

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**May 10, 2013**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:30 p.m. by Chairman Preston Littleton on Friday, May 10, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Francis Markert called the roll:

Present: Mr. Harvey Shulman  
Mr. John Gauger (arrived at 6:31 p.m. and left the meeting at 10:03 p.m.)  
Mr. David Mellen  
Chairman Preston Littleton  
Mr. Francis Markert, Jr.  
Ms. Lynn Wilson

Absent: Mrs. Jan Konesey  
Mr. Michael Strange  
Mr. Brian Patterson

Also Present: Ms. Glenn Mandala, City Solicitor  
Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

**APPROVAL OF MINUTES**

No Minutes were available for approval.

**CORRESPONDENCE**

Correspondence will be read when the continuation of the Public Hearing of Partitioning Application No. 0113-01 requesting the partitioning of a property located at Lots 58, 56, 54 & the westerly portion of Lot 52 Sussex Street portion of the meeting is held.

**OLD BUSINESS**

Chairman Littleton called for the Public Hearing of Partitioning Application No. 0113-01 for the property located at Lot 58, 56, 54 and the westerly portion of Lot 52 Sussex Street, into two (2) lots with Lot 58 and the westerly portion of Lot 56 becoming one (1) lot of 7,027 square feet and the easterly portion of Lot 56, 54 and the westerly portion of Lot 52 becoming one (1) lot of 7,027 square feet. The Partitioning has been requested by Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti LLC on behalf of Sussex<sup>2</sup> Inc., Alexander Martin Clark and Eileen Stroud Clark, owners of the property. Chairman Littleton provided the Public Hearing procedures.

Ms. Ann Womack, City Secretary, verified that the public notice for the Public Hearing was posted at City Hall, the Building & Licensing Department and on the City website on April 17, 2013. The notice was advertised in the Cape Gazette on April 19 and 23, 2013, Coast Press on April 24, 2013 and Delaware State News on April 24 and 25, 2013. The mailings to property owners within 200 feet were sent out on April 24, 2013, and the sign was posted on the property on April 24, 2013. A copy of the Public Notice was sent to Attorney Chase Brockstedt on April 24, 2013.

Chief Building Inspector Terri Sullivan read her report with exhibits. (Copy attached.)

- Exhibit A – Application packet which includes:
- (1) Application and Addendum
  - (2) Planning Commission Affidavit
  - (3) Deeds
  - (4) Existing Conditions Plan
  - (5) Tree Survey/Protection/Planting Plan
  - (6) Proposed Partition Plan
  - (7) Photographs

- (8) Certificate of Formation
- (9) LLC Resolution

Ms. Sullivan acknowledged that based on the surveys 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 50 feet of frontage on a street. She was not aware of why the rear lot line had a different dimension from the front lot line of the two lots. Ms. Sullivan has not received a letter with regard to the dwelling to the east of Parcel 57.

Chairman Littleton noted that the Applicant had submitted a letter on March 13, 2013 referring to the dwelling being 2.8 feet from the side lot. The discussion and report that took place at the Preliminary Hearing will be included in the Public Hearing.

Mr. Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti represented Mr. Alexander Martin Clark and Ms. Eileen Stroud Clark, owners of the property. The only addition to the Document Log would be the March 13, 2013 letter. The Applicant would like to have the partitioning approved with the conditions that it would meet the tree ordinance requirements and demolishing the existing structure.

Mr. David Mellen noted that the structure on Lot 52 is located close to the property line because the lot is proportional to what the original lot included. When the Clarks bought the property, they only bought a portion of Lot 52.

Mr. Harvey Shulman said that the reason there are setbacks is for public safety, among other things. The setbacks, according to the Code, are an aggregate of 16 feet with a minimum of six feet on one side. If this partitioning is approved, the structure on revised Lot 54 would be six feet from the property line, there would be approximately eight feet from the structures as opposed to 12 feet.

Mr. Mellen noted that when the property was originally bought, it was zoned commercial; and then it was rezoned to residential.

Attorney Brockstedt said that in reading the deed, it was not clear to him that when the Clarks bought the property, they also bought part of Lot 52. It appears that based on the deed the property lines to the east were already in existence. The implication would be that the land the McKay's built their home on must have been commercially zoned at the time, and there were no greater setbacks.

Ms. Sullivan said that according to the partition survey plan, a nine foot wide driveway is proposed to be on the east side of the property. She acknowledged that this is just a schematic to show what it would look like if the Applicant decides to locate the driveway there.

Public Comment:

1. Mr. Wayne Neale, 46 Sussex Street, asked what the required square footage per dwelling unit is for the R2 Zoning District.

Ms. Sullivan said that the minimum square footage per lot is 5,000 square feet. There are different calculations used for the square footage per dwelling unit. The FAR requirement is 50% of the lot which in this particular case would be a maximum of 3,500 square feet per dwelling unit per lot. There is a 250 square foot allowance for a front porch, 6'-6" height for the basement which is not counted against the FAR, and if the basement height is eight foot, 1,000 square feet does not count against the FAR, etc. The size of the house would not be different than a house located in the R-1 Zoning District. Currently, there are three separate parcels which are buildable lots, so three houses could be built if there would not be a partitioning. The Applicants are proposing to build two houses after the partitioning is approved.

Chairman Littleton closed the public portion of the hearing.

Mr. Shulman voiced concern with which side the driveway would be located on. His concern related to the closeness of the proposed structure on the structure on the other lot. The Planning Commission should approve the partitioning with the condition that there be a ten foot setback and not just let it be six foot of setback on the east side of Lot 54. This would be another reason to say it is preferable to have the wider setback and the driveway on the east of the house. He was focusing on public health and safety.

Attorney Brockstedt did not have a problem with the Planning Commission imposing a condition with regard to the driveway and using the dwelling next door to impose a setback.

Mr. Mellen said that from a safety standpoint, it would be better to have the setback on the east side

and the driveway on the other side of the house. He felt that it is uncomfortable to impose a restriction on a property owner when the problem was not created by the Applicant. Mr. Gauger agreed. Mr. Mellen noted that a comment made at the Preliminary Review referred to a sense of scale, and it was hoped that the structures to be built would fit the scale of the street and use the adjacent properties to reflect a continuity of scale from an aesthetic point of view.

Attorney Brockstedt said that the argument made was to push the house as close to the property line as possible.

Chairman Littleton was uncomfortable with setting those kind of requirements because of an existing condition on someone's property; however in this case, the Applicant wants the driveway on the east side of Lot 54. Two conditions are being proposed: 1. Demolition of the existing structure. 2. On Lot 54, the driveway should be located on the eastern edge of the property.

City Solicitor Mandalas noted that the minimum width of a driveway is currently nine feet. The Planning Commission would be imposing at least a nine foot setback. The minimum between two structures under the current Code is 12 feet. According the plans, there is 2.8 feet between Lot Nos. 52 & 54. The Planning Commission could impose a 9.2 foot setback on the east side of Lot 54.

Mr. Shulman made a motion that the setback on the east side of Lot 54 for the structure would be a minimum of 9.2 feet. There was no second.

Mr. Shulman was in support of the imposition of a 9.2 foot setback on the easterly portion of Lot 54. Mr. Markert was in support of the 9.2 foot setback for the reasons stated by Mr. Shulman. What Ms. Sullivan raised with regard to the westerly side of the lot, it is basically the back side or the side of a commercial building. He did not see that there are privacy issues and no real fire issues. The same kind of restrictions that the Planning Commission is considering for the one side does not counter on the other side. It is appropriate that there is a total of 12 feet for the setback. Mr. John Gauger said that what is being discussed is something that has not occurred to date. The Planning Commission does not know where the buildings and driveway will be. Ms. Lynn Wilson trusted and hoped that the driveway will be located where it is proposed. She was not sure about the other condition. Mr. Mellen was comfortable with the driveway on east side whether it is imposed by just the driveway being there or imposing a setback with the option of locating the driveway there. He was more concerned with the driveway adjacent to the Cultured Pearl building because the proposed driveway would be located close to a corner. Ms. Wilson agreed.

Mr. Shulman read a portion of the Resolution granting Conditional Approval, and City Solicitor Mandalas read the remainder of the Resolution. (See the attached Resolution.) Partitioning Application 0113-01 shall be conditionally granted with the following condition of Final Approval: 1. The Applicant shall completed demolish and remove the 44 foot by 28 foot masonry building currently on the property and illustrated on the Partition Survey Plan prepared by Adams-Kemp Associates Inc. for Sussex<sup>2</sup> Inc., dated November 9, 2012 and revised on December 28, 2012. 2. New Lot 54's eastern side lot setback shall be a minimum of 9.2 feet so long as the dwelling presently located approximately 2.8 feet from the eastern boundary of Lot 54 remains. Adoption of the Resolution shall constitute Conditional Approval and shall not constitute Final Approval. This Conditional Approval shall expire six months from the effective date of this Resolution, unless the Applicant has fulfilled all of the conditions as a contingency of Final Approval. The Planning Commission may grant one extension of this time period for up to three months based on good cause. Final Approval shall be granted upon (1) confirmation by the Building Inspector that the conditions of Final Approval have been satisfied and (2) an affirmative vote during a public meeting of the Planning Commission granting Final Approval. Subdivision of the property shall be in accordance with the Partition Survey Plan prepared by Adams-Kemp Associates Inc. for Sussex<sup>2</sup> Inc., dated November 9, 2012 and revised on December 28, 2012, and with notes and other revisions required by this Resolution. A final plat shall not be filed by the Applicant with the office of the Recorder of Deeds in and for Sussex County until the Planning Commission grants Final Approval. A copy of the final plat containing such conditions as may be required by the Planning Commission shall be filed by the Applicant with the office of the Recorder of Deeds in and for Sussex County within 90 days from the date of Final Approval. A copy of the recorded final plat shall be provided to the Planning Commission, Board of Assessment, Building Inspector and City Manager. If the final plat is not filed within this period, the approval shall expire, except that the Planning Commission for good cause shown may extend the time for final plat filing for a period not to exceed 90 days. This Resolution shall take effect immediately upon its adoption by a positive vote of the members of the Planning Commission.

The Resolution was seconded by Mr. Mellen. (Shulman – aye, Gauger – aye, Mellen – aye, Littleton – aye, Markert – aye, Wilson – no.) Motion carried.

Mr. Shulman suggested that at some point in the next three to five months, a meeting should be held to discuss the nature of conditions.

## **NEW BUSINESS**

There was none.

## **OTHER BUSINESS**

Chairman Littleton called to discuss the issue of side yard setbacks on lots used for residential purposes that have street frontages greater than 50 feet and possibly make recommendations to the Mayor and City Commissioners to amend Section 270-26 and/or other sections of the City Code as it applies to side yards.

Chairman Littleton noted that on a typical 100 foot lot, there is a required six foot minimum side yard setback with an aggregate of 16 feet. Currently, if there is an increase in frontage on a lot in the R-1 or R-2 Zoning Districts, the setback remains the same. This results in a massive structure being built to the same setback as there would be on a typical 50 foot x 100 foot lot. Additionally, if a 100 foot lot is divided into two 50 foot x 100 foot lots, two houses can be built with a combined setback of 32 feet with a 12 foot minimum on one side. The natural area ends up being close to the setbacks on the lots. This issue is of pressing need and there is public sentiment right now because of certain developments going on that the City Commissioners need to be advised that this issue needs to be looked into. Chairman Littleton proposed that a proportional setback could be done relative to the frontage issue. The minimum width in feet of each side yard and the aggregate total in feet of both side yards should be increased by the amount by which the frontage exceeds 50 feet, with the respective widths rounded up to the next whole number. The formula would be the frontage size divided by 50. For a residential use lot with 100 foot frontage, the multiplier would be 2. ( $100/50=2$ ). The minimum width of each side yard for R-1 use would be 12 feet, (6 feet x 2); and the aggregate total of both side yards for R-1 use would be 32 feet (16 feet x 2). Other examples were provided for lots of lesser sizes. The rationale is that if a 100 foot wide lot was partitioned into two lots with 50 foot frontage, two houses could be built each having a minimum side lot yard of six feet and an aggregate side lot of 16 feet. There would be in this 100 foot stretch, 12 feet of minimum side yards and 32 foot aggregate total side yards. The Planning Commission should take action by vote to go to the Board of Commissioners with this issue and proposal.

Ms. Wilson liked the idea. Time is of the essence.

Mr. Markert said that addressing this issue is long overdue. One of the issues the Planning Commission has been confronted with is lacking flexibility with regard to some partitionings. If the Planning Commission would be given some discretion with regard to requesting a house be sited on way or another, even on a 50 foot lot would assist it in preserving a few trees. Hopefully the Planning Commission will be able to study possible alternatives, etc. With regard to this proposal, the Planning Commission is not really addressing the nature of a 50 foot lot. Mr. Markert suggested that the Planning Commission could weigh in on that with regard to some flexibility in offsetting footprints and providing better space for existing trees, etc. or at least allowing a tree setback area. Ms. Sullivan noted that the FAR would remain the same.

Mr. Mellen was uncomfortable with maintaining the exact total number such as 2:1 for a 100 foot lot. The proportional may be a little less. With regard to building new subdivisions, alternating minimum/maximum setbacks would be done. This cannot be done in the City anymore. He would also like to understand the impact on FAR and restrictions on how big a house can be built, open space and how the numbers would change.

Mr. Wayne Neale, 46 Sussex Street, said that the issues are not just one of setbacks, but also of coverage, FAR, bulk plane, etc. All of those things should be considered. Modeling should be done to determine the final solution. Coverage and FAR requirements are strict. There are issues with way the zoning ordinance is written. The first issue concerns paving in side yards. He did not understand why a sidewalk or patio cannot be located in a side yard.

Ms. Sullivan noted that sidewalks are allowed in the setbacks. They have to go from an accessory structure to another structure or driveway. Driveways are allowed in the setbacks. They are excluded from the definition of structure. Structures are not allowed in the setbacks. Patios are not allowed in the setbacks because they are structures which are permanently affixed upon the ground.

Ms. Toni Sharp, 1002 Scarborough Avenue Extended, offered that as a resident the City is at a tipping point which has gotten the attention of a lot of people. The Planning Commission will be wise to offer to ring the bell as opposed to doing nothing.

Mr. Shulman said that conceptually he does not like what is going on, and something needs to be done

about it. Mr. Shulman had questions about the details, and he did not like the formulaic nature of this proposal. This setback problem is interrelated with other things. He would like to build in the notion that there needs to be more flexibility in how the setbacks are applied. Currently, the only solution is to go to the Board of Adjustment.

Mr. Markert said that it would be appropriate for the Planning Commission to forward this proposal to the Commissioners and determine if it should be done in a formal or informal fashion. It is worthy of the Planning Commission to raise the issue and possibly get a sponsor from the Board of Commissioners.

Mr. Mellen said that this issue should be presented more from the perspective of the Comprehensive Development Plan (CDP) where picture would be shown of lots and existing homes and what is currently being produced over the last two years. The Planning Commission should propose to alter the setbacks and make them somewhat proportional to the size of the lot. Discussion ensued.

The majority of the Planning Commission members were in agreement that Chairman Littleton should forward this proposal on to the Board of Commissioners. Mr. Shulman abstained.

Chairman Littleton called for the reports with regard to the Resolution Regarding the City's Trees passed by the Mayor and Commissioners on December 21, 2012 tasking the Planning Commission to research and propose amendments, as necessary, to the City's ordinances, regulations or procedures which are designed to protect and augment the City's urban forest in order to ensure the environmental health, beauty and enjoyment of Rehoboth Beach's trees.

Mr. Markert reported that his objective was to find out what had transpired in terms of how many trees have been taken down, etc. This basically cannot be done without looking back through the files and would be too laborious of a task. He provided the Planning Commission with a spreadsheet of the information he had gleaned. A draft report was also provided to the Planning Commission which outlines some of the information that Mr. Markert came across. The City does not have the system or the data to support any kind of an analysis at this time. An automated system is needed to track information along with internal controls over the permit. There is evidence here for the Planning Commission to consider what the City would need in order to manage this system. The Planning Commission should be able to look at a report on an annual or semi-annual basis of how many trees have been cut down, how many have been planted, how many trees have been replaced through mitigation, etc. Currently, there is no way to know, based on the documentation in the files, what has been done in terms of remediation. A list of how many trees were planted is not reflected in the file.

Ms. Sullivan noted that when the permits are closed, they are stamped as completed if the trees have been planted or whatever the requirements were. In the case of new construction, a certificate of occupancy is not issued until the trees have been planted. It is required that an inspection is done of the tree for a year. This is not documented. The Parks & Shade Tree Commission can only put a dollar amount on remediation.

Mr. Markert used the streets file to detail what he could find within the files; and from that, make some conclusions which are relatively minimal. He could not identify the justification for taking down trees. One permit was denied by Building & Licensing, and no other action was taken. The Parks & Shade Tree Commission minutes reflect all the denials that have been appealed. Out of 201 permits that were researched, only one permit still remained denied after going through the Parks & Shade Tree Commission process. Nothing he saw was evidence of mismanagement.

Mr. Shulman said that it is important to know the number of applications that have been denied by Building & Licensing and have not been appealed to the Parks & Shade Tree Commission.

Mr. Mellen has been trying to answer what the current canopy is in the City, what the canopy has been in the past, how the canopy is changing, where the canopy is if it is on private land, how much of the canopy is on private land and how much is on public land; and lastly, if the canopy is to grow, as the goals of the City have been set based on the tree survey which was done a few years ago, where the trees would be located. The Planning Commission is dealing with an ordinance, and it has to find out if the rules in the ordinance are consistent with the goals of what is trying to be achieved. The tree inventory was done to assess the trees on public land. He provided a brief history of a GIS system which is a computer technique of combining maps and information. It can layer information usually starting with maps. Mr. Kyle Hoyd of the State Department of Agriculture – Urban Forestry had said to Mr. Mellen in conversation that the State might be able to help the Planning Commission in some ways. Mr. Hoyd had forwarded the maps of Rehoboth, but they have to be opened by a GIS system. The City's GIS system is not currently operative. Approximately two years, the study

revealed that there was approximately 1,050 acres in the City, and the urban tree canopy was 209 acres which resulted in a 32% coverage. Based on that study, a goal of 40% coverage was set for the City. Satellite views from Google Earth were provided of various blocks in the City, and percentages of canopy cover was determined. Updating a GIS system on a yearly basis would allow for a viewer to see how the canopy is changing and where it is changing. Mr. Hoyd had recommended the Planning Commission look at the work that the University of Vermont is doing with this technology. Recently, the State did scans of the entire state, except for Sussex County. Mr. Mellen had hoped the data would be available to read and study it. Once the analysis has been done for Rehoboth, then it is only a question of getting new scans. The question is how important it is to the Planning Commission to get the numbers.

Chairman Littleton said that natural area is being taken down in the City. There has been a decrease in natural area and tree on private land. The rate of this decrease is unknown. The question is how important it is to document that number and rate. The City has declared the value of trees that they are important and the tree canopy should be increased. Discussion ensued.

Mr. Markert said that there is a certain preservation aspect that needs to be looked at with regard to trees. The Planning Commission should examine the various ordinances that impact on this like the side yard setbacks, etc. and make certain assessments about what effect that has. Then the Planning Commission could come up with something to allow flexibility for building sites to be adjusted so they can accommodate trees, etc. and if there are other things to do to preserve trees and still allow building to take place. He was thinking in terms of tree zones that would accommodate certain areas of certain lots and designate them as tree preservation areas. This would preserve an area for present and future trees. A lot of time and effort has been spent on trees that are not very big and significant. Focus should be put on the big, tall canopy trees that tower above the houses.

Mr. Shulman said that the Planning Commission needs to figure out what the ordinance is intended to do. When the ordinance was enacted, the idea was not discussed about maintaining a specific percentage of tree canopy. It was all about the quality of neighborhoods, the tree-lined streets, etc. Discussion ensued.

Mr. Markert suggested that a questionnaire should be sent out to people to solicit responses from them about their views of the tree ordinance.

Chairman Littleton suggested an action plan: 1. A structured questionnaire is required to be sent out to citizens. Mr. Markert volunteered to do the questionnaire. 2. Three members of the Planning Commission should talk with some people about their views and report back to the Planning Commission. 3. Have a meeting where representatives from the tree service companies, builders and developers would be in attendance to voice their points of view with regard to the tree ordinance.

Due to the lateness of the meeting, the remainder of the agenda items were not discussed.

The next scheduled Regular Meeting will be held on June 14, 2013 at 6:30 p.m.

There being no further business, Mr. Markert made a motion, seconded by Ms. Wilson, to adjourn the meeting at 10:17 p.m.

**RECORDED BY**

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(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON  
NOVEMBER 8, 2013**

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(Francis Markert, Secretary)