no radio, digital musical device, musical instrument or other machine or device producing or reproducing sound shall be used outdoors after 11:00 p.m. or prior to 8:00 a.m. Another provision says that generally creating a racket such as yelling, shouting, hooting or whistling on public streets and residential properties between the hours of 11:00 p.m. and 8:00 a.m. so as to annoy and disturb the quiet comfort or repose of persons in adjacent premises. Noise shall be measured at the property line and be plainly audible without the use of a noise meter. Such noise shall be considered a noise disturbance. Currently, the City Commissioners are in discussion regarding noise as a violation and the timeframe from 11:00 p.m. or prior to 8:00 a.m. vs. all day.

Chairman Mellen suggested that old equipment should not be grandfathered infinitely. There should be a time period in which the investment of quieting technology should be applied where there is an annoyance.

Mr. Shulman was concerned that there will be challenges to the ordinances. He suggested that a protective measure should be fit into the ordinance of protecting sleep hours, not just at the property line or just disturbance, but focusing on people trying to get to sleep between certain hours.

Mr. Walter Brittingham, 123 Henlopen Avenue, commented that this topic is not on the agenda and should not be discussed. Chairman Mellen disagreed. The Planning Commission has been asked to review the CDP and provide an update. The issues being discussed are issues that have been cited in the CDP as problems within the City. City Solicitor Mandalas noted that all of this discussion related to 8(A) and 8(F) of the agenda.

Mr. Gulbranson noted that the City Commissioners have been reviewing a draft pool ordinance which establishes requirements for pools, application of requirements for pools, sets up an annual inspection, differentiates between a family residential pool and a rental pool with standards for both. The ordinance sets up a process where if there are complaints against any individual pool, the City Manager has options of closing the pool or pulling the permit. A potential rental housing ordinance has been discussed which would establish requirements for rental housing and would have a similar process to the pool ordinance that if there is a rental property which is causing problems for neighboring property owners in terms of noise, disturbing the peace, etc. Currently, the City Commissioners have not discussed defining commercial properties in the residential districts and occupancy. The rental housing ordinance has been deferred temporarily in order to move the noise and pool ordinances forward. Zoning issues were briefly discussed at the last Commissioners' meeting and will be discussed at the March 20, 2015 Special Workshop Meeting.

Chairman Mellen requested that the document on rentals provided by the realtors to the Commissioners should be forwarded to the Planning Commission for its review.

City Commissioner Toni Sharp, Mayor Sam Cooper, Chairman Mellen and Mr. Mike Strange met this afternoon to discuss these issues and what the visions are regarding them. There was a difference of opinion as to the Planning Commission recommending to the City Commissioners what should be done with the items it has recommended with regard to the CDP. The Planning Commission felt it was the responsibility of the Commissioners. The Planning Commission members will need to look at what their responsibilities are as planners and how far they should go in doing those things. There may be a different role or process that the Planning Commission will have to perform.

Mr. Shulman said that there needs to be understanding with what the City Commissioners are doing, and at some point, there needs to be coordination.

Mr. Gulbranson said that typically a Planning Commission should establish goals and action items in the CDP. Then it should go through and identify and prioritize the issues and start working towards drafting ordinances or whatever mechanisms there would be to address those issues. He acknowledged that the role of the Planning Commission should be somewhat different than what it has been practicing. There should be agreement between the Planning Commission and the City Commissioners of what the priorities are.

Chairman Mellen called for discussion of potential use of external City planning resources to help in a "Master Plan" design.

Chairman Mellen noted that the Planning Commission has made recommendations relative to the commercial districts for improvement on Wilmington and Baltimore Avenues. Recently, a commercial venture has come before the Planning Commission with a plan involving streetscape which is called out in the CDP. It was suggested in the CDP that there should be master plan for the City. The use of a planning resource was initially turned down by the City Commissioners. Chairman Mellen had distributed the Regional Urban Development Assistance Team (RUDAT) process to the members prior to the meeting. If a city wants to move forward and needs expert advice, AIA can put together an expert team to work with it in developing the path forward from some of the goals. This process is costly. This could help solve some of the City's problems. If there are problems in the City, the Planning Commission needs to define where the problem areas are and what is to be done about them.

Mr. Francis Markert said that from the values listed on the spreadsheet document, the Planning Commission needs to derive the problems or threats of the potential for them, etc. It is the Planning Commission's role to identify and outline what the potential problems are and list them. In conjunction with what the threats are, the Planning Commission needs to determine what the risks are and forward them to the City Commissioners for them to review. Ms. Wilson, Ms. Lussier and Mrs. Konesey agreed.

Chairman Mellen said that if there is a change in the way the Planning Commission operates, it will need professional advice as to identifying the culture and nature of the City. Different staffing would be needed to help the Planning Commission. It may need a different relationship with the City Commissioners, different timing and more meetings or workshops. This all would need to be done collectively within the City.

City Commissioner Toni Sharp had requested the meeting previously mentioned as a result of having the

spreadsheet document. If the size of houses, streetscape, parking issues, etc. are the number one priority, she could not find it in that document.

Chairman Mellen said that these issues were left off of the document. The Planning Commission did not feel it should weigh in on an issue that is currently being dealt with by the City Commissioners. He suggested that for the next meeting, the Planning Commission members need to review the spreadsheet document and fill in the missing information. After this is done, these items will be prioritized.

Chairman Mellen called for the Building Inspector's Report.

There was none.

Chairman Mellen called for the City Solicitor's Report.

There was none.

Chairman Mellen called to discuss possible agenda items for the April 10, 2015 Regular Meeting.

There were none.

Chair Mellen called to for the report, discussion and possible action concerning those activities or actions taken at Regular or Workshop Meetings of the Mayor and Commissioners that directly relate to the Planning Commission.

This item was combined with the discussion of plans and timeline for review and documentation of the CDP.

No new applications have been timely submitted.

The next scheduled Regular Meeting will be held on April 10, 2015 at 6:30 p.m.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Markert, to adjourn the meeting at 9:03 p.m.

**RECORDED BY**

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(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON  
APRIL 10, 2015**

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(Francis Markert, Secretary)