

**MAYOR AND COMMISSIONERS MEETING
CITY OF REHOBOTH BEACH**

September 9, 2013

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:05 a.m. by Mayor Samuel R. Cooper on Monday, September 9, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

City Solicitor Glenn Mandalas gave the Invocation followed by the Pledge of Allegiance.

ROLL CALL

Present: Commissioner Bill Sargent
 Mayor Samuel R. Cooper
 Commissioner Stan Mills
 Commissioner Lorraine Zellers

Absent: Commissioner Patrick Gossett
 Commissioner Pat Coluzzi
 Commissioner Mark Hunker

Also in attendance was: City Solicitor Glenn Mandalas

Also absent: City Manager Gregory Ferrese

CORRESPONDENCE

There was none.

OLD BUSINESS

There was none.

NEW BUSINESS

Mayor Cooper called to discuss the recommendation of the Planning Commission that the Commissioners consider amending Section 270-26 of the City Code to increase the side yard setbacks for lots with greater than 50 feet of street frontage in the R-1 District and for R-1 uses in the R-2 District.

Mayor Cooper noted that the recommendation from the Planning Commission was forwarded to the Commissioners prior to the meeting. He was in agreement with the idea of increasing the setbacks for wider lots. There is a little problem in what constitutes the width of a lot, etc.

Commissioner Stan Mills disclosed that he owns property with greater than 50 feet of street frontage in the R-2 District. Other Commissioners also have property with street frontage greater than 50 feet.

City Solicitor Mandalas said that in a community the size of Rehoboth, it is difficult to find any issue coming before the Commissioners that they would not have some sort of a connection to it at some point. The nexus between the individual Commissioners and some sort of gain or benefit that flows to them has to be something greater than what is seen here, a zoning issue with property affected by a decision the Commissioners make. That same zoning issue is prevalent throughout the City. There is probably a quorum of the Commissioners who have property with greater than 50 feet of street frontage. The rule of necessities relates to where there is not a quorum of members on the elected body to make a decision. After full disclosure, the body can still come together and act on it. Consideration of recusal is not required in this matter.

Commissioner Mills said the recommendation would apply only to properties in the R-1 District and R-1 uses in the R-2 District. He requested clarification on the R-1 uses in the R-2 District that have more than one building on their properties. Many people in the R-2 District have a single-family home and behind it there may be another single-family home or a multi-family dwelling. The R-1 District has to do with only single-family homes.

Mayor Cooper's interpretation was that it would be for single-family dwellings which are the only things that are permitted in the R-1 District. Those are the uses which are allowed in the R-1 District. The resolution would apply to a single-family dwelling in the R-2 District, but not to a multi-family dwelling except that there

are other provisions in the Code to increase the setback for those.

Planning Commission Chairman Preston Littleton referred to Section 270-26 of the Code which deals with the R-1 District and R-1 uses in the R-2 District. He supported Mayor Cooper's interpretation. The usage is an R-1 use which happens to be in a R-2 District.

Commissioner Mills said that if there is a primary single-family dwelling and a secondary single-family dwelling which are detached in the R-2 District, the recommendation would apply to both dwellings. If a similar property has a primary single-family dwelling and a multi-family dwelling, then it would apply to the single-family dwelling but not the multi-family dwelling.

Chairman Littleton noted that the recommendation from the Planning Commission would exclude the R-1(S) District because the properties have ample setbacks. It also would not apply to any residential in the commercial district.

Commissioner Mills said that the recommendation does not only apply to new homes. There will be a significant impact on a majority of properties in the City which would become grandfathered.

Commissioner Bill Sargent said that a suggestion was made to him with regard to a larger property that if there are more than four bedrooms in a house, then more on-site parking should be added. Mayor Cooper said that this would not do anything about the appearance or the imposition of the front of the structure on the street.

Commissioner Mills noted that the Planning Commission in its report mentioned whether the Commissioners should sanction the Planning Commission to look at rear yard setbacks. If the Commissioners are going to charge the Planning Commission with that at some point, then it should be a concurrent exercise with this recommendation before voting on it. This could be the perfect opportunity to address off-street parking for large houses. Currently, only two spaces are required per dwelling that is located on a 50 foot wide lot with four to six bedrooms and a dwelling that is located on a 100 foot wide lot with eight to twelve bedrooms. The Commissioners could address the off-street parking because how it integrates with the other zoning restrictions is important and should be considered at the same time. If additional off-street parking is required, then it will impact placement of the house, 40% natural area and 50% lot coverage, etc. Commissioner Mills preferred that the Commissioners should defer on the final vote, but they should keep discussing this matter. Mayor Cooper disagreed. The Commissioners have been presented with this recommendation and if they broaden it, there will be an endless loop of all these types of things. If parking would have an impact, then the proposal could be revised at a later date.

Chairman Littleton said the Planning Commission's decision was to bring to the Commissioners something that would be passable. It excludes 99.9% of the properties within the City because there are not that many 100 foot wide lots remaining for new construction. The only thing debated by the Planning Commission regarding this topic was that the setbacks should be done by proportional increase on each side of the lot. Currently, there is a six foot minimum side yard setback. With the proposal, the minimum side yard setback on one side would be 12 feet for a 100 foot wide lot. This would affect where a house would be built on a larger lot. If the owners' desire would be to subdivide a larger lot in the future, he/she could partition the property to have a 50 foot wide buildable lot. The Planning Commission decided that with regard to the owners' decision on where to locate a house, it could be done by partitioning. There could be two 50 foot wide lots with the house being built on one of the lots, or by taking a proportional side yard setback where there would be a 12 foot minimum on one side. Mayor Cooper said that this proposal would not only affect partitionable lots. He preferred the six foot minimum side yard setback on one side.

Commissioner Sargent did not see why a person who has a property with the potential for two lots and wants to build on one of the lots but does not want to go through a formal partitioning, could not build a house a minimum of six feet from the setback as though it would be one lot. He agreed with addressing the subject of this recommendation at this time and addressing parking at a later date. Commissioner Mills concurred.

Chairman Littleton noted that this recommendation was done because of massive structures being built on the larger lots in terms of streetscape because they do not fit the character of the neighborhood. Comments were received by citizens that attention needs to be given to this matter. If the side yard setbacks would be increased, no other impacts would be affected such as the size of the house, 4,000 square foot rectangle, FAR, natural area and lot coverage, etc. Bulk as it appears at the street would be impacted. Street frontage would be the only trigger. With regard to a corner lot, the side yard facing the street would be increased to 12 feet. This would be applicable for all lots with street frontage greater than 50 feet. The recommendation should be applicable to corner lots. The Board of Adjustment would address unique cases.

Mayor Cooper did not think that accessory structures such as sheds, garages, patios, garden edging, etc. are not governed by this recommendation. There is a separate ordinance for accessory structures. Commissioner Mills thought that it is debatable whether those structures should or should not be included in this recommendation.

Chairman Littleton noted that with regard to environmental and aesthetic impacts, more open space would be maintained which would increase natural areas and the opportunity for landscaping, trees, etc. Issues were discussed by the Planning Commission regarding light, air, impact to neighbors, etc.

Commissioner Mills said that the recommendation does not appear to impact height, 40% natural area, etc. He thought that FAR would be impacted for property owners who would want a one-story or 1.5 story house and maximize the footprint. They would have to build upward. There is a slight chance that the net bulk on the front could be the same.

Chairman Littleton acknowledged that the Planning Commission had not considered any alternatives to reducing bulk such as allowing a one-story screened wrap-around porch on the side, angled setbacks, etc. It had discussed irregular-shaped lots. The same logic was used with this recommendation as the aggregate of 16 feet. There are 50 foot wide lots which are odd-shaped, and there is no separate provision in the Code for this type of lot. Any unique issues would fall back to the Board of Adjustment. Mayor Cooper had concerns that there are irregular-shaped lots which would be impacted.

Commissioner Mills said that this recommendation will have an impact on grandfathering many properties. It will also impact the Building & Licensing Department because every property with greater than 50 foot frontage on a street will need a new calculation.

Chairman Littleton acknowledged that with a grandfathered building, the new restriction would apply to the expansion of that building. The fact that the building is grandfathered would not allow it the ability to be expanded beyond the existing building. Any expansion would have to meet the Code requirements. Mayor Cooper said that adding onto a house would require that all the areas being added would have to conform.

Mr. Walter Brittingham, 123 Henlopen Avenue, asked if the recommendation includes renovations of a home. A variance would be needed from the Board of Adjustment if an A/C unit would be placed in a setback. He suggested that exceptions should be built into it and addressed before getting to the public hearing.

Commissioner Mills thought that there may be some merit to having an exception for A/C units. This item should be discussed at a later date.

Mayor Cooper was concerned that the pie-shaped lots would be rendered virtually unbuildable because of the Planning Commission's recommendation. Mayor Cooper presented examples of various irregular-shaped lots in the City. One example use 8 foot side yard setbacks, 10 foot rear yard setback and 15 foot front yard setback. A 5,912 square foot lot will have a net buildable area of 2,550 square feet as opposed to 3,036 square feet as it relates to the Planning Commission's recommendation and the current Code.

Commissioner Sargent thought that with a triangular lot, it would be fair to go towards the rear of the property on an angle. The buildable area would become larger which would allow for a healthy two-story structure. The Commissioners could write something that would make it clearer for the building inspector with regard to a triangular lot.

Mayor Cooper noted that a footnote should be added on the table in Section 270-26 of the Code for lots 50 feet or greater. With a triangular shaped lot, the width of the lot would be determined by measuring 50 feet back from the street line as opposed to measuring at the street line. Chairman Littleton urged that the Commissioners not use that type of measurement. The current issue is the frontage of a house on a street. Discussion ensued.

Chairman Littleton said that currently there are houses being built to 16 foot setbacks on 100 foot wide lots. The majority of the lots in the City are rectangular.

Mayor Cooper said that the solution for the side yard may be to start a line from the front that would be perpendicular to the front line so it would start out at 16 feet and go back to a point and then follow what is currently there. There would be no less than 16 feet in aggregate.

This matter will be addressed at the next Regular Meeting.

Chairman Littleton suggested that the Commissioners should charge City Solicitor Mandalas with developing this into ordinance language for the next meeting so the Commissioners will have before them a

resolution. If they want to modify at the next meeting, the Commissioners would be able to do that. If not, a public notice could be posted for the following Regular Meeting for adoption. Chairman Littleton's fear was that the Commissioners were asking builders and developers to do things that ultimately they do not want them to do. The quicker the Commissioners get to a point of doing something about the larger lots, will freeze any further applications for building permits. Commissioners Zellers and Mills agreed.

City Solicitor Mandalas said that there are two ways of addressing Chairman Littleton's concern about applications for building permits being filed: 1. Quickly get an ordinance together and subject it to the pending ordinance doctrines of not accepting any more permit applications. 2. Place a moratorium for a short duration on acceptance of applications for building permits for new structures until the Commissioners have time to work through this matter and come to a conclusion.

Mayor Cooper and City Solicitor Mandalas will work together to develop an ordinance to be discussed at the next Regular Meeting.

Mayor Cooper called to discuss a draft ordinance that would amend Section 92-21(H) regarding bicycle safety equipment to make it clearer and possibly add additional requirements.

Mayor Cooper noted that the wording in the current Code is convoluted. He proposed that language from the State Code should be used. Most Codes require a red reflector be attached on the rear of a bicycle with no time constraint.

Commissioner Sargent suggested that the wording in the Section (1)(H)(2) should be "[A]t all times with a reflector attached to the rear..." He suggested that flashing red lights should also be attached on the rear. Commissioner Mills agreed and thought it should be mandatory.

Police Chief Keith Banks said that it would be safer if a flashing red light would be attached to the rear. This would need to be enforced if it is written in the Code. He suggested staying consistent with State Code.

Commissioner Mills thought that bicycles should be equipped with a bell or other signaling device. Mayor Cooper noted that the State Code reads "[A] bicycle may be equipped with a bell or other signaling device, however no bicycle shall be equipped with a siren or whistle. No person may use a siren or whistle when operating a bicycle." Very few codes require this, but some permit it. All codes prohibited sirens and whistles.

Mr. Walter Brittingham said that some of the bicycle shops mount the reflectors on the side where the fender braces are. The white light on the front, whether it is solid or flashing, should be affixed to the bicycle. The red light to the rear should be solid or flashing.

This item will be placed on the agenda for the next Regular Meeting.

Mayor Cooper called to discuss a draft ordinance that would amend Section 92-245 to remove the caveat that the offense of careless driving applies only to public highways and to discuss a draft ordinance that would resolve duplication in the City Code whereby reckless driving is prohibited in both Section 92-126 and Section 92-244 of the City Code.

Mayor Cooper said that in the current Code the definition of careless or inattentive driving is whoever operates a vehicle in a careless or imprudent manner, or without due regard for road, weather and traffic conditions then existing, shall be guilty of careless driving. Wordage to be removed from the Code is "[o]n a public highway" which will bring the City Code into conformance with the State Code. Bring into conformance with State Code. Careless driving and inattentive driving are both covered under Section 92-245. This section would be covered under the general penalty section. Police Chief Banks has recommended that the fines should be similar to reckless driving and have a fine of \$100.00 to \$300.00 for the first offense and subsequent offenses be \$300.00 to \$500.00 for careless and inattentive driving. Subsequent violations committed within 24 months was changed to three years for reckless driving. Reckless driving would be removed in Section 92-126 and a new Section 92-244 would incorporate reckless driving.

Commissioner Lorraine Zellers thought that the fines for racing should be consistent with reckless and careless driving.

This item will be placed on the agenda for the next Regular Meeting.

Commissioner Mills had been given a courtesy notice which reflects that bicycle helmets are to worn by persons under age 16. Police Chief Banks noted that the Code reflects age 16 where the State Code reflects age 18. He recommended that this change also be made with regard to bicycles.

CITY MANAGER'S REPORT

There was nothing to report.

COMMITTEE REPORTS

Commissioner Sargent, member of Streets and Transportation Committee, presented possible agenda items for discussion that the Committee should consider placing on its agenda before next summer. He polled Commissioners and members of the Committee about items to address and prioritize in coming months. Other items can be added to the list.

Commissioner Mills asked what the purview is of the Committee. Most all of the committees, commissions and boards on the City website have a mission statement. He encouraged the Streets and Transportation Committee to devise a mission statement. Items 18 through 29 on the list of possible agenda items for the Committee are not in its purview. They are budget items. With regard to Item No. 19, Mayor Cooper, City Manager Gregory Ferrese and Commissioner Mills having been working on ADA ramping for years. Some of the items on the list could be taken care of by the Chair of the Committee. Commissioner Sargent said that with regard to Item No. 19, there may be a question of how funding should be allocated between street paving and ADA ramping.

Mayor Cooper thought that there should be a discussion with the State regarding Item No. 15 – Consider adding signage for state established bike trails.

Commissioner Sargent said that the next step with regard to these items is to set priorities.

Commissioner Mills voiced concern with the bicycle routing through Grove Park. It should be routed properly through the park. Commissioner Sargent will add this to the list.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Commissioner Mills announced that on September 28, 2013 from 8:00 a.m. to 2:00 p.m., Delaware Solid Waste Authority (DSWA) will be hosting a collection event specific to electronic recycling and paper shredding.

Mayor Cooper attended the Clean Water Advisory Council Meeting last on September 4, 2013. A presentation was made about the City's request for funding. The staff was meeting with the Secretary on September 5, 2013 to discuss the Record of Decision which is near final form.

Commissioner Mills announced that Coastal Cleanup will be held on September 21, 2013 which is hosted by Rehoboth Beach Homeowners' Association.

DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.

There were none.

Mr. Walter Brittingham reminded the Commissioners that DelDOT will be doing work at the roundabout. He hoped that the City would talk to DelDOT because of closing off lanes. Commissioner Mills said that when he attended DelDOT's workshop meeting with regard to sidewalk improvements along the Route 1 corridor, it also included part of inside Rehoboth Beach from the circle to Fifth Street. The work would start approximately before next summer and last over a year. It is not known when the work will occur in the City.

Mr. Walter Brittingham noted that there are serious tree issues over the travel part of roadways. He encouraged the City to take a look at these issues.

Ms. Carol Everhart of Rehoboth Beach/Dewey Beach Chamber of Commerce as if beach replenishment will resume this fall. Mayor Cooper had heard that it would start approximately November 1, 2013.

The next Regular Meeting will be held on September 20, 2013 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 11:15 a.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)