

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**August 10, 2012**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:30 p.m. by Chairman Preston Littleton on Friday, August 10, 2012 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Francis Markert called the roll:

Present:           Mr. Brian Patterson  
                      Mr. David Mellen  
                      Chairman Preston Littleton  
                      Mr. Francis Markert, Jr.  
                      Ms. Lynn Wilson  
                      Mr. Robert Anderson

Absent:            Mr. Harvey Shulman  
                      Mr. John Gauger  
                      Mrs. Jan Konesey

Also in attendance were: Mr. Glenn Mandalas, City Solicitor  
                                  Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

**APPROVAL OF MINUTES**

Minutes of the May 11, 2012 Planning Commission Regular Meeting were distributed prior to the meeting. The June 8, 2012 and July 13, 2012 Planning Commission Regular Meeting and July 13, 2012 Planning Commission Executive Session Minutes were not available for approval.

Mr. Francis Markert made a motion, seconded by Mr. David Mellen, to approve the May 11, 2012 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

**CORRESPONDENCE**

Commissioner Patrick Gossett presented his letter to the Planning Commission, thanking it for the Silver Lake and water bodies report. The work is now upon the City Commissioners to put the Planning Commission's recommendations into place. He also noted that Mayor Cooper has been in contact with Chairman Littleton about scheduling a joint meeting of the Board of Commissioners and Planning Commission so that the Planning Commission can present the report with some interaction between the Planning Commission and the Board of Commissioners. At the last Board of Commissioners Workshop Meeting, Commissioner Gossett had proposed to the Board of Commissioners that perhaps a Workshop Meeting in Fall 2012 be established for the exclusive agenda item of the Comprehensive Development Plan (CDP) review. This would be a joint meeting of the Planning Commission to talk with the Board of Commissioners about looking ahead at the next year of what needs to be accomplished in the CDP and what has been accomplished in the past year. He would like to see this become an annual workshop meeting in the fall with the CDP as the exclusive agenda item.

Chairman Littleton commented that the report forwarded to the Board of Commissioners is still considered a draft report, and the Planning Commission will not be releasing the report publicly until it has had a chance to meet with the Board of Commissioners to finalize the report. He noted that Mayor Cooper has been in contact with him, and September 10, 2012 at 9:00 a.m. is being proposed as the date for the joint meeting.

**NEW BUSINESS**

Chairman Littleton called for the Preliminary Review of Partitioning Application No. 0712-03 for the property located at 12 Rodney Street, Lot Nos. 13, 14, 15 & 16, Block 34, into two (2) lots with Lot A becoming one (1) lot of 5,000 square feet and Lot B becoming one (1) lot of 5,000 square feet. The Partitioning has been requested by Vincent G. Robertson, Esq. of the law firm Griffin & Hackett P.A. on behalf of Michael A. Palmer and Mary Pat Fannon of EOA LLC, owners of the property. Chairman Littleton noted the Preliminary Review procedures.

Ms. Ann Womack, City Secretary, verified that this Application has been duly posted and advertised.

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

Exhibit A. Application, Certified Resolution of EOA LLC, Planning Commission Affidavit, Deed, Photographs, Boundary Survey dated April 3, 2012 and revised June 27, 2012, Tree Location with Tree Protection Plan, dated June 27, 2012, Division Survey Plan dated June 27, 2012.

Ms. Sullivan noted that based on the surveys submitted, both proposed lots can fully contain a 4,000 square foot rectangle, have a lot size of at least 5,000 square feet and have 50 feet of frontage on a street. Since the property is located in a hazardous zone, additional requirements need to be met when building in that area such as flood venting, etc.

City Solicitor Glenn Mandalas noted that there are 20 documents listed on the Project Document Log, and they are all Building & Licensing date stamped July 13, 2012. A copy of the Log was provided to Mr. Vincent Robertson, Esq., representative of the Applicants.

Mr. Vincent Robertson, Esq. of the law firm Griffin & Hackett P.A. represented EOA LLC, the corporate entity established for Mr. Michael Palmer and Mrs. Mary Pat Fannon. The property will remain the Applicant's property. The 100 foot x 100 foot property will be developed into two 50 foot x 100 foot lots. He clarified that in regard to D(12) of the Application, it should have been checked not applicable instead of no. No deed restrictions exist. At the meeting, Attorney Robertson checked the box "yes" that he is the Applicants' agent on the original Application. No plans have been finalized for the new home which will be situated on one of the lots. The other lot may be used as a yard or a guesthouse, but nothing has been finalized. Currently, there is a non-conformity because there is a large two-story dwelling with a garage apartment. Demolition would bring the property back into conformance. Putting a nicer house with landscaping on one of the lots would be an improvement to the community. A Demolition Permit has not been requested at this point. Attorney Robertson clarified that the property is not under contract and nothing is pending. The Applicants have owned the property for approximately four to five months.

There was no correspondence.

Public Comment:

1. Mr. Tom McDonald, 8 Rodney Street, voiced concerned about the treatment such as trimming of the trees and shrubs along the lot line, a potential blockage of views from his porch, how tall the new structure can be and which lot the new structure will be built on. He asked if the garage/apartment will be demolished because currently it is being rented.

Chairman Littleton noted that according to the Application, every structure will be demolished on the property. Demolition cannot occur prior to September 15<sup>th</sup> or later than May 15<sup>th</sup>. The Planning Commission will decide on the subdivision of a piece of property. It does not decide which lot will be built on. Mr. Mike Palmer, owner of the property, commented that the garage was rented when the transfer went through. Ms. Sullivan noted that the height of the structure cannot be higher than 2.5 stories or 35 feet.

2. Mr. Tom Zellers, 308 Stockley Street – in support of.

Chairman Littleton closed the public portion of the hearing.

Mr. Patterson commented that a curb-cut would need to be added to the new lot. He asked if there is any requirement about narrowing the driveway or if the double-wide driveway can remain. Ms. Sullivan said that any lot can have a driveway up to 20 feet wide. If the Applicant chooses to have a single driveway, the current driveway would need to be narrowed. A curb-cut would not be required until a structure is built on the other lot.

Ms. Sullivan acknowledged that currently all the trees have protection. Once the building or demolition permit is applied for, it is determined at that time whether a tree would need to be removed. Chairman Littleton said the Applicant has stated that all trees will remain for the purpose of a partitioning.

Mr. Mellen made a motion, seconded by Mr. Markert, to move the Application to Public Hearing. Motion carried unanimously.

This Application will be heard at Public Hearing on September 14, 2012.

## **OLD BUSINESS**

Chairman Littleton called for an update on the status of the appeal of the 2 St. Lawrence Street partitioning.

City Solicitor Mandalas reiterated that the Application for the 2 St. Lawrence Street partitioning had been denied by the Planning Commission, and an appeal was filed to the Board of Commissioners. After the appeal was filed, negotiations began involving Mayor Cooper, City Solicitor Mandalas, the Applicant and his attorney. Through a series of meetings and events, the Applicant decided that he would be willing to prepare a quitclaim deed that would quitclaim to the City all of the land extending from the numbered lots. The numbered lots would remain with 2 St. Lawrence Street LLC. City Solicitor Mandalas received a letter today from Mr. Chase T. Brockstedt, Esq. who is the attorney for the Applicant. In that letter, he withdrew the appeal without prejudice meaning that if the Board of Commissioners does not take the next step in the action that has been proposed, then the appeal can re-initiated. The Board of Commissioners has on its agenda for August 17, 2012 an draft ordinance to be considered. Under that ordinance, it would recognize the two lots that were proposed to the Planning Commission, upon the filing of the quitclaim deed. City Solicitor Mandalas acknowledged that it would be appropriate for the Planning Commission to remain silent until the appeal is totally gone.

## **OTHER BUSINESS**

Chairman Littleton called for the Building Inspector's Report.

Ms. Sullivan reported that she has been working on a new grant for pruning of trees along Rehoboth, Wilmington and Baltimore Avenue to make sure the elevation of the branches is above the height of cars and pedestrians. The decision of the Parks & Shade Tree Commission on July 30, 2012 was to uphold the decision of the Building Inspector with regard to 141 Henlopen Avenue.

Chairman Littleton called to discuss, prioritize and formulate action plans to address items and/or issues that have been deferred by the Planning Commission.

Chairman Littleton noted that with regard to proportional changes in side lot setbacks for legal non-conforming lots of less than 50 foot frontage or for lots with more than 50 foot frontage, there has been some thought about looking that and forwarding suggestions back to the Board of Commissioners.

Ms. Sullivan thought that if this would be done, it should be done across the board no matter what the size of the lot is.

Chairman Littleton called for the City Solicitor's Report

City Solicitor Mandalas reported that in regard to the merger ordinance, one of the issues which has been debated is if there is a proposal to create two lots where a house straddles an old property line the conventional thought has been that the lots have merged because the house straddles the property line. One theory is that if the house is removed and the owner wants to use the lots as they were originally plotted and put the line back where it was, then there should not be a need to come to the Planning Commission for a subdivision. Another theory is that once there is the benefit of merging the lots, then they would not be unmerged simply by removing the structure. There are properties where the structure has been removed, and the Building Inspector would only give one building permit because she would say they were merged. There could only be one building permit regardless of whether or not there are two deeds. Those cases have been taken to the Board of Adjustment, and it has disagreed with the Building Inspector. The Planning Commission has said that merger is merger, and if a lot is to unmerged, the owner needs to come to the Planning Commission. One of the main things it comes down to is that there has not been expressed notice given to people that their lots were merged because of the house straddling the lot lines, and now they should not have to pay a fee and come before the Planning Commission for doing it. More discussion is needed with regard to this matter. Commissioners Gossett and Lorraine Zellers have decided to come to members of the Planning Commission to learn more about the issue and then report back to the Board of Commissioners. City Solicitor Mandalas thought that a document could be prepared by the City recording all of the lots in the City which it says have been merged so any unsuspecting buyers would be informed a lot is merged. This would probably cure the notice problem. He was unsure how difficult it would be to generate this type of document.

Mr. Patterson said that the average person who is buying a property does not know if they are buying two lots. It would take a legal opinion to get to the conclusion that two lots are being bought and that a house could be demolished and two separate houses could be built. City Solicitor Mandalas agreed. Part of the issue with the Board of Commissioners is that the unsuspecting buyer does not know when an oversized lot is purchased that there is a merger. Typically a deed today will call out both parcels to make the entire parcel. Most listings

will refer to oversized lots.

Mr. Eugene Lawson, 12 Hickman Street said that one thing which creates this problem is the State mandates that land records be kept by the Recorder of Deed in Georgetown, DE. Whatever records the City keeps with respect to planning and zoning has no effect on the title of the property. The City itself is inconsistent with how it treats the tax parcels. Some lots that are two lots with the County are one lot with the City and vice versa. With regard to merger, everyone has agreed except the Planning Commission that from a title perspective lots can be separated and are available by how they are recorded in the Recorder of Deeds office. Zoning is a different issue. There is no legal requirement that two lots together or a structure built be owned by the same entity. The biggest problem is that land records are mandated by the State to be kept in Georgetown, not the City.

City Solicitor Mandalas noted that the bonding ordinance has gone through a few revisions. Three provisions with regard to extensions were rewritten by Mayor Cooper, and the language has gotten better. He will forward the revised draft to the Planning Commission. The bonding ordinance will be on the agenda for the Board of Commissioners Regular Meeting on August 17, 2012.

Mr. Mellen said that there are two key issues: 1. If there is a default on development, how the City would get its money and what needs to be done to collect on the bond. 2. If there is a walk-away on development, how the City would not have the situation that existed at Rehoboth Avenue and Church Street where there is a partial development on a lot for a period of approximately five years. There is a need to bring it back to a neutral condition for the City's and people's protection.

Mr. Mellen said that in reference to the CDP and the case law which was cited several months ago where a CDP for a municipality has the force of law, it seemed to him that the impact of the words the Planning Commission used in the CDP such as will vs. shall vs. could or should, plays an important part. The Planning Commission needs some guidance with regard to this matter. Either the State legislation will be found to be unworkable or the Planning Commission will need to change how it writes the CDP. City Solicitor Mandalas noted that most CDP's that he has read are fluffy documents and are written as a plan. While they have the force of law, he has thought that the force of law is when the Planning Commission says there is a zoning change that the Board of Commissioners needs to make. The force of law is that the Planning Commission is forcing the Board of Commissioners lawfully to go in and do that process. In this particular case, it was stated that when the document is certified saying that there is going to be a zoning change and will be legislatively adopted, the zoning has occurred within the document. The distinction for municipalities has never been entirely clarified that in a municipal CDP, the entire document has the force of law. In a county CDP, only the maps have the force of law. In Title 9 of the State statute which deals with counties and in Title 22 for municipalities, the languages are almost mirror images. There is an intention to change the part where it says only the maps have the force of law for the counties and for the municipalities the entire document has the force of law. City Solicitor Mandalas will keep the Planning Commission informed in regard to this matter.

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

City Solicitor Mandalas noted that there are scooter parking issues in the City.

Chairman Littleton noted that status of the planned meeting with the Mayor and Commissioner to discuss the Planning Commission's report on the City lakes was discussed at the beginning of the meeting.

No new applications have been filed. The deadline for filing is August 17, 2012.

Chairman Littleton called to continue to discuss, prioritize and formulate action plans to address items and/or issues that have been deferred by the Planning Commission.

Chairman Littleton had forwarded a list of items to the Planning Commission from its December 2011 agenda which have and are being worked on. The items are as follows:

- c. Develop application form and instructions for site plan review. No action has been taken to date. Mr. Patterson and Mr. Shulman volunteered to work on this item, and Commissioner Patrick Gossett has offered to help.

Mr. Patterson will follow-up with Mr. Shulman. Mr. Mellen suggested holding off on this item until the Planning Commission finds out what the Board of Commissioners wants to do with regard to

the Planning Commission's Lake Report which also includes a recommendation in terms of site plan review.

- b. Revitalization of selected commercial areas including the development of visionary plan and the possible use of mixed-use development, overlay zoning districts and incentives.

Chairman Littleton recommended that this item should not be started until the Board of Commissioners has requested the Planning Commission to do so.

- d. Review and update of application form(s) and instructions for partitioning/minor subdivisions.

Chairman Littleton said that he had received a request from Commissioner Stan Mills who is pursuing placement of documents on the City website, including applications. He noted that the Chair of the Board of Adjustment has had concern with regard to placing documents on the City website, such as applications.

Mr. Robert Anderson understood the sense of what Commissioner Mills is proposing is some type of a much more structured decisional process for the Board of Commissioners where everything is appearing online before the Commission ever meets, and the Planning Commission would be included in that process. It is not at all clear what the practical impact would be and if anybody would use it.

Mr. Mellen noted that with regard to a partitioning application, Attorney Robertson had said that the application is too complicated and needs to be condensed in a simpler manner. The consensus of the Planning Commission members was to poll various attorneys for their input regarding the applications.

- e. Concepts of proportional changes in side lot setbacks for legal non-conforming lots of less than 50 foot frontage or for lots with more than 50 foot frontage.

Chairman Littleton thought that this item is a real issue.

Mr. Mellen said that if there is a 50 foot lot, the side yard setbacks are an aggregate of 16 feet. If there is a 100 foot lot and a big house is built on it, it still has an aggregate of 16 feet for the side yard setbacks. The City, in effect, has lost 16 feet of free space. The question is whether it should be some proportion of what the total setback would have been if there had been multiple lots. He believed there is support from Mayor Cooper about this issue. The Floor Area Ratio (FAR) will not be changed at this point in time. The practical problem of this issue is that if someone builds a big house on a double lot, there is no room for trees. Chairman Littleton added that there are lots in the City which are less than 5,000 square feet and a legally non-conforming. These lots are required to abide by the same setbacks as any other lot. The idea would be to do proportional setbacks to be fair.

Mr. Anderson and Ms. Lynn Wilson will work on this item, and will also talk with Mayor Cooper and Ms. Sullivan to get their input.

- j. Other items to be identified.

Mr. Mellen noted that the issue of trees will be coming up in the near future, and the Planning Commission should not initiate it. This is an issue that should come to the Planning Commission from the Board of Commissioners. Chairman Littleton endorsed that idea.

Mr. Markert said that it is more to establish what the status is of the tree ordinance and what has occurred in the last six years, and not so much the Planning Commission talking about revising the tree ordinance.

There being no further business, Mr. Mellen made a motion, seconded by Mr. Markert, to adjourn the meeting at 7:58 p.m. Motion carried unanimously.

**RECORDED BY**

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(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON  
SEPTEMBER 14, 2012**

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(Preston Littleton, Jr., Chairman)