

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

July 9, 2010

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:00 p.m. by Chairman Preston Littleton on Friday, July 9, 2010 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Mr. Timothy Spies called the roll:

Present: Mr. Harvey Shulman
 Mr. John Gauger
 Mr. David Mellen
 Chairman Preston Littleton
 Mr. Timothy Spies
 Mr. Francis Markert, Jr.
 Mr. Patrick Gossett

Absent: Mr. Brian Patterson
 Mrs. Jan Konesey

Also Present: Mr. Kevin Baird, Esq. was in attendance due to a prior engagement of Mr. Glenn Mandalas, City Solicitor
 Ms. Terri Sullivan, Chief Building Inspector
 Mr. Kyle Gulbranson, City Planning Consultant
 Mr. Alan Kercher, City Engineer

A quorum was present.

APPROVAL OF MINUTES

Minutes of the June 11, 2010 Planning Commission Regular Meeting were not available for approval.

CORRESPONDENCE

Email received on July 7, 2010 from John & Susan Roehmer, 528 School Lane, expressing concern with the proposed Rehoboth Beach Visitor's Center, Energy Science & Technology Exploratory Museum and transportation hub.

NEW BUSINESS

Chairman Littleton called for the Preliminary Review of Partitioning Application No, 0610-01 requesting the partitioning of a property located at 73 Park Avenue, Lots 49 & 51 into two (2) lots with Lot 49 becoming one (1) lot of 5,027.828 square feet and Lot 51 becoming one (1) lot of 5,194.482 square feet. The property is owned by Vardell Realty Investments L.L.C. The Partitioning has been requested by Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti on behalf of the owners of the property. Chairman Littleton presented the Preliminary Review procedures.

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

Exhibit A – Application for Subdivision with Attachments, dated June 2, 2010.
Exhibit B – Resubdivision Plan, dated June 29, 2010.
Exhibit C – Lot & Location Survey, dated June 29, 2010.

Ms. Sullivan noted that in the R-1 Zoning District, there is a 15 front yard setback and an open front porch can encroach up to five feet. The side yard setbacks are an aggregate of 16 feet with a minimum of 6 feet on one side. The parking requirement is 9'-0" x 18'-0", and the Applicant has shown on the plan that the parking requirement will be met. The setback lines are not impacted by a licensing agreement with the adjacent rear property. The license agreement does not make the lot any smaller and does not create any setback issues. The one lot which abuts Central Park is not considered a corner lot.

Mr. Kevin Baird, Esq. commented that he and City Solicitor Glenn Mandalas did not believe the license agreement impacts the setbacks or the dimensions of the lot.

Mr. Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti, represented the owners of the property. The package was submitted on June 2, 2010 which included the Application & Addendum, Affidavit, Deed, Operating Agreement and Consent, Lot and Boundary Survey, Tree Survey Protection Plan, Proposed Subdivision Plan, Photographs and Licensing Agreement. The Application was supplemented with a receipt showing that the Deed had been recorded and a copy of the Deed. Recently, the full-size sealed drawings were submitted to comply with the rest of the application process. This Application was submitted pursuant to Chapter 236 of the Municipal Code. The three requirements under Section 270-22 have been met. There is 50 feet of road frontage on Park Avenue. Both lots are 5,000 square feet or greater. Both lots can handle a 4,000 square foot rectangle with 48 feet as its shortest side. There are two spaces for off-street parking which is shown on the Subdivision Plan, and they are located on the east side of both proposed lots. Regarding the licensing agreement, he explained that there was a difference of opinion as to who had the right to use an approximate 18 inch strip of land across the entire rear of one of the proposed lots and partially across the rear of the other proposed lot. To avoid a dispute that would boil into something which would result in litigation, an agreement was made which grants the rear property owner the ability to use part of the land which is subject to this Application without putting any structures, landscaping, etc. on it. It is Attorney Brockstedt's understanding that Mr. John Hughes, the rear property owner, had been using a portion of the property located at 73 Park Avenue for awhile and has had a strong desire to keep using a portion of the lot. That was something the new owner did not have a problem with, so long as everything was documented. This is alluded to in the licensing agreement. Attorney Brockstedt's research agreed with what Attorney Baird said tonight, which was that it does not in any way affect the setbacks, dimensions or the density, etc. with regard to calculating for the two lots proposed to be created. The license agreement is an agreement whereby Mr. Hughes has the right to use that portion of the property which ends with either his demise or his wife's demise, whichever is later. The agreement does not speak to the current owner's use. It serves to allow Mr. Hughes to use the property. The current owner has not relinquished his right to using the land. The agreement has affirmatively granted a right to another property owner.

Mr. Harvey Shulman said that both the Hughes' and the current property owner have the right to use this area that the Hughes' were given the license to use. If the current owner has the right to also use that piece of property, then it makes sense that it counts towards density, setbacks, size of the house to be built, etc. If the current owner has no right to use that property, it at least raises the question whether the full size of the lot or only the size of the lot that he has a right to use is counted towards some of these things. Attorney Baird said that Mr. Shulman made a good point. The agreement is silent as to the owner's use; but under Section (F) of the agreement, it talks about how the Grantee (the Hughes') agrees to maintain the property but agrees not to install any landscaping or structures, or create any nuisances without the written approval of the Grantor (the owner). This language seems to, at least implicitly, show that the Grantor is maintaining some control over that area, at least some mutual use of it. Attorney Brockstedt said that if there is a violation of that provision, then the owner of the property has the opportunity to terminate the license agreement; and there is a set time in which it does terminate,

Mr. Shulman said that the Affidavit authorizing Attorney Brockstedt to pursue this Application, was signed on January 21, 2010. It seems like the Applicant did not own the property until May 25, 2010. Attorney Brockstedt noted that the property went under contract in November or December 2009. The license agreement is the reason why the property did not settle earlier than May 25, 2010. At the time the Affidavit was executed, Vardell Realty Investments L.L.C. was the contract purchaser, not the actual owner because settlement had not occurred at that time.

Mr. Michael Vardell noted that Vardell Realty Investments L.L.C. came into effect in 2005.

Mr. Spies commented that there might be an error with the year when the land was conveyed to David Brock. The Deed shows that it was conveyed in 1975. Mr. Spies' recollection is that David Brock bought the property in mid to late 1990's. Attorney Brockstedt said that he will contact the law firm of Wilson, Halbrook & Bayard to see if there is a possible error.

Attorney Brockstedt noted that on Lot 51, nine trees are being proposed to be preserved, and five trees will be removed. The building official had made a determination that the 15 inch diameter hickory at the right rear corner of Lot 49 and the 14 inch diameter cedar at the front of the property are line trees. They are not depicted as line trees on the survey. The Applicant will work with the building official to make sure to comply with the Tree Ordinance before any trees are removed or that there is a plan is to replace any trees if it is determined whether or not they are on the line. If that means one or two trees would need to be planted, the owner is committed to doing

that. The idea is to save the line trees and have them count towards density.

Mr. Shulman thought it would be useful to clear this up for the next meeting before the Planning Commission takes any action on this Application. The Code says that a line tree does not count towards density. It should be determined by the next meeting if the hickory and cedar are line trees.

There was no correspondence, and there was no public comment.

Chairman Littleton called for discussion among the members of the Planning Commission.

Mr. Spies made a motion, seconded by Mr. Shulman to approve moving the Application to Public Hearing at a future meeting. Motion carried unanimously.

Chairman Littleton noted that his intent is place this Application on the August 13, 2010 agenda. The City will communicate with Attorney Brockstedt as to the date of the Public Hearing.

OLD BUSINESS

Chairman Littleton called for the Public Hearing on Major Subdivision Application No. 0708-05 requesting the major subdivision of the property located at 43 Canal Street, comprised of the following lots on Canal Street: Lots 43, 44, 45, 46, 47 & 48, the following lots on Sixth Street: Lots 26, 27, 28, 29 & 30, and the property located at 512 Rehoboth Avenue comprised of Lot 42A, into fifteen (15) lots as follows: Lot 1 to be 6,112 square feet, Lot 2 to be 5,015 square feet, Lot 3 to be 6,362 square feet, Lot 4 to be 6,112 square feet, Lot 5 to be 6,328 square feet, Lot 6 to be 6,076 square feet, Lot 7 to be 5,421 square feet, Lot 8 to be 5,260 square feet, Lot 9 to be 5,260 square feet, Lot 10 to be 5,260 square feet, Lot 11 to be 5,259 square feet, Lot 12 to be 5,584 square feet, Lot 13 to be 5,174 square feet, Lot 14 to be 7,381 square feet and Lot 15 to be 5,012 square feet. The properties are owned by Oak Grove Motor Court, Inc. The Major Subdivision has been requested by the owners of the property. City Solicitor Mandalas presented the Public Hearing procedures.

Chairman Littleton noted that the Board of Adjustment met on June 28, 2010 and has granted a variance relative to the rear lot lines as being proposed in the Application. The Planning Commission was represented at that meeting by Vice Chair David Mellen and Secretary Spies. Each member has seen the testimony the Planning Commission sent, not necessarily in support of the Applicants, but rather an explanation of the review process and what the objectives have been from the City's perspective for this property. The issue of the rear lot line is resolved.

Chairman Littleton said that at the last meeting there were two areas of discussion and agreement. One was to increase the width of the parking area by one foot, and the other was to re-establish an easement to surround the entire road. The Applicants had agreed to both of them, and engineering drawings will be done. The focus of the last meeting then moved to adequacy of on-street parking on one side of the street. A request was made by the Planning Commission for Mr. Kyle Gulbranson and Ms. Terri Sullivan to do a worst-case analysis of on-street parking, and Chairman Littleton had also requested that a best-case analysis be done. Mr. Mellen had done research in the neighborhoods and determined that approximately 1.5 cars can be parked in front of a typical lot with 50 feet of frontage and in view of fire hydrants, driveways, etc. The request for the workgroup was to do an analysis of on-street parking with the proposed properties that would abut Sixth Street, Canal Street and Jones Lane. A presentation will be made to the Planning Commission of the completed analysis. The next issues to be addressed, beyond engineering conditions, will be pathways and sidewalks. The Planning Commission has been comfortable in saying that once the review of the final design has been completed, there are engineering issues that need to be deferred to the Mr. Alan Kercher, Mr. Gulbranson and Ms. Sullivan to work out. Consensus has been reached regarding trees and remediation, and was accepted by the Applicants. The Applicants have agreed to other things to incorporate into the language for the homeowners' association documents. Mr. Spies has done an analysis report on those things and has been forwarded to the Planning Commission. Chairman Littleton would like the Planning Commission to reach consensus with the final steps such as pathways and sidewalks. Only at that time can the Applicants begin the analysis of the adequacy of the retention pond which would require State agencies to be involved. The Planning Commission agreed to not force the Applicants in the expense of the analysis until they knew that the Planning Commission was in agreement with the overall design.

Correspondence:

Exhibit 25 – Cover letter dated July 2, 2010 and associated documentation which was selectively provided from Oak Grove Motor Court in regard to slides shown at the May 14, 2010 and June 11, 2010 Regular Meeting. The documentation consists of a summary of public comments on the Oak Grove Project, a

mid-summer comparative of parking in Country Club Estates, on-street public parking after development, new subdivision resulting in fewer parked cars, total combined parking, one-side parking, street construction techniques, and lighting and shade trees.

Exhibit 26 – Letter dated July 6, 2010 from Dolph Spain, 19 Grove Street is in support of the major subdivision, but expressed concern regarding removal of trees, additional parking and a walking/bike path.

Exhibit 27 – Letter dated July 6, 2010 from Lorraine Finnegan, Lewes, DE, is in support of the major subdivision, but expressed concern with prolonging the project.

Exhibit 28 – Letter dated July 9, 2010 from Michael J. McHugh, 1-C Sixth Street, is in opposition to the approval of the project as currently proposed. Concerns were expressed regarding tree preservation and development, consequences for future owners and lot configuration.

Mr. Paul Lovett said that the Applicants will not be presenting a new drawing this evening which shows nine foot wide parking because a hydrant needs to be moved off of the pathway and edge reinforcement needs to be determined. The easement currently exists on the drawing and is 10 feet wide. The Applicants will agree to edge reinforcement being required along the road because of a concern about demarcating where the right-of-way would end and private property would begin. The demarcation will be matched on each side.

Mr. Kyle Gulbranson said that as requested at the last meeting, he and Ms. Sullivan met last week to look at the worst-case and best-case scenarios for on-street parking. The plan which was submitted by Ms. Judy Schwartz was used to determine these scenarios, and all of the constraints were backed out in terms of intersections, setbacks, hydrants, driveways, and stop signs. What will determine where on-street parking can occur will be the locations and types of driveways. Scenario Nos. 1 & 2 were presented to the Planning Commission. Scenario No. 1 (best-case) is based on the best location of driveways for parking on this site, and it was determined that there could be 19 on-street parking spaces. This plan utilizes a single driveway with a 10 foot curb-cut on each lot. The lots on Sixth Street would utilize access from Sixth Street. The interior lots would have access from Jones Lane. The lots fronting on Canal Street would have access to single driveways from Canal Street. There would be seven parking spaces on Canal Street, and no trees would be disturbed in the right-of-way. The right-of-way would need to be improved to allow the parking to take place. Currently, there are some areas where there is parking; but in order to maximize the seven spaces, improvements would need to take place on Canal Street. Six parking spaces would be available on Sixth Street along with six parking spaces on Jones Lane itself. One parking space is questionable because it would be close to the k-turn, and it was difficult to determine if that would be a viable space. In Scenario No. 2 (worst-case), it was determined that there would be 11 on-street parking spaces available. A hypothesis was used that a number of residents would have a 20 foot wide driveway access to their property, especially on Canal Street. A scenario was used where the location of a large tree is close to the street, and it would be permissible by the Code for the people of one lot on Canal Street to use a split driveway to go around the large tree. On-street parking is conditional upon the location and types of driveways. To maximize the on-street parking, the Planning Commission would need to place conditions on the location of driveways. Two parking spaces were identified on each lot based on where the house is located and whether a garage would be incorporated into the plan. It is possible that there could be more than two off-street parking spaces; but in terms of on-street parking spaces, 19 is probably a comfortable scenario. Rehoboth Avenue was not counted because that lot which fronts on Canal Street and Rehoboth Avenue is commercial and could be utilized for any purpose that is allowed in a commercial district. It is unknown what scenario would occur with this lot. Currently, there are two parking spaces available on Rehoboth Avenue. On Canal Street, the removal of trees would allow for more parking. In this parking scenario, enough area was left around those trees which are currently in the right-of-way on Canal Street for them to be viable. The west side of Canal Street was not included in the analysis because of the narrow width of the pavement. Some parking is allowed on Canal Street. Any available parking on the west side should not be used for this project because it might have a negative impact on Canal Park. A 10'-0" x 20'-0" space was used to allow for maneuvering.

Exhibit 29 – Oak Grove On-Street/Off-Street Parking Analysis prepared by Mr. Gulbranson and Ms. Sullivan.

Mr. Shulman said that in the best-case scenario, there would be 49 parking spaces for 15 lots assuming there are two parking spaces off-site for each lot; and in the worse-case scenario, there would be 41 parking spaces for 15 lots. Mr. Patrick Gossett said that in the meeting of May 14, 2010, the number of current parking spaces is 19; and in the future, there would be 23 spaces. Mr. Spies added that in **Exhibit 25**, the Applicants proposed 23 on-street parking spaces after development, and total combined parking would be over 50 spaces.

Chairman Littleton said that the City will require two on-site parking spaces. Approximately 23

on-street parking spaces would be available for the community. He asked if this project is putting a parking load on the City, equal with general practices, or helping the City by providing extra parking. Chairman Littleton urged the Planning Commission to not look at the on-site parking because it would be a minimum of two spaces per lot. The Planning Commission should be looking at this matter from a City standpoint regarding what public access there is for parking. In the analysis, there would be 23 on-street parking spaces based on 15 lots, but one lot was excluded so there would be a reduction in the number of spaces. The commercial lot has an advantage because it is a corner lot so there would be the ability to do parking on Canal Street and Rehoboth Avenue. Mr. Gulbranson did not think that parking is possible on Canal Street for Lot 2 because of the setback from the stop sign and the intersection. There would be two spaces available on Rehoboth Avenue. Chairman Littleton said that currently the number of on-street parking spaces surrounding the entire property is 12.

Mr. Mellen noted that comparing the parking spaces is a different type of utilization. Once the homes are considered, there is a reasonable expectation that the density and parking would be equal to what it is in the rest of the City.

Chairman Littleton said that the Board of Commissioners would have to approve parking on only one side of the street, and it would need to have some feel for the impact of allowing parking on only one side of the street. This data becomes an important point and could be a negative impact on the City.

Mr. Gossett noted that currently there is some parking available on the west side of Canal Street. Parking would most likely service this development. Chairman Littleton also noted that parking was not considered on the south side of Sixth Street.

Mr. Shulman said that if there is a parking concern which the Planning Commission or the City Commissioners have, it is feasible the Applicants can put a clause in the covenants or requirements for three biggest lots to be required to have three off-street parking spaces. Knowing this, the Applicants could respond proactively to this concern. Chairman Littleton said that the public parking would then be the exclusive right of those owners, where the on-street public parking is the right of the City. Mr. Shulman said that the Planning Commission could impose a design requirement that eliminates the worst-case scenario. One of the things that the Planning Commission has to do when it reaches a decision on this subject, is to list the points that the public made. This is helpful in responding to the public comment about parking.

Mr. Gulbranson commented that the only way the Planning Commission can maximize parking and not take down trees in the right-of-way in Scenario No. 1 is to have set locations for driveway accesses. He did not know if that would be a condition placed on the approval or whether that is an aspect which is looked at, at the time of applying for a building permit. The Code states that driveway locations will be determined to maximize on-street parking. Chairman Littleton said that the parking issue has been predicated by having parking on one side of Jones Lane.

Mr. Lovett gave his presentation. The Applicants used the image of a car and came up with 25 parking spaces. Two spaces were included on Rehoboth Avenue. In 2007, seven residences were built with two public spaces in Cottages by the Sea. The Planning Commission is imposing on the Applicants what the City has not imposed upon itself over the past years. Over the Fourth of July weekend except for the fireworks itself, the Applicants checked 17 times on how much parking was actually available on Sixth and Canal Streets; and of the 57 available parking spaces on Sixth Street, 50% of the spaces were unused. Ninety-three percent of the parking spaces on Canal Street were unused. Average non-holiday including weekends was checked 18 times over an eight day period, and 80% of the spaces were unused on Sixth Street, and 93% of the spaces were unused on both sides of Canal Street. There are 37 individual residences on the two streets, and Oak Grove itself has 21 units occupied. The total combined parking as designed is 12 lots with 55 spaces, assuming two off-street spaces per residence. With regard to the Applicants' analysis vs. the City's analysis of parking spaces on Canal Street, there would be fewer parking spaces if driveways are located in a certain way. If 20 feet is used per parking space in the worst-case scenario, there would be more than four spaces available for parking. Ms. Cindy Lovett said that a parking space was placed in front of each of the two trees on Canal Street. Mr. Lovett said that it can be debated as to how long the parking spaces would be and whether or not it should be put in the homeowners' association agreement. Also, the agreement could state that the width of the driveways could be reduced in order to preserve trees. The Applicants' analysis shows that 36 new single-family homes built within the last five to seven years were identified; and on average, the off-street parking is 2.6 without a requirement to put in any more than two. The widths of the driveways were not studied.

Chairman Littleton referred to the amount of usage which takes place; and he noted that if the City

ever proceeds to fully develop Canal Park, it would be expected that there would be much more public use than there currently is in that area of the City.

Mr. Lovett said that one option would be to convey the deed and Oak Grove could restrict Lots 10, 11, 12, 13 & 14 to have a minimum of three off-street parking spaces. Five off-street parking spaces could be required to be deeded. Ms. Sullivan said that she could not force those lots to have three parking spaces without it being written somewhere. She cannot enforce the deed. The other issue she had with this requirement is that usually the third space becomes a patio. Mr. Shulman commented that the Building Inspector can enforce the three parking spaces if the Applicants submit a proposal to the Planning Commission that there be three off-street parking spaces; and as part of the approval, any building permit for a particular lot must have three off-street spaces. Mr. Lovett continued his presentation with the consequences of two-sided parking. The Applicants believe that, in this area of the City, parking on one side of the street is sufficient because mandated off-street parking handles most situations. Jones Lane is far from the beach and is not near restaurants or commercial retail. Most of the year, parking on Sixth and Canal Streets is very light. Parking on one side of Jones Lane is preferred because there are better general street aesthetics and a variety of "green" rainwater distribution benefits; and requiring parking on both sides further jeopardizes the trees the Planning Commission and the applicants have been working to preserve. A profile of the two-sided parking scenario was provided if the Planning Commission should require parking on both sides of the street. At most, five spaces would be added if there is parking on both sides of Jones Lane. The rain garden/bio-retention would be eliminated. A specimen tree at the end of Jones Lane would be put at additional risk. Stormwater would be collected rather than being dealt with on-site. Pervious asphalt would need periodic street sweeping. Mr. Lovett said that the Applicants are proposing a bio-retention/rain garden because Jones Lane would be short.

Ms. Judy Schwartz of GMB said that the pervious asphalt would be accepted by the Conservation District because of the high infiltration rate of the native soils, if the two-sided parking is a requirement of the Planning Commission or the City Commissioners. The pavement would consist of porous hot-mix asphalt. Mr. Alan Kercher, City Engineer said a request would need to be quantified as to what type of porous pavement would be allowed because it could become a serious maintenance issue, especially in summer. Ms. Schwartz noted that in regard to three off-street parking spaces, there would be logic in predetermining the locations of driveways on Jones Lane because of placing the bio-retention area. It would be feasible to identify where the curb-cuts would be on the parking side of Jones Lane.

Chairman Littleton said that there was consensus with the Planning Commission that 23 on-street parking spaces are attainable, and the Applicants should go back and plan out this scenario. Mr. Kercher believed the best-case scenario substantially addresses what the Applicants should try to achieve by locating the driveways where they will maximize parking and limiting the driveways to 10 foot wide. Chairman Littleton said there is agreement that on the edge of the paved road there is going to be structural edge reinforcement on Jones Lane. Because of the way the bio-retention area would run into the property as a natural area and the parking area would be a manufactured natural area, the Planning Commission is looking to have a visual edging for the property owners to know where the bio-retention area is and the right-of-way ends. Ms. Schwartz was not sure what the Planning Commission had in mind for the edging. Chairman Littleton thought a paver could be used to put in the grass to demarcate the edge. Mr. Kercher said that from a practical long-term maintenance standpoint, the best edge would be some kind of a mini-structural type recessed curb because it will give stability to the edge of the reinforced matting or grass pavers. When there is no edge restraint for the parking, it will most likely rotate. Typically, there should be a substantial structural edge restraint on both sides of the pavers to keep the edges from rotating. The pavement edge will approximate it but will not do nearly as good a job as a vertical rigid piece of concrete. Chairman Littleton said that subject to an engineering consideration, the Planning Commission wants some type of demarcation between the grass that belongs in the right-of-way and grass that belongs to the individual. He preferred to let the engineering aspect of this up to Mr. Kercher and the Applicants for them to figure this out and then return to the Planning Commission. Mr. Shulman suggested that the Applicants think about something to be put in the homeowners' association documents that specifically says the people are not to appropriate the bio-retention area. Mr. Mellen said that the right-of-way for Jones Lane will end at the edge of the parking, and there must be a City easement which the Applicants have agreed to. They will be responsible to maintain the easement even though the street will be dedicated.

Public Comment:

1. Mr. Don Walker, 10 Sixth Street, asked if Jones Lane would be a private or City road, and if there would be public parking.

Chairman Littleton said that the road would be constructed at the expense of the developer, but it would be a dedicated City road. The City would maintain the road. Because of the design of the bio-retention area in the right-of-way, the Planning Commission would require that the Applicants maintain the viability of the bio-retention area. There will be some sort of agreement between the homeowners' association and the City that would obligate the homeowners to maintain this area. Public parking would be allowed on Jones Lane. Mr. Shulman said that before there is final approval, the Planning Commission would need to see the final homeowners' association documents and see what the City Solicitor has drafted.

Mr. Lovett thought that it is time to close the public hearing tonight, and he would like to see that happen. Chairman Littleton said that he will make that decision.

Chairman Littleton felt strongly that there should be a paved sidewalk for the length of this property on Canal Street and should connect to the existing pavement on Rehoboth Avenue. One reason for this in the Comprehensive Development Plan (CDP) is that the Planning Commission is trying to make a walkable community and deal with bicycling. The length of the property sets precedent for the rest of that plot. If there is going to be development at Canal Park, it will give handicapped people must easier access and will eliminate people assuming that they own out into the right-of-way. Chairman Littleton also felt strongly that there needs to be access from Jones Lane to Canal Street.

Chairman Littleton said that the Planning Commission could probably get to a resolution that is not voted on if the issue of parking on one side of Jones Lane is resolved. He was not sure when the City Commissioners would need to act on this issue. By Code, the Board of Commissioners is the only entity that can address parking on one side of the street. If the Planning Commission thinks it is a good idea for parking on one side of the street, then the City Commissioners are the only ones who can agree to that. This major subdivision cannot be approved without the City Commissioners' approval because the Planning Commission does not have the authority to establish parking on one side of the street.

Mr. Shulman said that there have been a lot of comments about which way the lots face on the corner of Jones Lane. One of the consistent arguments that he did not think has been addressed is a concern with the streetscape on Sixth Street if the lots face as they are currently laid out in the proposed subdivision.

Chairman Littleton said that there was strong public testimony about parking on Sixth Street. It was at the Planning Commission's urging of the Applicants to re-orient the lots to be respectful of the Sixth Street parking. The other thing about the streetscape is what currently exists on the other side of this property on Sixth Street, such as condominiums and townhouses. Mr. Lovett said that the Applicants will put in the architectural review association documents, a requirement that the lots on Sixth Street have the appearance of also fronting on Sixth Street.

Mr. Mellen assumed the Chairman's role in order for Dr. Littleton to speak about sidewalks and pathways. Dr. Littleton said that there are sidewalks on Rehoboth Avenue, and proposing a sidewalk on Canal Street would connect the Rehoboth Avenue sidewalk and would move parallel to the Canal. The CDP strongly recommends this, and the City currently has been struggling with discontinuous sidewalk issues. Dr. Littleton felt very strongly that a sidewalk is needed on Canal Street.

Chairman Mellen said that the problem with putting in a sidewalk on the Oak Grove side of Canal Street is the 40 foot width right-of-way, and trees would be lost.

Mr. Gossett asked, in regard to the CDP and the development of a canal park, if it would be better to put a sidewalk on the canal side of Canal Street that would eventually have a continuous pathway from Lewes to Dewey Beach. Dr. Littleton said that the Planning Commission does not have any ability to require such a thing on this development. Under the safety, public access and public welfare of the Code, the Planning Commission has the ability to require a sidewalk on the Oak Grove side of the Canal Street. A sidewalk cannot be required on a property that the Applicants do not own or abut against.

Mr. Markert voiced concern with extending the sidewalk along the Oak Grove property because it would go nowhere and would not be continuous to the end of the block.

Mr. Shulman said that a sidewalk would keep pedestrians generally out of the street. If the owner of the property between the right-of-way of Canal Street and the Canal, whether it is the Army Corps of Engineers or the City, would agree to make a nicer pathway, it would provide pedestrians with the opportunity to not walk on the street. If the goal is to generally keep pedestrians off the street and if the Applicants can work something out with the Army Corps of Engineers to put in a chipped wood path on the canal side of the Canal Street, this would be reasonable. He did not understand having the Applicants build a sidewalk that would stop at the

middle of the block.

Dr. Littleton said that he wants to have access directly on an ADA compliant sidewalk coming off of Rehoboth Avenue for pedestrians going toward the Canal, and he would like that there would be a pathway on the canal side of the Canal Street. This would not apply to sidewalk connecting from Canal Street to Sixth Street because there is no connecting sidewalk from Sixth Street. The Oak Grove property does not abut on any area of the sidewalk on Sixth Street. The design of a sidewalk along Canal Street would need to be deferred to the City Engineer. It would be ideal for no trees to be lost on the Oak Grove side of Canal Street, but he would rather see the trees taken down than to not have a sidewalk. Mr. Kercher said that a sidewalk could jog around a tree; but it would be out of the right-of-way, and easements would be needed.

Mr. John Gauger said this development could connect by sidewalk to Rehoboth Avenue. The problem is that it does not connect to any more sidewalk, but this does not mean that the City cannot require more sidewalk to connect to Country Club Estates. Ms. Sullivan noted that the City adopted a code in February 2010 that anyone who requests a building permit that is at least \$20,000.00 and 50% or more of the lots on the block have sidewalks, that person is required to put in a sidewalk in front of his/her property.

Ms. Lovett said that this would create a problem because just past Oak Grove, there is a grass space in the triangle with driveways all the way to the parking lot of Canalside Inn, so there is no chance that sidewalks will be put in, in that area. Ms. Sullivan said that sidewalks can be put on top of the apron.

Mr. Lovett asked why the onus is being put on the Applicants to put in a sidewalk. Dr. Littleton said that the Applicants would pay for the sidewalk. Mr. Lovett said that the City could require a sidewalk at anytime, not necessarily now. Dr. Littleton said that this would be done as a condition of the project if a sidewalk is required.

Mr. Gulbranson noted that sidewalks are built in the right-of-way. There is a right-of-way on both sides of Canal Street, and there is less than a 40 foot width approaching Rehoboth Avenue.

Chairman Mellen asked how many people would want to gain access to the houses on the six lots on Canal Street vs. heavy use on the canal side of Canal Street. He would prefer that a sidewalk be put in on the canal side of Canal Street because a sidewalk would end in the middle of the block on the Oak Grove side of the street.

Dr. Littleton said that if the Planning Commission ends up with the Applicants putting in a sidewalk on the canal side of Canal Street and if it legally can be done, he would be comfortable with that.

Mr. Gossett suggesting asking Mr. Gulbranson, Ms. Sullivan and Mr. Kercher to explore the aspect of having a cement or pervious surface sidewalk on the canal side of Canal Street for at least the length of what is currently being talked about, and perhaps to look forward as to the City setting an example that the continuation of the sidewalk would be at the City's expense. Dr. Littleton thought that the sidewalk should be ADA compliant. Depending on what the engineer says, the Applicants may be repaving Canal Street because of tearing it up for water and sewer services.

Chairman Mellen said that because of the width of Canal Street, the likelihood of putting sidewalks on both sides is probably remote. The sidewalk that appears in front of all the houses in the City is an accessway for people not on that street to come down because they are going someplace. On this particular street, people are not going anyplace unless they are using Canal Street. The logic is to put the sidewalk on the canal side for the future, whether it is done by the Applicants or the City. Ultimately, if Canal Park is built, there will be a pathway on the canal side of Canal Street.

Mr. Shulman said that the Planning Commission needs to decide where the sidewalk makes the most sense, and if it is feasible economically to expect any sidewalks to be built on either side of Canal Street.

Mr. Lovett said that he would like to see a mulch pathway put in all the way down Canal Street, and he would lead an effort to do that with the Army Corps of Engineers. Canal Park is lovely as it is, and the street is beautiful. What the CDP recommends is complete streets program. Complete Streets is an acceptable street design, indicating that the road is for pedestrians, cyclists and motorists. There are no sidewalks or rolled curbing. If a sidewalk is put straight down the canal side of Canal Street, a lot of trees would be taken down.

Mr. Shulman wondered, in the nature of "sidewalks" if what is being talked about is a walking area and trying to keep the character of the street in the neighborhood. He asked if it would be possible for the canal side to have a strip along Canal Street for pedestrians only.

Dr. Littleton said that the Applicants have designed a pathway partially down Jones Lane which is a pervious sidewalk. The pathway on the canal side of Canal Street could be similarly designed. The idea would be to have pedestrian access, not bicycle access. He suggested that Mr. Gulbranson, Ms. Sullivan and Mr. Kercher come up with a proposal and work with the Applicants' engineer to meet walking accessibility.

Chairman Mellen did not think that the Planning Commission should consider cutting down trees for a sidewalk on either side of the street when it has made so much effort to save trees. What he would like to see the Planning Commission do for the area is to not cut down trees unless necessary, and try to achieve the goal of walkability principally for Canal Park. The practicality of walkability for six houses is a reality.

Mr. Shulman would like to see some cost estimates for extending the asphalt and building a sidewalk on Canal Street.

Dr. Littleton felt strongly that there should be a pathway connecting Jones Lane with the Canal. Correspondence on this issue, both for and against, has been received; and everything he has read on cul-de-sacs is that pedestrian and bicycle access should be provided. This is a City development, not a gated community. There is public good to have public access and walking across this development. Someone needs to look after the interest of the future owners of the interior lots. The greatest feature of the entire development, besides trees and nature which will be preserved, is the Canal and Canal Park. The future owners will not have access across their own development to the Canal unless they walk across their neighbor's yard. What Dr. Littleton would like to see is that the right-of-way be continued which would require an easement. The ability to have flexibility with parking and access is important. There has been a lot of concern by the Planning Commission about gridlock or capture of emergency vehicles on this property. A pathway, not dedicated to the roadway, that would have the ability to get an ambulance out of the property when there is an emergency and fire hoses into the property, makes sense to Dr. Littleton. The pathway does not need to be a concrete paved sidewalk. It should be a continuation of exactly the same construction as the proposed partial pathway down Jones Lane. Dr. Littleton's preference is that the pathway would be dedicated to the City, but he was willing to allow it to be under the homeowners' association with the same construction design is currently proposed for the pathway on Jones Lane.

Mr. Gossett thought that connectivity is not an issue, but the liability of the pathway between two home and open 24 hours a day are issues. He did not know where that responsibility would fall, if the City or the homeowners' association would own it.

Mr. Shulman said that as a practical matter, the pathway cannot belong to the homeowners' association or the City because it would eliminate the 50 foot frontage required of at least one of the lots fronting on Canal Street, unless the pathway would be three feet wide. The pathway could not be owned by anybody other than the lot owner. If the pathway is owned by the lot owner, there would be issues of whose responsibility it would be to maintain the path, etc. There is an issue concerning the people on Jones Lane. Mr. Shulman said that proposing something limited to the new lots on Jones Lane and limited to daylight hours is something the Applicants may choose to do.

Ms. Donna Benge noted that she is against having the pathway. Ms. Benge hopes to build a home in the development, but she does not want to invite the public to walk by her side windows. It would be a detriment for her and the other lot owners. Emergency vehicles could come from Canal Street, Sixth Street or Rehoboth Avenue. It would be hard to police letting the people from Jones Lane to walk through. It would be difficult to determine who would be allowed to walk through. Dr. Littleton said there would be two lots where people would be walking on the side. At some point, the Planning Commission members will need to vote on what is to be approved or not approved.

Ms Cindy Lovett said that she is against having the pathway. Connectivity is a good idea in large developments, but the Oak Grove project is small. To say that someone cannot go around is incomprehensible.

Mr. Gulbranson thought that if the Planning Commission would require a sidewalk to be built on the Oak Grove side of Canal Street that would connect to Rehoboth Avenue, it would generate demand for access to that sidewalk. People would want to get to that sidewalk because it would be an easier way to get to Rehoboth Avenue.

Mr. Lovett said that the Applicants have gotten conflicting priorities across the board: 1. Have more asphalt for service vehicles or smaller footprint for a greener environment. 2. Work for a greener community, but does it sacrifice safety for vehicles, pedestrians, or the handicapped. 3. Hydrants exceed Code or allow more parking. The City is asking, and the Applicants have agreed, to two fire hydrants neither of which are

required by the Code. This cuts into parking because of the limitations on hydrants. 4. Utilities under street to preserve trees or alongside for long term convenience. 5. More parking or more trees. 6. Connectivity or privacy. 7. Non-code requirements vs. property owner's right to use his property as he sees fit. 8. More discussion or right to due process.

Dr. Littleton returned to his position as chairman. Chairman Littleton noted that the "best and final application" was submitted on March 19, 2010. The Applicants asked the Planning Commission to table its initial application. They did ask the Planning Commission to reconsider it, and the first time the Planning Commission received the Applicants' revised application was March 19, 2010. The Applicants immediately ran into legal problems and Code problems. For two years, the Applicants had not given the Planning Commission something legally able to be acted upon. He felt that the mistake that this Commission has made was to not disapprove this application when it was blatantly not in compliance with the Code. This could have been done expeditiously in the first meetings. Rather, at the Applicants' request, the Planning Commission deferred action on this application. The Planning Commission had not been provided with something it could act on until just several months ago. The Planning Commission has worked hard during all of this time. In addition, the Planning Commission went with the Applicants to three City Commissioners' meetings and the Board of Adjustment meeting in support of this application. Mr. Spies fully endorsed Dr. Littleton's comments.

Chairman Littleton said that with the conditions Mr. Spies has laid out, the Planning Commission needs to get together some articulation of a possible resolution on this application. Even though there has been consensus on some things, when everything is put together, there may be members who will support this and member who will not support this. There is tentative approval of Jones Lane. The Planning Commission has not seen the drawing regarding parking. There will be a 10 foot easement around the entire property. The Applicants are working on a solution on neutral parking. There will be a design change in terms of the edge of the right-of-way. Ms. Judy Schwartz said that the hydraulic analysis will need to be completed. She will need to know the square footage of impervious surface on Canal Street, of which the sidewalk can have an impact on that. The sidewalk on Canal Street could open up many other issues related to drainage on Canal Street and widening of Canal Street. If the locations of the driveways are going to be predetermined, it will help with the bio-retention. Mr. Kercher said that he will need information on grading and drainage,

Mr. Shulman said that when the Planning Commission was drafting the dead-end street provision, the way it was written is, "[A]s a condition of its approval of the short dead-end street, the Planning Commission may require that parking be restricted or prohibited on the short dead-end street; and if so required, final subdivision approval shall not occur until after the Board of Commissioners has adopted an ordinance incorporating such restrictions".

Chairman Littleton noted that there was no consensus of the majority of the Planning Commission to vote on a condition to require a concrete paved sidewalk on the Oak Grove side of Canal Street, but there was consensus of the members to hear something about pedestrian access along Canal Street. This will give Ms. Schwartz the ability to move forward from a hydraulic standpoint.

Mr. Jim Lovett found the pathway to be disturbing, but the idea of making a community contribution would sound appealing to him.

Chairman Littleton said that at the next meeting, the Planning Commission may have some of the skeleton for a resolution on known things which have been discussed.

Mr. Kercher said that from a site plan perspective he can sign off without the hydraulic analysis, but to say that this can go to construction, he needs to see the hydraulic analysis, grading plan, plan and profiles, and construction details to see that it is engineered correctly and there is enough detail to properly construct it. He suggested that the Applicants' engineer should do preliminary calculations, plan and profile. Mr. Kercher said that it would be fine if the Planning Commission conditions an approval based on pending information. Chairman Littleton suggested that Ms. Schwartz and Mr. Kercher should come up with what is needed.

Mr. Lovett will deliver another drawing on parking to Building & Licensing prior to the next meeting.

Chairman Littleton requested that the City Engineer, Building & Licensing, Land Use Planner and City Solicitor meet to write a conditional approval resolution for the Planning Commission to either approve or disapprove.

Chairman Littleton said that the Planning Commission has not looked at the updated homeowners' association document. He also said that once the Planning Commission has taken official action that would nail down the rear lot line with the lot layouts, the Building Inspector and City Solicitor would find that or some

time close to it as meeting the conditions of the Applicants' variance. Mr. Lovett's question of when the lots can be recorded because the Applicants need to market them for sale, will be deferred to the City Solicitor.

The Public Hearing was closed and will be reopened at the next meeting.

OTHER BUSINESS

Chairman Littleton called for discussion and possible follow-up action from the Planning Commission's July 9, 2010 Workshop Meeting with DeIDOT regarding the State's plans for the Park & Ride facility and roadways, and the Chamber of Commerce's proposed Destination Station at that location. At its June 11, 2010 meeting, the Planning Commission passed a resolution expressing its concern about the lack of coordinated planning and agreed to get needed factual information.

This topic will be placed on the agenda for the August 13, 2010 Regular Meeting.

Chairman Littleton called for the Building Inspector's Report.

Ms. Sullivan noted that the City received a grant from the State for a tree canopy survey. She met with Mr. Bryan Hall this week, and they are starting the process.

Chairman Littleton called for the City Solicitor's Report.

There was nothing to report.

Chairman Littleton called for the report of the State's PLUS review of the Comprehensive Development Plan.

Chairman Littleton commented that the State's recommendations were provided in a letter dated June 21, 2010 to Mayor Samuel Cooper from Constance Holland, Office of State Planning Coordination Director. Chairman Littleton's proposal to Mayor Cooper is that this document be incorporated in its entirety as Appendix B in the CDP. Mr. Bryan Hall and Mr. Bruce Galloway have agreed to the incorporation of this document in the CDP.

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

There was nothing to report.

Chairman Littleton 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.

One new partitioning application has been filed for a property located at 2 St. Lawrence Street. The Preliminary Review will be held on August 13, 2010.

The next Regular Meeting will be held on August 13, 2010 at 6:00 p.m.

Mr. Gauger made a motion, seconded by Mr. Spies, to adjourn the meeting at 10:28 p.m.

RECORDED BY

(Ann M. Womack, Recording Secretary)

**MINUTES APPROVED ON
AUGUST 13, 2010**

(Preston Littleton, Jr., Chairman)