

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

November 8, 2013

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:32 p.m. by Chairman Preston Littleton on Friday, November 8, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

Mr. Paull Hubbard was welcomed as a new member to the Planning Commission. Mr. Francis Markert and Mr. David Mellen were reappointed to the Commission.

ROLL CALL

Mr. Francis Markert called the roll:

Present: Mr. Harvey Shulman
Mr. Paull Hubbard
Mr. David Mellen
Chairman Preston Littleton
Mr. Francis Markert, Jr.
Mrs. Jan Konesey
Ms. Lynn Wilson
Mr. Michael Strange

Absent: Mr. Brian Patterson

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

A quorum was present.

Chairman Littleton noted that Ms. Joanne Hess, former member of the Planning Commission, had passed away.

VERIFICATION

Ms. Ann Womack, City Secretary, verified that she had met the requirements for the meeting notice to be posted, advertised, mailed and signage.

ELECTION OF OFFICERS

Mrs. Jan Konesey made a motion, seconded by Mr. Harvey Shulman, to approve the election of Preston Littleton as Chairman, David Mellen as Vice Chair and Francis Markert as Secretary. Motion carried unanimously.

APPROVAL OF MINUTES

Minutes of the May 10, 2013 Planning Commission Regular Meeting and August 9, 2013 Planning Commission Special Meeting were distributed prior to the meeting. Minutes of the August 9, 2013 and October 11, 2013 Planning Commission Regular Meetings were not available for approval.

Ms. Lynn Wilson made a motion, seconded by Mr. David Mellen, to approve the May 10, 2013 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

Minutes of the August 9, 2013 Planning Commission Special Meeting were deferred to the next scheduled meeting.

CORRESPONDENCE

Correspondence will be read when the Building Inspector's Report is heard.

NEW BUSINESS

Chairman Littleton called for the Preliminary Review of Minor Subdivision Application No. 1013-03 for the properties located at 114 and 118 St. Lawrence Street and 113 Lake Drive, Block 23, into three (3) lots with Lot Nos. 9, 10 and a portion of 11 facing St. Lawrence Street and Lake Drive becoming one (1) lot of 6,920.44 square feet, a portion of Lot Nos. 11, 12 and 13 facing St. Lawrence Street becoming one (1) lot of 5,025 square feet, and a portion of Lot Nos. 11, 12, 13, 14, 15 and 16 facing Lake Drive becoming one (1) lot of 11,279.91 square feet. The

properties are owned by Charles R. Bailey, Jr. & Kathleen Ann O. Bailey and David I. Rowland & Suzanne B. Rowland. The Minor Subdivision has been requested by Veronica O. Faust, Esq. of the law firm Morris James LLP, on behalf of the owners of the properties. Chairman Littleton provided the Preliminary Review procedures.

Building Inspector Terri Sullivan read her report with exhibits.

Exhibit A – Application packet which includes:

- (1) Cover letter to Building Inspector/Planning Commission
- (2) Application
- (3) Planning Commission Affidavits
- (4) Deeds
- (5) Tree Survey/Protection/Planting Plan
- (6) Photographs
- (7) Existing Conditions Plan
- (8) Proposed Resubdivision Plan

The owners wish to subdivide Lot Nos. 9, 10, 11, 12 & 13, Block 23, into three lots with the northerly half of Lot Nos. 12 & 13 and a portion of Lot No. 11 becoming one lot known as 114 St. Lawrence Street and consisting of 5,025 square feet; the entirety of Lot Nos. 9 & 10 and a portion of Lot No. 11 becoming one lot known as 116 St. Lawrence Street and consisting of 6,920.44 square feet; and the southerly half of Lot Nos. 12, 13, 14, 15 & 16 and a portion of Lot No. 11 becoming one lot known as 113 Lake Drive. Currently, there are 20 trees located on the property on the side of the street being divided per the tree plan. One tree on the northerly half of Lot No. 13 is proposed to be removed. Lot Nos. 12, 13 and a portion of Lot No. 11 will contain no trees. The minimum required will be four trees to meet density requirements. All of the other lots being subdivided meet the density requirements. The existing curb cut in front of Lot No. 13 will be required to be closed up at the time of demolition. Based on the surveys submitted, the proposed lots can fully contain a 4,000 square foot rectangle, will have a lot size of at least 5,000 square feet and will have 50 feet of frontage on a street. While there are four lots shown on the surveys, the northerly half of Lot Nos. 14, 15 & 16 are not being changed from their current configuration.

Mrs. Konesey said that there is a discrepancy between the existing and proposed survey with regard to the lot consisting of 5,625 square feet located on the northerly portion of Lot Nos. 14, 15 & 16. The rear lot line is shown as 100.00 feet on the existing survey and 75.00 feet on the proposed survey.

City Solicitor Glenn Mandalas noted that the northerly portion of Lot Nos. 14, 15 & 16, known as 112 St. Lawrence Street, is owned by the Baileys and is not changing. The southerly portion of Lot Nos. 14, 15 & 16, known as 113 Lake Drive is owned by the Rowlands. Lot Nos. 9, 10, 11, 12 & 13, known as 114 St. Lawrence Street, is jointly owned by the Rowlands and Baileys. Lot No. 9 with 25 feet of frontage is original to the South Rehoboth lots, and the ownership of this lot has been associated with the two other lots.

Mr. Mellen said that on the proposed boundary survey, the azimuth line on Lake Drive is in error. That is exactly the azimuth of the horizontal lines that run parallel to St. Lawrence Street. A sealed survey has been submitted that is not correct.

City Solicitor Mandalas said that when there is a clear error, the Planning Commission does not have to rely upon the survey. It is the duty of the Planning Commission to investigate and figure out what is correct.

Mr. Shulman said that unless there is some other information or evidence that is credible, the Planning Commission should rely on the survey. The other information or evidence could be another survey that the Planning Commission feels is more laudible. The other evidence could be that there are self-contradictory things on the survey.

Mr. Mellen found the errors on the survey when he was looking for the area of land that will be added on to the Rowlands property. That area of land is slightly more than 4,000 square feet, not 5,000 square feet. Using the azimuths and the distances as described on the drawings, that area does not close. The properties as described in the Barnett deed match this in terms of areas. There is question as to whether the Planning Commission will be creating three lots or will be subdividing the properties that were purchased jointly and creating four lots. The fourth lot being added to the Rowlands property. The question then would be how the Planning Commission would create four lots with the fourth lot being less than 5,000 square feet. If four lots would be created, it would be considered a major subdivision, not a minor

subdivision. Another question was raised as to how the property would be ultimately transferred since there are separate owners of the two existing lots. The correct way to have done this would have been to declare the entire area jointly with the owners' rights to a square footage basis, and then subdivide it. The Planning Commission needs to know the ownership of the property it subdivides.

Chairman Littleton clarified that the land before any subdivision takes place is a piece of property that is jointly owned by the two couples. What is being proposed as a minor subdivision is a request to create three lots of which two are new lots, and the third lot is an extension of the Rowlands existing lot.

Mr. Shulman said that on Lot No. 9 there is no water and sewer. Chairman Littleton noted that the City only has provided water and sewer on St. Lawrence Street and not on Lake Drive. Mr. Shulman said that in order for the Rowland property to get water and sewer, there is an easement on the Bailey property. He asked why there is a property line if the lots are merged.

City Solicitor Mandalas noted that the lots are merged for zoning purposes, not for title purposes. All three of the lots can be conveyed for title purposes to separate owners; but for zoning purposes, Ms. Sullivan can only issue one building permit to build a structure. The reason that the owners are being asked to subdivide is because the property is merged for zoning purposes, but not for title purposes. The Planning Commission is being asked to create a lot that meets the Zoning Code.

Mr. Shulman said that for purposes of the Zoning Code, the two big lots are one lot. He asked why it is shown as two separate lots on the survey. The Planning Commission needs to know where the property lines are for ownership purposes and where the lot is for zoning purposes.

Mr. Mellen said that the Applicants are coming before the Planning Commission for a partitioning issue, so perhaps there should be another sheet to basically show the property for zoning purposes. If the lines are taken out, then the Planning Commission would be creating three lots, one of which would be non-conforming that would be merged into a pre-existing lot. From a zoning standpoint if the property is shown as one lot and the Planning Commission is asked to subdivide it into one lot of more than 5,000 square feet and another lot with 4,000 square foot lot. This would be a two-step process because there are different owners of the various lots. The first step is to subdivide a property that has been jointly bought and is merged by use. From a zoning standpoint, this is one lot, but from a tax standpoint, they are three lots. The second step would be to add the sub-standard lot to the lot owned by the Rowlands.

Mr. Shulman said that in looking at the cover survey, it appears that the Planning Commission is dealing with four lots that would become three lots. In reality for zoning purposes, the Planning Commission is dealing with two lots that would become three lots.

Mr. Mellen noted that the Planning Commission would have to be guaranteed that the easement for water and sewer would continue and run with the property.

Ms. Veronica Faust, Esq. of the law firm Morris James LLC, represented the Charles & Kathleen Bailey and David & Suzanne Rowland where were in attendance at the meeting. The Rowlands own 113 Lake Drive. The Baileys own 112 St. Lawrence Street. The City has deemed that Lot Nos. 9, 10, 11, 12 & 13 have been used as one parcel for 45 years. When the Barnetts owned the property, they have had three separate tax map numbers and three separate parcels. When the Barnett Estate sold the property to the Baileys and Rowlands in August 2013, the parcels were conveyed in that capacity. The Rowlands have owned their property since 1989. The Baileys have owned their property since 2001. The Baileys and Rowlands purchased the property with the intention of controlling its future use and development because they have properties of substantial value on that street. The Applicants believe they have presented the Planning Commission with a plan that is a viable subdivision and will preserve the integrity of St. Lawrence Street and Lake Drive. Attorney Faust apologized for the errors on the surveys. These errors will be rectified, and revised surveys will be presented to the Planning Commission. If the property is subdivided, the proposed plan is that the Baileys property will not change. The existing lot line for the Rowlands. In the proposed plan, the southerly portion of Lot Nos. 11, 12 & 13 would be added to the Rowlands' property. The Rowlands want a buffer to extend the lot on Lake Drive in order to preserve that area. The Baileys are hoping to convey the northerly portion of Lot Nos. 11, 12 & 13 to themselves. Lot Nos. 9, 10 and the westerly portion of Lot No. 11 would be conveyed to the Rowlands. After the subdivision, the final subdivision plat would be recorded in Georgetown. At that point the two remaining lots could be recorded in the names of both couples and they could do a conveyance. The deed would be simultaneously recorded for Lot Nos. 9, 10 and the westerly portion of Lot No. 11 which would suggest that this would be conveyed to the Rowlands.

Mr. Shulman said that the southerly lot is owned solely by the Rowlands. The new lot which would be created on Lake Drive is currently part owned by the Rowlands, but would still be owned by both couples.

Chairman Littleton noted that the Planning Commission has been told there is an agreement between the parties. The Application shows that there is no agreement. There are three parties involved, individually owned and jointly owned. Attorney Faust thought that the Code provision was with respect to third parties. She did not think that the Code provision was with respect to the owners. Attorney Faust thought that the genesis was that the Planning Commission did not want contracts with third parties. If the Planning Commission wants to consider this an agreement, then it is an agreement. This does not run a fowl of the spirit of the law.

Mr. Mellen acknowledged that if the Barnett children would have wanted to subdivide the property, they could have come before the Planning Commission as the owners and subdivided the property; and they could have agreed amongst themselves which lots would be owned by whom provided all of the lots would be created greater than 5,000 square feet.

Chairman Littleton noted Mr. Shulman had reported that the practice of the Planning Commission is that it could not allow another party to come before it. The original party who came before it had to complete everything the Planning Commission agreed to. Then subsequent to the partitioning and its filing, the original party could do something with the subdivision if it chose to.

Mr. Shulman said that currently there are two applicants, the Rowlands as a couple who own 113 Lake Drive and the other as four people who own one lot with combined interest. The concern with conveyance is that it creates an awkward situation for everybody. People may be making a deal based on the belief that the Planning Commission will do something in their favor.

Chairman Littleton said that continuing with the process for this Application would set a precedent for the Planning Commission. The Planning Commission has to be consistent with what it is going to do in the future. This is where Planning Commission would get into a legalistic discussion of a stepwise process.

Attorney Faust did not think a surveyor made the errors on the boundary survey. She thought it was a transferring of the data to the survey. This will be addressed immediately next week. She also agreed that the azimuths need to be corrected.

Mr. Mellen noted that what is being violated with the proposed plan is that the Planning Commission would be creating two lots which are conforming and one parcel that is non-conforming which will then be merged into another lot. The Planning Commission cannot create a non-conforming parcel.

Mr. Charles (Rick) Bailey, 112 St. Lawrence Street, said that the owners chose to do tenants-in-common which can have a proportional ownership. The owners chose not to do an LLC. Ownership interest has been created which accomplishes the same thing as an LLC. With the tenants-in-common, the Rowlands have a greater percentage than the Baileys do. In anticipation of getting this subdivision approved, the Rowlands will have a larger parcel to add to their existing property that would come out of the tenants-in-common ownership they have by having a greater percentage to it. If it ends up that there is one total parcel, the Rowlands' ownership interest would be greater than the Baileys' ownership interest. Mr. Bailey acknowledged that currently there is an agreement that there are different percentages of ownership on this property.

Chairman Littleton mentioned that if the Rowlands' existing property including the jointly owned property were in the same entity, then the Planning Commission would not have a problem.

Mr. Shulman said that the Rowlands would be the recipient of the property that is being subdivided. The Planning Commission will be creating a new lot that does not currently exist. The new lot will be part of the lot that all four own and part of the lot that the Rowlands own. The way the Planning Commission has treated this in the past is that if there is a subdivision, and as a result of the subdivision, there is a piece that would be attached to an adjacent lot which would become larger. The order of the adjacent lot has to file an application with the Planning Commission. The Rowlands are asking to be the recipient of the land that is being cut off of the lot that is being subdivided. The Planning Commission requires both the person giving up the land and the person receiving the land to file applications, one for the person who is giving up the land and one for the person who is receiving the land. The purpose of the Preliminary Review is to see if the Application is substantially complete and accurate. The 100 foot error would not make the Application substantially incomplete and inaccurate, but there is a question of that and the azimuth, etc. which would make it not substantially complete and inaccurate. The other purpose of the Preliminary

Review is to see whether there are questions from the Planning Commission to put on the table now and not at the Public Hearing. Tenants-in-common is basically a partnership, and the Planning Commission would require a copy of the partnership agreement and would need to know how the decisions are made for the partnership. With regard to the extensions of land to the south of Lake Drive on the survey, one is noted as existing and the other is an existing extension of Lot Nos. 9-13. Mr. Shulman questioned who owns the existing extension of Lot Nos. 9-13. This would be of concern to the Planning Commission because it is directly bordering on Silver Lake, and the lake is a public resource. The extension of land owned by the Rowlands has the same tax map number and cannot be ignored because it is part of the Rowlands lot on the north side of Lake Drive.

Attorney Faust had not anticipated that the extensions of land to the south of Lake Drive would be included in the subdivision application. The easterly extension of land to the south of Lake Drive is owned by the Rowlands. This piece of land is not part of the subdivision application. With regard to the existing extension of Lot Nos. 9-13, the tax map number that is attributed to this parcel says the State of Delaware owns it. The Applicants are not aware of any deed or any other ownership records by the State of Delaware. When the Barnetts conveyed the property between St. Lawrence Street and Lake Drive to the Baileys and Rowlands, they also gave them a quitclaim deed for the existing extension of Lot Nos. 9-13 along Silver Lake. The Barnetts have utilized the extension for 40 years and built the gazebo. The Baileys and Rowlands have continued to maintain the extension of land. The Applicants are not asking for any subdivision of the extension of Lot Nos. 9-13.

Mr. Shulman suggested putting a note on the survey that says the Planning Commission action did not in any way address the existing extension of Lot Nos. 9-13. With regard to the existing extension of land which is owned by the Rowlands, they deed states that they own the property to the lake.

Mr. David Rowland noted that when he and his wife purchased the property, they were led to believe they owned the extension of land to the lake. The deed is consistent that the Rowlands own the extension of land. The tax map identification shows that the Rowlands are the owners of that property.

Chairman Littleton said that if the Planning Commission follows through with what is being asked for, it will be creating a new lot. The new lot would be part of what the Rowlands currently own plus a new piece of land. The new lot being described would be an L-shaped lot that excludes any land owned by the State. The Planning Commission wants to explicitly say that whatever action it takes has nothing to do with the extension of land to the south of Lake Drive.

Mr. Shulman said that if ownership is affirmed, the Planning Commission would need a disclaimer stating that anything there would be used to calculate FAR, etc.

Mr. Rowland said that when the property at 113 Lake Drive was conveyed to them, it was conveyed in two parcels. It is conceivable and likely that there is a different tax map parcel number.

Mr. Mike Strange said that the Applicants have signed Affidavits with regard to the ownership in question. All the owners of the property have made the Application, and they are the legal Applicants so it is not unclear as to what actions will be taken. He asked if there is an illegal issue with how this has been presented with this group being the legal Applicants.

City Solicitor Mandalas disagreed with the analysis that there would be a creation of a fourth non-conforming lot. There would be three new lots being created. With regard to ownership, there is a provision in the Code that clearly says there can be no agreement to transfer or sell to a third party as part of a subdivision. There will be a portion added to the Rowlands' lot, and the Rowlands will gain property from the entity that owns the larger parcel. There is agreement to transfer a portion of the property. This has become an issue because there is one property which is owned by one couple and the larger parcel is owned by everyone.

Chairman Littleton said that there are two different entities. The Rowlands own the existing house and lot, and the Baileys and Rowlands own the larger parcel.

Mr. Strange said that in this particular case, it is an issue that needs to be addressed that the Planning Commission should not be determining business arrangements to facilitate land use decisions in this case. If all of the owners have signed affidavits, and they are present, the result of the action if everything was done simultaneously is that there will be three conforming lots even if there was an instantaneous intervening act that said there is a non-conforming piece. He had more concern with the sloppiness of the drawings. At some point and a separate issue, there is an organization in the State that deals with

surveyors. The Planning Commission will have to make a more concerted action with dealing with that. Once the surveys are recorded, there is a real problem and conflicts will arise. The way in which this Application has been represented is sufficient, and it does not create any conflicts.

Mr. Shulman acknowledged that it would be better if the Baileys and Rowlands would file one Application, and then the Rowlands would file a secondary Application to say that they want a portion of the property added to their parcel.

Mrs. Konesey said that when a new survey is presented, she would also like an explanation sealed by the surveyor of what happened that caused the errors on the current survey.

Chairman Littleton said that the Planning Commission needs to have something in writing with regard to the easement that the Rowlands will have access to sewer and water.

Attorney Faust acknowledged that the deed to the extension of land south of Lake Drive which is owned by the Rowlands will be presented to the Planning Commission along with the additional information requested.

City Solicitor Mandalas said that the City may want protections with regard to the easement. This is an issue which could be discussed in the future.

Mr. Mellen said that the recorded easement should run with the property. He suggested that there should be a third drawing which shows the configuration of the lots. The one lot should be shown that it is merged and how it currently exists.

Ms. Sullivan said that by definition in the Zoning Code, the property owned by the Rowlands to the north and south of Lake Drive are considered two separate lots.

Mr. Shulman said that the Applicants should think about some conditions, if any, that should be put on the westernmost lot such as cub-cuts, driveways, etc.

Attorney Faust acknowledged that the lot would be exited onto St. Lawrence Street. It also would not be capable of being further subdivided. She will present something to the Planning Commission to verify that. Attorney Faust was not sure if it is possible to provide the chain of title for the Rowlands southernmost parcel along Silver Lake, but she will try to locate something.

Public Comment:

1. Ms. Suzanne Goldstein, 111 St. Lawrence Street – in support of.
2. Mr. George Warner, 113 St. Lawrence Street – in support of.
3. Ms. Suzanne Rowland, 113 Lake Drive, said that this has been an educational process.

Correspondence:

1. Letter from Veronica Faust, Esq. of the law firm Morris James LLP with an attachment of nine memos - in support of:
 - a. Francis J. Fabrizio, Jr. and Sarah W. Fabrizio, Trustees, Lot Nos. 6, 7 & 8, Block 23.
 - b. Edward J. & Tatyana I. Dailey, portion of Lot Nos. 17 & 18, Block 23.
 - c. Robert M. Klingel, portion of Lot Nos. 17 & 18, Block 23.
 - d. Suzanne M. Goldstein and Dana S. Greenwald, Trustees, Lot Nos. 51, 52 & 53, Block 24.
 - e. George E. & Carol C. Warner, Trustees, Lot Nos. 54, 55 & 56, Block 24.
 - f. Christopher J. & Dawn A. Weilminster, Lot Nos. 57, 58 & 59, Block 24.
 - g. Janice M. Rowland, Lot Nos. 60 & 61, Block 24.
 - h. James Lee Pryor, Lot Nos. 62 & 63, Block 24.
 - i. Carol C. Hyde, Lot Nos. 65 & 66, Block 24.

Attorney Faust said that the Applicants are requesting that the matter of this Application be tabled until a letter is submitted to the Planning Commission asking for it to place this Application back on the agenda so that issues can be worked out and discuss legal ramifications of the Application with the City Solicitor. A disclaimer can be included on the survey to note that the parcel to the south of Lake Drive is not included in the subdivision.

Mr. Shulman said that if major modifications are made to the Application, it will be considered a new Application. The Planning Commission will have to decide if the changes are significant enough for it to

be considered a new Application.

Mrs. Konesey made a motion, seconded by Mr. Markert, to table this application. Motion carried unanimously.

OLD BUSINESS

Chairman Littleton called for the request for a 30-day extension of conditionally approved Partitioning Application No. 0113-01 for two (2) properties located at Lot Nos. 58 and the westerly portion of Lot Nos. 56 Sussex Street and the easterly portion of Lot No. 56, Lot No. 5 and the westerly portion of Lot No. 52 Sussex Street.

Correspondence:

1. Letter from A. Martin Clark of Sussex², owner of the property, requesting a 30 day extension due to unforeseen health issues.

Mrs. Konesey made a motion, seconded by Mr. Markert, to grant the requested extension for 90 days because Mr. Clark had been hospitalized with heart problems and was unable to proceed with the work to get the demolition done. Motion carried unanimously.

OTHER BUSINESS

Chairman Littleton called for the continuation of discussion regarding possible changes and amendments to the City Tree Ordinance based on public input, interviews and recommendations received by the Planning Commission and research conducted by the Commission with respect to the Resolution Regarding the City's Trees pass by the Mayor and City Commissioners. Chairman Littleton also called for discussion of a planned transmittal report to the Board of Commissioners, identifying any additional data needs and plan to attain same and public comment.

1. The consensus of the Planning Commission agrees to fix the existing Code.
2. Mr. Brian Patterson has been tasked by the Planning Commission to amend the Code.
3. The Planning Commission to send a report to the Board of Commissioners with regard to a new way of looking at the Code and providing an educational process.

Mr. Mellen said that with regard to Mr. Patterson's presentation at the last meeting, there is a significant benefit to move the tree ordinance into the Zoning Code so the appeal process goes to the Board of Adjustment rather than the Parks & Shade Tree Commission. What has come out of discussions and presentations with preserving or growing canopy, it would be better to focus on getting and achieving one or two good canopy trees as opposed to multiple trees. One of the major reasons for that is because of the way the houses are being built especially on 50 foot wide lots with the current setback situations, it becomes almost impossible to put great quantities of canopy trees in that space. They are being taken down for construction purposes in most cases. There should be more focus on getting the kinds and numbers of trees to create canopy. Consideration should be given to line or near line trees to add to the canopy. There is concern with how to account for trees that have to be removed from a thinning standpoint along with how trees are removed from buildable areas. The City Arborist should be given more authority on a lot by lot basis on what should or should not be done. It is difficult to treat trees in the general sense as opposed to what is right for a particular lot and particular construction or however the lot is being utilized. There should be more power or judgment on the part of the City Arborist to make those kinds of decisions. Three trees at a minimum on a property do nothing for streetscape.

Chairman Littleton presented bullet points for incorporating broad principles with regard to the fixing the Code. These principles which the majority of the Planning Commission agrees with include:

- Simplification of the Code
- Focus on large or medium large canopy trees.
- More attention to the right tree in the right place vs. just any tree.
- Do not differentiate between large deciduous vs. non-deciduous trees.
Pines should be considered.
- Allow for thinning.
- Protect neighbors' trees that are proximate to new construction.
- Eliminate as much hassle and tree permit requirements concerning small trees.
- Possible trigger of three or a certain amount of trees when a property transfers. (How the City can be aware of this and impose a requirement.)
- Re-examine the Planning Commission's role/responsibility concerning trees when there is a

subdivision. (Require three trees if a newly subdivided lot does not have new construction within certain months of approval to prevent denuded vacant lots.)

- Possible incentive or counting of owner planted/maintained street trees or line trees.
- Continue push for trees in the front yard.
- Clearly separate in the Code the discussion of/requirements for public trees from trees on private land.
- More flexibility on removing trees that are in high danger from construction with requirements for replacement of properly located canopy trees.
- Whole discussion about what caliper size should be specified in the Code for various trees/location. (Current requirement for street trees is too big.)
- Need for Delaware approved list of medium and large canopy trees appropriate for beach town.
- Any special consideration for ocean fronting or first block from ocean concerning trees vs. other locations in the City.
- Uniform non-negotiable monetary penalty or remediation cost per tree.
- How can/or should permit requirements be removed for small trees while at the same time assuring that lots are not clear cut of small trees?
- Moving the entire tree code into the Zoning Code.
- Replace Parks & Shade Tree Commission's appeal responsibility by having Board of Adjustment handle appeals.

Mr. Markert thought that there should be exclusions for trees at maturity that do not grow to a specified height.

Mr. Shulman commented that unless something is adopted by the City in the context of its authority related to zoning, decisions of a City administrative official that do not related to items involving zoning matters can go to the Board of Adjustment. The trigger for putting the tree ordinance into the Zoning Code would be an appeal from a decision that is zoning related. In order to get the tree ordinance into the Zoning Code, the entire ordinance will need to be re-enacted as amended and will have to go through a public hearing. Everything the Planning Commission has been discussing makes it easier to take down trees. Nothing stops some of the destruction which has occurred in backyards, etc. The Code is being interpreted much too leniently. City officials do not feel they have the authority to require certain things, but none of this is doing anything more to protect the big trees located in the front, side and rear setbacks that are being taken down. Most of the canopy in the City is trees that are big and mature, and they have been frequently cut down.

Chairman Littleton noted that the right tree in the right place is more important than saving every tree in existence. He is less concerned that people should have the ability to do what they would like to do on their lots within reason. Causing a lot of problems for trying to maintain a tree which will not live because of construction or because it is the wrong tree, does not make any sense.

Ms. Lynn Wilson suggested that the Planning Commission read the Parks & Shade Tree Commission meeting minutes. Experts provide testimony in almost every case. Discussion ensued as to how the Parks & Shade Tree Commission meetings have been held.

Mr. Paull Hubbard said that his wife is a member of the Parks & Shade Tree Commission. He noted that the Chair of the Parks & Shade Tree Commission would like for members of the Planning Commission to attend their meetings to get a sense of how they operate.

Ms. Sullivan noted the fee to be heard by the Parks & Shade Tree Commission is \$250.00. The fee for a case to be heard before the Board of Adjustment is \$1,000.00. With regard to the Parks & Trade Commission, there is no education process for the members. The members should be educated so they have the knowledge needed to hear the cases more intelligently.

Mrs. Konesey mentioned that Mr. Tom Evans, Chair of the Board of Adjustment, thought there should be a two-tier process where if the Board would be holding hearing related to trees, there would not be court reporters and attorneys. The Board of Adjustment would meet at a separate time to hear all the tree cases. It would not be the normal Board of Adjustment process.

City Solicitor Mandalas acknowledged that there might be a way for tree matters to be heard by the Board of Adjustment without the tree ordinance being part of the Zoning Code. He has felt that the regulation of trees is a private property matter and would be proper for the tree ordinance to be in the Zoning Code.

Mrs. Konesey said that the city of Columbus, Indiana, wins awards for its streetscapes. The city has a planting plan on city property and is a well-coordinated design by professional landscapers. This provides a role model for the community as a whole. She provided a brief history of the city. People do not get their certificates of occupancy if they do not meet the landscaping requirements. A performance bond of 125% of the value and an irrevocable letter of credit are required if they have to extend meeting the certificates of occupancy requirements and there is a delayed installation. A tree is not how tall it is when planted, but how tall it will grow. The city plan works by a point system, and a large deciduous tree is valued up to 25 points. In the commercial and multi-family areas, the buildings are adjusted to maintain the large growth trees. In the residential neighborhoods, the residents have paid to canopy the streets. Shrubs, evergreens, etc. are counted as trees, and there are different points for different trees. Columbus' code covers maintenance, quality, ground cover and standards for shrubs, flowers and trees. There are consequences if a person does not abide by the requirements and if that person does not maintain the trees, landscaping, etc. Mrs. Konesey asked where the City of Rehoboth's leadership is in promoting canopy, trees, landscaping etc.

Mr. Strange said that in order to increase the potential canopy for the City, it would have to make changes to the building code because the building code does not lend itself for larger trees to survive. There is no requirement when people put up a fence, that they have to keep the structural side to their property. With the construction of the newer, larger homes, Mr. Strange has seen less openness between homes. Everyone is installing a six foot fence, and it is isolating the City much more than it was previously. There are condescending negatives that come to light that meet other requirements which are detrimental to what is trying to be achieved.

Chairman Littleton summarized that the Planning Commission has a specific charge relative to the Code. The Planning Commission should fix the Code as best as possible. The Planning Commission would be remiss if it did not think about leadership, point system, etc. There is no way that the City can accomplish its announced goal of 40% canopy. It will not happen on private property, and it will not happen on public property unless the City does something different from what it has been doing. Part of the Planning Commission's responsibility is to send the Board of Commissioners a report that addressing the problems in the Code. The Planning Commission has to also tackle the much bigger problems. Chairman Littleton acknowledged that because the way the building codes are structured and there is no accommodation to allow larger trees to exist on contemporary lots where there has been recent construction, there are additional things that need to be addressed such as lot coverage, construction techniques, etc.

Mr. Shulman said that the tree ordinance is an impediment to totally unbridled cutting down of trees. The tree ordinance has been helpful in this respect.

Chairman Littleton noted that with regard to the status of the Board of Commissioners action on the recommendations submitted by the Planning Commission on August 16, 2013 relative to the Resolution regarding side lot setbacks for properties with frontages greater than 50 feet, the Board has not enacted an ordinance to date. Mayor Cooper had presented a resolution setting a public hearing for the proposed ordinance amending Section 270-26 of the City Code that would increase the side yard setback with any lot greater than 52.5 feet on street frontage and lot area of 5,250 square feet in the R-1 District and for R-1 uses in the R-2 District. It does not address rear yard setbacks.

One new partitioning application has been submitted for 49 Park Avenue.

Chairman Littleton called for the Building Inspector's Report.

Ms. Sullivan noted that demolition has begun at 8 Silver Lane on November 7, 2013.

Chairman Littleton called for the City Solicitor's Report.

City Solicitor Mandalas noted that there was nothing to report.

The next scheduled Regular Meeting will be held on December 13, 2013 at 6:30 p.m.

There being no further business, Mrs. Konesey made a motion, seconded by Ms. Lynn Wilson, to adjourn the meeting at 10:18 p.m.

**MINUTES APPROVED
MARCH 14, 2014**

RECORDED BY