

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**December 11, 2015**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 3:00 p.m. by Chairman David Mellen on Friday, December 11, 2015 on the second floor of the Rehoboth Beach Volunteer Fire Company, 219 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Francis Markert called the roll:

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

Absent:            Mr. Brian Patterson

Also Present:     Mr. Damalier Molina, Chief Building Inspector

Also Absent:     Mr. Glenn Mandalas, City Solicitor

A quorum was present.

**VERIFICATION OF MEETING NOTICE**

Ms. Ann Womack, City Secretary, verified that the Agenda was posted at City Hall, Building and Licensing Department and on the City website on December 4, 2015. The agenda was faxed to Cape Gazette, Coast Press and Delaware State News on December 4, 2015. An E-News blast was sent out on December 4, 2015. The Public Notice for Public Hearing of Application No. 1015-03 on the matter of the Partitioning request for 300 Bayard Avenue was posted at City Hall, Building and Licensing Department and on the City website on November 19, 2015. The Public Notice was advertised in the Cape Gazette on November 24, 2015 and November 27, 2015, Coast Press on December 2, 2015 and Delaware State News on November 25, 2015 and November 26, 2015. Notification to property owners within 200 feet was mailed out and signage was posted on the property.

**APPROVAL OF MINUTES**

Minutes of the November 13, 2015 Planning Commission Regular Meeting were distributed prior to the meeting. Minutes of the May 8, 2015 and June 12, 2015 Planning Commission Workshop Meetings and the September 11, 2015 and October 9, 2015 Planning Commission Regular Meetings were not available for approval.

Mrs. Jan Konesey made a motion, seconded by Ms. Joyce Lussier, to approve the November 13, 2015 Planning Commission Regular Meeting minutes as written. (Shulman – abstained, Lussier – aye, Strange – aye, Mellen – aye, Marker – aye, Konesey – aye, Hubbard – aye, Wilson – aye.) Motion carried.

**CORRESPONDENCE**

1. Letter received December 10, 2015 from Constance C. Holland of Office of State Planning Coordination with regard to receipt of the CDP update.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

**Public Hearing of Application No. 1015-03** on the matter of the Partitioning request for the property located at 300 Bayard Avenue consisting of Lot Nos. 13, 14, 15 & 16, Block 30, into two (2) lots with Lot Nos. 13 & 14 becoming one (1) lot of 5,010 square feet and Lot Nos. 15 & 16 becoming one (1) lot of 6,969 square feet. The Partitioning has been requested by Jeffrey M. Garrison of Garrison Homes LLC on behalf of Joseph A. Mathews, Executor of Nancy E. Mathews Estate, owner of the property. Chairman Mellen provided the Public Hearing procedures.

Building Inspector Damalier Molina gave his report with exhibits.

Exhibit A – Application packet which includes:

1. Application for Land Subdivision
2. Supplemental Information to Application
3. Additional Conditions Coverage from Tim Miller of Foresight Services
4. Affidavit of Joseph A. Mathews, Executor of Nancy E. Mathews
5. Photographs
6. Boundary Survey Plan
7. Warranty Deed dated February 25, 1977 from Book No. 250, Page No. 497
8. Tree Survey Plan
9. Agreement of Sale

The Applicant wishes to subdivide the property consisting of Lot Nos. 13, 14, 15 & 16 into two (2) lots with Lot Nos. 13 & 14 becoming Lot No. 1 and Lot Nos. 15 & 16 becoming Lot No. 2. The existing structures will be demolished if the proposed subdivision is approved. Currently, there are 18 trees located on the property. Proposed Lot No. 1 will contain six (6) trees, and proposed Lot No. 2 will contain twelve (12) trees. Five (5) trees are proposed for removal on Lot No. 2. Based on the survey submitted, each proposed lot can fully contain a 4,000 square foot rectangle, has a lot size of at least 5,000 square feet and has at least 50 feet of frontage on a street. Building Inspector Molina will amend his report to reflect that Proposed Lot No. 1 will contain five (5) trees. One (1) tree is located on the inside of the property line along Bayard Avenue. This tree is not counted towards density. One of the trees to the rear of the lot may also be located on the property line.

Mr. Jeffrey Garrison had nothing new to add.

Correspondence:

1. Letter received November 18, 2015 from Vincent G. Robertson, Esq. of the law firm Griffin & Robertson P.A. on behalf of Philadelphia Square Condominium that the condominium does not object to the partition application. The letter advised the Planning Commission that there is an encroachment that exists from the subject property onto the condominium property along the northeast corner of the subject property. Part of the garage and a fence encroach onto the condominium property. The purpose of this letter is to include this requirement within the Planning Commission's record and to have this requirement either acknowledged by the Applicant or included in the Commission's approval of the partitioning.

Attorney Vincent Robertson acknowledged that he has authority on behalf of the condominium association to agree to a condition in any approval, such condition proposed by the Applicant to demolish/remove the fence and garage, and then grade the area that it is flat. The garage has to be demolished due to the encroachment.

Mr. Garrison noted that the fence and garage will be demolished, and the area will be graded.

There was no public comment.

Chairman Mellen closed the public portion of the meeting.

Chairman Mellen read the resolution concerning the Public Hearing of Partitioning Application No. 1015-03. The Planning Commission finds that the partitioning has been conditionally granted with the conditions of (1) removal of all existing structures, (2) removal of the approved three trees only and (3) as proposed by the Applicant and with the expressed agreement stated today by council for the neighboring property at Philadelphia Square Townhouses, the Applicant shall remove and properly grade the fence and garage structure which encroaches the condominium property to the immediate east. The Resolution shall take effect immediately upon its adoption by a positive vote of the members of the Planning Commission.

Mrs. Konesey made a motion, seconded by Mr. Michael Strange, to adopt the Resolution of the Planning Commission as read. Motion carried unanimously.

## **OTHER BUSINESS**

### **Report of the Nominating Committee and election of officers**

Mrs. Konesey of the Nominating Committee recommended the reappointment of the current officers, Mr. David Mellen as Chair, Mr. Michael Strange as Vice Chair and Mr. Francis Markert as Secretary.

Mrs. Konesey made a motion, seconded by Ms. Lussier, that the Planning Commission continue with the

recommended slate of officers for the 2016 year. Motion carried unanimously.

### **Update of the status of the Beach Walk (Baymart) project**

The Beach Walk (Baymart) project was originally scheduled to be on the agenda for preliminary review for this meeting, but several weeks ago the Building Inspector asked for this project to be withdrawn due to a problem with the Application related to the Zoning Code. The Applicants have filed with the Board of Adjustment to challenge the decision of the Building Inspector, and the hearing has been scheduled for January 2016. The basis for the Building Inspector denying the Applicants the right to come before the Planning Commission is that the Application was not adequately prepared. There are many single-family dwellings as part of the Beach Walk (Baymart) proposal, but under C-1 in the Table of Use Regulations in the Zoning Code, single-family detached dwellings are allowed provided that no more than one main building may be erected on a single lot. Because this Application is under Title 25 of the State Code to be a condominium and it is considered one lot, the Building Inspector has stated that this project cannot go forward because of that condition. A lengthy discussion ensued.

Mr. Shulman made a motion, seconded by Mr. Paull Hubbard, that the Planning Commission directs the officers to prepare for submission and have someone appear before the Board of Adjustment to state the Planning Commission's view on the issue raised in the appeal that is pending before the Board of Adjustment. (Shulman – aye, Lussier – aye, Strange – abstained, Mellen – no. Not because he is opposed to making the Planning Commission's voice known, but it is an inappropriate time to do so. Markert - aye, Konesey – aye, Hubbard – aye, Wilson – no. Not because she is opposed to making the Planning Commission's voice known, but it is an inappropriate time to do so. The Planning Commission should watch to see what the appeal points are. She was not sure the process would be helped by getting into it now. Certainly, the Planning Commission has a way it can appeal it.) Motion carried.

### **Building Inspector's Report**

Building Inspector Molina is currently addressing illegal nonconforming uses that have been and are being practiced and operated in the City. The Building & Licensing Department is beginning to enforce the inappropriate use of private property. Recommendations will be made in the future to the Planning Commission.

### **City Solicitor's Report**

There was nothing to report.

### **Possible agenda items for the December 11, 2015 Regular Meeting.**

There were no agenda items.

### **Report, discussion and possible action concerning those activities or actions taken at Regular or Workshop Meetings of the Mayor and Commissioners that directly relate to the Planning Commission.**

Mayor Cooper and Commissioners Stan Mills and Toni Sharp have proposed bringing the tree ordinance forward. It is not clear at this time whether the City Commissioners will accept the Planning Commission rewrite of the tree ordinance or if they will do something different.

No new applications have been timely submitted.

The next scheduled Regular Meeting will be held on January 8, 2016 at 3:00 p.m.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Mike Strange, to adjourn the meeting at 4:50 p.m.

**RECORDED BY**

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(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON  
APRIL 8, 2016**

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(Francis Markert, Secretary)