

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**May 13, 2011**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:34 p.m. by Acting Chair David Mellen on Friday, May 13, 2011 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Timothy Spies called the roll:

Present: Mr. Brian Patterson  
Mr. Harvey Shulman  
Acting Chair David Mellen  
Mr. Timothy Spies  
Mr. Francis Markert, Jr.  
Mrs. Jan Konesey

Absent: Mr. John Gauger,  
Dr. Preston Littleton  
Mr. Patrick Gossett

Also Present: Mr. Mike Hoffman, Esq. of the law firm Baird Mandalas LLC on behalf of Mr. Glenn Manadalas, City Solicitor  
Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

**APPROVAL OF MINUTES**

Minutes of the September 10, 2010 and March 11, 2011 Planning Commission Regular Meetings were distributed prior to the meeting. Minutes of the September 10, 2010 Planning Commission Regular Meeting were not available for this meeting.

Mr. Francis Markert made a motion, seconded by Mr. Spies, to approve the September 10, 2010 Planning Commission Regular Meeting minutes. Motion carried unanimously.

Mrs. Jan Konesey made a motion, seconded by Mr. Spies, to table approval of the March 11, 2011 Planning Commission Regular Meeting minutes to the next meeting. Motion carried unanimously.

**CORRESPONDENCE**

There was no general correspondence.

**OLD BUSINESS**

Acting Chair Mellen noted that the Planning Commission had tabled the application for the partitioning of 2 St. Lawrence Street so the applicants could discuss with the City a possible resolution to the conflict of ownership of land.

Mr. Mike Hoffman, Esq. of the law firm Baird Mandalas LLC provided an update for the Planning Commission. Agreements are in the process of being drafted. The intention is for this application to be placed on the agenda for the June 2011 Planning Commission Meeting, but he will need to confirm the timing. Procedurally the Planning Commission tabled the application, so it can bring the application back on the table. If the Planning Commission would want to make sure there are no substantive items, then that could be addressed when the application comes back before the Planning Commission. The application was tabled because there were questions as to the ownership of land, and those questions are in the process of being addressed. This matter will be before the Mayor and Commissioners on May 20, 2011 at their Regular Meeting. If the application is in a position to be brought back before the Planning Commission, then it can put the application back on the table; and whatever questions are raised can be brought up at that meeting.

There have been multiple discussions regarding the matter of ownership. The Planning Commission tabled this application. The Planning Commission can notice it for a meeting to bring it back to see what is on the table, and then move forward from there. This is what is being recommended in terms of having the application noticed for a public hearing so that if the Planning Commission looks at it, then the Planning Commission has the option to move forward on it.

Mr. Spies acknowledged that consideration of approval of a proposed Mutual Agreement with 2 St. Lawrence Street LLC which would resolve ownership issues relating to the property extending to the Atlantic Ocean and originating from the easternmost boundary of the property located at 2 St. Lawrence Street has been placed on the agenda for the May 20, 2011 Mayor and Commissioners Regular Meeting.

Acting Chair Mellen commented that a request to be placed on the agenda for the June 2011 Planning Commission Meeting has not been received to date from Mr. Chase Brockstedt, Esq. of the law firm Bifferato Gentilotti LLC on behalf of the owner of the property. There is no indication the Planning Commission has to take any action other than to hear what has been done regarding the ownership of land. The plotted lots would most likely be acceptable for partitioning. The issue is the land eastward to the Atlantic Ocean of the plotted lots. The Planning Commission has no idea at this time as to how this will be resolved. Presumably, it would not be coming back to the Planning Commission if there was not a resolution that appeared acceptable to the Mayor and City Solicitor. Bringing back the application does not force the Planning Commission to act on it. It will allow the Planning Commission to at least hear what has been done.

Mr. Harvey Shulman said that the Planning Commission does not know what agreements are being drafted, and it could be a significant amendment to the application which would require that the documents be filed 28 days prior to the Planning Commission Meeting. Depending on what the deal is, the issue is whether the Chairman wants to put it on the agenda for discussion to take the application off the table. If it is put on the agenda to take the application off the table, there is still a question of whether the Planning Commission would proceed with the public hearing or whether the public would need time to know what is in the application. The public hearing would be continued until July 2011 so the public would have a chance to look at it. Mr. Shulman said that the Planning Commission should get the information beforehand so that when the motion is made and seconded, it can vote on it and have knowledge. He did not understand why the Planning Commission would have to accommodate the 2 St. Lawrence Street application since this matter has been kicked around for months and the information is submitted late. Mr. Spies and Mrs. Konesey agreed.

Discussion ensued as to the scheduling of backlog of applications to be heard by the Planning Commission. In order for the 2 St. Lawrence Street application to be placed on the agenda for the June 10, 2011 Planning Commission Meeting, all materials will be required to be received by May 18, 2011. Currently, there are four applications pending: 2. 80 Kent Street partitioning. 2. 2 St. Lawrence Street partitioning. 3. 2 Oak Avenue partitioning. 4. 36 Columbia Avenue partitioning.

Mrs. Konesey said that unless the Planning Commission has all the information by May 18, 2011, the 2 St. Lawrence Street application should not be heard at the June 10, 2011 meeting.

Acting Chair Mellen will be deciding which applications will be placed on the agenda for the June 10, 2011 Planning Commission Meeting.

## **NEW BUSINESS**

Acting Chair Mellen called for the Preliminary Review of Partitioning Application No. 0311-01 requesting the partitioning for the property located at 80 Kent Street, Lot Nos. 80 & 82, into two (2) lots with each lot becoming one (1) lot of 5,000 square feet. The property is owned by Sara E. Wright, Co-Trustee of The Albert W. Wright Family Trust and The Albert W. Wright Irrevocable Trust and William Dean Wright, Co-Trustee of The Albert W. Wright Family Trust and The Albert W. Wright Irrevocable Trust. The Partitioning has been requested by Vincent G. Robertson, Esq. of the law firm Griffin & Hackett, P.A. on behalf of the owners of the property.

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

Exhibit A – Application packet which includes:

- (1) Property & Location Survey dated February 23, 2011 and received March 11, 2011.
- (2) Partition Survey dated February 23, 2011 and received March 11, 2011.

- (3) Partition Survey & Tree Protection Plan dated February 23, 2011 and received on March 11, 2011.
- (4) Affidavits signed by Sara E. Wright and William Dean Wright, Co-Trustees of The Albert W. Wright Family Trust and received on March 10, 2011.
- (5) Affidavits signed by Sara E. Wright and William Dean Wright, Co-Trustees of The Albert W. Wright Irrevocable Trust and received on March 29, 2011.
- (6) Photographs of adjacent properties.
- (7) Agreement of Sale for Delaware Residential Property signed by Sara E. Wright and William Dean Wright on February 9, 2011 at 2:30 p.m. and received on March 10, 2011.
- (8) Recorded Deed received on March 10, 2011.
- (9) Trust Certification signed by Sara E. Wright and William Dean Wright on May 4, 2006 and received on March 10, 2011.
- (10) Revocable Trust Agreement signed by William Dean Wright on May 4, 2006 and Sara E. Wright on May 14, 2006, and received on March 10, 2011.

Mr. Vincent G. Robertson, Esq. of the law firm Griffin & Hackett, P.A. represented the owners of the property. The buildings have been demolished, and the trees have been preserved. Since the buildings have been demolished, some of the information in the Application has changed. Attorney Robertson will supplement the Application with updated photographs, etc. The (2) proposed 5,000 square foot lots meet all the requirements for the dimensions. There are no setback issues because the buildings have been demolished. Attorney Robertson reviewed the photographs with the Planning Commission. The original lots ran 50 feet of frontage on Kent Street and 100 feet in depth and parallel with Fifth Street. Currently, there are no structures on the existing lot which has been used as one property. Because of the orientation of the house, the property had been merged by use. The two (2) lots had not been titled separately. In regard to the orientation of the proposed lots, there is a good chance trees could be saved, and it would make the proposed lots match historically with the view from the street, i.e. the front doors facing Fifth Street. The Kiwanis lot which is commercial would have the proposed rear yards next to it. This would provide the least impact and would be most consistent with the way lots currently appear on Fifth Street. Attorney Robertson acknowledged that it seems there is a good chance that Tree No. 7 may be removed regardless if the proposed lots front on Fifth or Kent Streets. If the proposed lots are oriented with the fronts on Kent Street, Tree No. 5 which is a 48 inch diameter oak would be in the buildable area whereas if the proposed lots are oriented with the fronts on Fifth Street, Tree No. 5 would be in the rear yard and the other trees would be along the perimeter of that lot.

Mr. Shulman said that if the proposed lots face Fifth Street, Tree No. 5 may be in the setback area and would be protected. This would be a positive reason for looking at the Tree Plan facing Fifth Street. On the other hand, when the lot is sold it is not known what will happen to that tree. The tree could be removed if it is not in the setback area. Tree No. 5 may not necessarily be saved because of orienting the fronts of the proposed lots on Fifth Street. Mr. Shulman asked if Tree No. 5 is partially located in the side yard setback area if the proposed lots are oriented to face on Fifth Street. He requested confirmation if a portion of Tree No. 5 is within six feet of the property line. It would be useful to know whether Tree No. 5 has to be saved or if it is up to the owner of the lot.

Ms. Sullivan noted that either the way the proposed lots are oriented, Tree No. 5 would be in the buildable area. If the proposed lots are oriented with the fronts facing Fifth Street, the setback requirement on the Kent Street side would be 10 feet, and the setback between the two proposed lots would be six feet for the proposed corner lot.

Attorney Robertson said that he would provide the dimensions as to the location of Tree No. 5. If this application is moved to public hearing, then the Applicant will be prepared to answer that at the June meeting. Attorney Robertson acknowledged that above the Tree Identification Table on the Partition Survey & Tree Protection Plan, it is written that "[N]o trees shall be harmed nor removed as a result of the Partition or demolition required as part of the partition process. Thereafter, any improvements upon the Property will be subject to the requirements of Chapter 253 of the Municipal Code." Acting Chair Mellen said that the trees likely to be removed will be Tree Nos. 5, 7 & 10 and potentially Tree No. 3.

Mr. Markert tried to think in terms of tree canopy and to save the biggest trees possible. If Tree No. 7 would be removed, then Tree No. 5 would be the next tree in contention and should try to be saved.

Mr. Shulman read Section 236-8.1(B)(1) of the Municipal Code which refers to the purpose of

preliminary review.

Mr. Patterson had a question about chain of title. The applicants are the Family Trust and Irrevocable Trust. A Deed was submitted from 2004 showing the transfer to the Family Trust and Irrevocable Trust. The Agreement of Sale from 2011 shows the seller as identified only as the Family Trust. Attorney Robertson believed there is an addendum. For whatever reason for estate planning purposes, the Irrevocable Trust owns 2% interest. He was not sure that when the contract was done if it was realized or since it was done. Attorney Robertson will provide the addendum to the Planning Commission. In regard to the trust affidavits, all information has been supplied. The property is currently under contract, and the sellers are aware that this Application would be null and void should the property be sold before the partitioning is approved.

Mrs. Konesey made a motion, seconded by Mr. Shulman, to move this Application to Public Hearing. Motion carried unanimously.

Supplemental information to this Application will be provided to the Planning Commission 18 days prior to the June 10, 2011 Planning Commission Meeting. The measurement from Tree No. 5 to the property line will be taken at side closest to the property line and at 12 inches above the ground.

## **OTHER BUSINESS**

Acting Chair Mellen called for the report of any new subdivision applications that may have been submitted in the prior 28 days and the status of pending applications or requests.

Ms. Ann Womack, City Secretary, noted that two new subdivision applications have been filed to date for partitionings at 2 Oak Avenue and 36 Columbia Avenue.

Acting Chair Mellen called for identification, discussion and possible formulation of plans to address items and/or issues that have been deferred to date. Such items previously mentioned include: 1. Need to update the major subdivision section of the City Code with particular emphasis on ensuring the City is properly protected. 2. Mixed-use development and possible overlay districts. 3. Front walkways [already being considered by the Board of Commissioners]. 4. Concept of proportional changes in side lot setbacks for legal non-conforming lots of less than 50 feet front footage or for lots with more than 50 feet front footage. 5. Explore means to increase efficiency and reduce costs to both the City and the applicant relative to partitioning, and minor or major subdivision review.

Acting Chair Mellen noted that the purpose for this agenda item was to not discuss these particular issues, but whether the Planning Commission should be taking up some of these issues and how the Planning Commission should be doing it. He suggested that some of these issues should be discussed in a workgroup session and then brought back before the Planning Commission where recommendations would be formulated. Some of the recommendations would then be forwarded to the Board of Commissioners for them to take action on. Attorney Robertson has made an offer to Dr. Preston Littleton to share thoughts with the Planning Commission on exploring means to increase efficiency and reduce costs to both the City and the applicant relative to partitioning, and minor or major subdivision review. Attorney Robertson serves as counsel for Sussex County Planning Commission.

Acting Chair Mellen said that the issue relative to front walkways is before the Board of Commissioners, and a Public Hearing will be held on May 20, 2011. He had surveyed all of the homes in South Rehoboth from Prospect Street to Philadelphia Street and from the ocean to the east side of Scarborough Avenue. The widths of all the sidewalks were tallied of which there was a high percentage of existing sidewalks that exceeded the three foot limitation and in some cases the five foot limitation. The City Commissioners had changed the Code to three feet. Anyone with an existing sidewalk, who would have to replace the sidewalk for whatever reason, would not be able to do so unless less than 50% would be replaced. The real issue regarding the width of sidewalks is that people were beginning to abuse the sidewalk restriction.

Acting Chair Mellen said that discussion on side lot setbacks of houses on large lots has been raised. There is some sensitivity that perhaps the side lot setbacks on houses larger than 50 feet should be somewhat in proportion to the size of the lot rather than an aggregate of 16 feet for 50 foot wide lots.

Attorney Robertson said that it may be worthwhile for the Planning Commission to take a look at the Partitioning Application. It has gotten to the point where an individual property owner probably almost cannot fill out the application by himself because it has gotten really complicated. A lot of the information requested in the application is nice to have but he did not know how much could be used to deny an application. It might be

good to streamline the process. There are questions in the application that he has never had to deal with such as subterranean streams, drainage ditches, etc.

Mr. Shulman said that the Code specifically requires the Planning Commission to ask about these two items. Some questions were left in the application because the Code requires them, not because they are particularly useful.

Attorney Robertson asked what difference it makes for a partitioning if there is a rental license. He could not understand how someone who has or had a rental license would have a bearing on whether the Planning Commission decides a lot has 5,000 square feet. It is just a question of what bears on the ultimate decision of whether to grant the partitioning or not. Mrs. Konesey said that the rental license makes a difference to neighbors. There are some things that matter to neighbors because of the close proximity of the houses.

Mr. Shulman said that if the Planning Commission determines that splitting a lot would have an adverse impact on the adjoining properties, then under the Code as explained in the Comprehensive Development Plan (CDP), the Planning Commission would not be able to treat that as a partitioning. Attorney Robertson commented that the courts in Delaware have said that the Planning Commission cannot just say it has to create an adverse set of circumstances because that is not a basis to deny a partitioning. Mr. Shulman said that the Planning Commission does not deny things because of adverse impact. It is just that the process changes. Under the Code, if something as proposed is determined by the Planning Commission to create an adverse impact and the applicant is not willing to change something to eliminate the adverse impact, it does not get denied. The application has to go through the major subdivision process. Ninety percent of the major subdivision factors would not apply to a double lot for partitioning. By going through the major subdivision process, it allows the Planning Commission more opportunity to say what needs to be done as opposed to a partitioning. The Planning Commission has to be very fact specific and legal about what an adverse impact is.

Attorney Robertson said that it is a real burden expense-wise for applicants to hire a surveyor to get height shots of adjacent properties. This goes back to how relevant it is to a partitioning. Mr. Shulman said that knowing what is next to the property such as the height of buildings, what the buildings are, etc. is relevant to the determination of adverse impact. Mrs. Konesey said that a photograph would show how far apart the buildings are. She could live with changing the requirement of the applicant providing a survey of the adjacent properties.

Attorney Robertson said that with the information that is in the Code, the burden is on the applicant to look at the Code and make sure that all the requirements are satisfied. The Planning Commission does not necessarily have to lay it all out for everybody on a plot or in the application. Acting Chair Mellen said that in the case of 46 Pennsylvania Avenue, the neighbors were concerned with what was going to be built on the property. Although the Planning Commission told the neighbors it had no legal capability to force the developer to build in any particular way, the neighbors' concerns gave the Planning Commission some leverage to discuss with the developer what might be done to mitigate those concerns.

Mrs. Konesey said that what the Planning Commission needs to do, rather than change the application, is what can be done with the Code to make sure that the City is kept the way it is. Attorney Robertson said that what any land-use attorney will say is that the Planning Commission cannot make up the rules on each application.

Mr. Shulman said the fees should be revised so that the applicants actually pay for the City's expenses. Attorney Robertson said one group says that the fees should cover the costs, and the other side says that it is a service of the City government to deal with planning and zoning.

Attorney Robertson noted that if a workshop meeting is held, he would be willing to participate on the committee.

Acting Chair Mellen asked Attorney Robertson to provide an update regarding 807 King Charles Avenue. He noted that conditions needed to be met. If the conditions are not met, then the Planning Commission cannot give final approval. Attorney Robertson said that he made sure everyone knew the requirements of the deadline in regard to the conditions. Ms. Sullivan said the applicant has been informed that an extension may need to be filed for removal of the deck, etc. Mr. Shulman said that to get an extension, just cause needs to be shown.

Mr. Markert said that since the Planning Commission has recently dealt with a major subdivision, it is somewhat fresh in the minds of the members and would be appropriate should they decide to make amendments to the process and application. This would be balanced with what the odds are that the Planning Commission would be returning to it, so this may be a low priority. He asked if there has been any discussion with the City Commissioners or if there are certain areas of interest they would like the Planning Commission to do. Acting Chair Mellen has had a discussion with Mayor Samuel Cooper regarding the side lot lines. There is sensitivity, at least on Mayor Cooper's part to look at that issue.

Mrs. Konesey said that the Planning Commission needs to deal with major subdivisions since it is fresh. At some point, the Bay Mart area might be a great mixed-use development. The Walls property could potentially be another major subdivision at some point.

Mr. Shulman said that he is against any major updates to the major subdivision ordinance. There is a time for doing the updates. Much more important than changing words is whether the Planning Commission members have the information they need and the determination to make difficult decisions. There may be some tweaks needed in the major subdivision ordinance. The process actually worked with the recent major subdivision the Planning Commission had before it. Mr. Markert disagreed. Each member of the Planning Commission could come up with topics that probably should be addressed. He was not contemplating the notion of revamping it, but there are certain things that the Planning Commission could easily strengthen for the betterment of the City. Mr. Shulman said that if any members would like to make suggestions regarding the major subdivision ordinance to Dr. Littleton, Acting Chair Mellen or Mr. Spies, then at some point those suggestions could be discussed at a future meeting and decided whether there is consensus to make changes.

Mr. Spies thought that in regard to mixed-use development and possible overlay districts, the Planning Commission would need some outside advice from a professional. Mrs. Konesey agreed that a professional should be brought in to look at the best for what the Planning Commission wants to do, work with the professional and tweak as they go along.

Acting Chair Mellen said that there are Code issues such as the surety bond, etc. that should be taken care of. Mr. Shulman said that the Planning Commission members should come up with issues and send them to Acting Chair Mellen, Mr. Spies and Dr. Littleton.

Mr. Shulman would like something about the Canal added to list for discussion. The State has put some money into the study of the water taxi between the City and Lewes.

Mr. Markert said that the architectural review manual does exist and there is potential for that to be moved along at some point under the right circumstances. Acting Chair Mellen said that what learned in that process has somewhat impacted how the Planning Commission does business. He suggested that if there are specific issues on major subdivision, the Planning Commission needs to make those recommendations to the Board of Commissioners. The Planning Commission would need to work with the City Solicitor to create something, but there are obvious deficiencies. A note should be sent to Dr. Littleton, Mr. Spies and Acting Chair Mellen in regard to anything related to those specific issues, etc.

Acting Chair Mellen called for the Building Inspector's report.

Ms. Sullivan noted that the Oak Grove project is moving along and is progressing with its water, sewer and stormwater lines, road, etc. The owners of the property are now obeying the rules, and they are paying Kercher Engineering Inc. for the inspections. Kercher Engineering Inc. has been onsite more regularly.

Acting Chair Mellen called for the City Solicitor's report.

There was nothing to report.

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

Mr. Spies encouraged all of the Planning Commission members to listen to the audio from the last Board of Commissioners meeting which is on the City website regarding the discussion about the tree ordinance. Commissioner Dennis Barbour presented two amendments, one of which was a list of trees and the second a change to the appeals process. Absolutely nothing was accomplished. If the tree ordinance is left in the hands of Mayor Cooper and Commissioners Bill Sargent, Stan Mills and Lorraine Zellers without any opposition, it will be gutted. It is an issue of property rights.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Markert, to adjourn the meeting at 8:33 p.m.

**RECORDED BY**

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**(Ann M. Womack, City Secretary)**

**MINUTES APPROVED ON  
JUNE 10, 2011**

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**(Preston Littleton, Jr., Chairman)**