

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

September 14, 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, September 14, 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 (arrived at 6:31 p.m.)
 Mr. Harvey Shulman
 Mr. John Gauger
 Mr. David Mellen
 Chairman Preston Littleton
 Mr. Francis Markert, Jr.
 Ms. Lynn Wilson
 Mr. Robert Anderson

Absent: Mrs. Jan Konesey

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

A quorum was present.

APPROVAL OF MINUTES

Minutes of the August 10, 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. Markert made a motion, seconded by Mr. David Mellen, to approve the August 10, 2012 Planning Commission Regular Meeting minutes as written. (Patterson – aye, Shulman – abstain, Gauger – abstain, Mellen – aye, Littleton – aye, Markert – aye, Wilson – aye, Anderson – aye.) Motion carried.

CORRESPONDENCE

There was none.

NEW BUSINESS

There was none.

OLD BUSINESS

Chairman Littleton called for the Public Hearing 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 Public Hearing procedures.

Ms. Ann Womack, City Secretary, verified that the Public Notice for the Public Hearing was posted at City Hall, Building & Licensing Department and on the City website on August 22, 2012. The Notice was advertised in the Cape Gazette on August 24 and 28, 2012, Coast Press on August 29, 2012 and Delaware State News on August 29 and 30, 2012. Signs were posted and mailings to property owners were sent out on August 29, 2012.

Building Inspector Terri Sullivan gave 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.

Attorney Vincent Robertson of the law firm Griffin & Hackett P.A. represented Michael Palmer and Mary Pat Fannon of EOA LLC, owners of the property. Since the meeting last meeting, it was realized that the surveys which were submitted, referenced Mary F. Wagner, Trustee on them. Ms. Wagner was the prior owner of the property. The new surveys reference EOA LLC. The Applicants are looking to build a home for their family and get the property divided into two lots. There is no intention to sell either of the proposed lots, but they want to have flexibility to put their house on one lot and leave the other lot as a yard or for future estate planning. The property is located in the R-1 Zoning District and is a 100 foot x 100 foot lot. The 4,000 square foot rectangle fits well within both proposed lots. The trees are proposed to be protected at this time. The Applicants will comply with the tree protection requirements as they move forward with demolition of the house as well as building a house in the future. The partitioning will be consistent with all the other properties between St. Lawrence and Rodney Streets and Norfolk and Rodney Streets. The house will be demolished along with the garage/apartment, and the property will be brought into conformity once it is partitioned and the plans are finalized and permits are pulled for the new house. A rental license will no longer be needed. Attorney Robertson thought that the Applicants would build their house on the proposed lot that is closer to the water.

There was no correspondence.

Public Comment

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

Chairman Littleton closed the public portion of the Public Hearing and called for discussion among the members of the Planning Commission.

Mr. Anderson made a motion, seconded by Mr. Markert, that the resolution of the Planning Commission of the City of Rehoboth Beach, Delaware, granting final approval pursuant to Chapter 236, Section 236-9, of the Municipal Code of the City of Rehoboth Beach, Delaware, 2001, as amended, of Partitioning Application 0712-03 for the property located at 12 Rodney Street, Lot Nos. 13, 14, 15 & 16, Block 34, Tax Identification Number 3-34-20.06-64.00. Whereas, on July 15, 2012, EOA LLC filed a partitioning application, and thereby requested a preliminary review of a two-lot partitioning of the property located at 12 Rodney Street, comprised of Lot Nos. 13, 14, 15 & 16, Tax Identification Number 3-34-20.06-64.00; whereas, Section 236-2 of the City of Rehoboth Beach Municipal Code provides that: (A) The purpose of this chapter shall be to provide rules, regulations and standards to guide land subdivision in the City in order to promote the public health, safety and convenience and the financial and general welfare of the City. It shall be administered to ensure orderly growth and development, the conservation, protection and proper use of land, and adequate provision for vehicular and pedestrian traffic, utilities and services of and in the City. (B) These subdivision regulations shall be considered the minimum requirements for the protection of the public health, safety and welfare of the City. Any action taken by the Planning Commission under the terms of this chapter shall give primary consideration to the above-mentioned matters and to the welfare of the entire community. Whereas, consistent with Section 236-8.1(A) and (B) of the City of Rehoboth Beach Municipal Code, the Rehoboth Beach Planning Commission scheduled, properly noticed and on August 10, 2012 held a public meeting to preliminary review and discuss Partitioning Application No. 0712-03. Whereas, during the August 10, 2012 public meeting the Rehoboth Beach Planning Commission determined by vote that the application was substantially complete and accurate as submitted so as to warrant further consideration. Whereas, consistent with Section 236-8.1(C) of the City of Rehoboth Beach Municipal Code, the Rehoboth Beach Planning Commission scheduled, properly noticed and on September 14, 2012 the Planning Commission held a public hearing to further consider and discuss Partitioning Application No. 0712-03 and possibly take action on the application. Whereas, Section 236-9(E) provides that: "Partitioning applications which are found to meet all the requirements of this chapter and Chapter 270, Zoning, shall be approved by the Planning Commission"; whereas, Title 22, Section 702(D) of the Delaware Code provides that a municipal "comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan"; whereas, the Planning Commission finds and concludes that the proposed subdivision of the Property is consistent with the Rehoboth Beach Comprehensive Development Plan, as certified on July 23, 2010 by the Office of State Planning Coordination, and strikes a reasonable balance between the Rehoboth Beach Comprehensive Development Plan's various goals; whereas, the Planning Commission finds and concludes that subdividing the Property as proposed promotes the health and general welfare of the community by creating well coordinated development of land; and whereas, the oral and written public comments made part of the public record of this application have been given careful consideration in the final decision of the Planning Commission. Now, therefore be it resolved by the Rehoboth Beach Planning Commission, in session met, this 14th day of September 2012, as follows: Section 1. Approval of Partitioning Application No. 0712-03 shall be and is hereby granted. Section. 2. Subdivision of the Property

shall be in accordance with the final division survey plan prepared by Adams Kemp & Associates Inc., dated June 27, 2012. Section 3. In accordance with City Code Section 236-9(G), a copy of the final plat shall be filed by the Applicant with the Office of the Recorder of Deeds in and for Sussex County within 90 days from the date of this approval. A copy of the recorded final plat shall be provided to the Planning Commission, the Board of Assessment, the Building Inspector and the City Manager. If the final plat is not filed within this period, the approval shall expire, except that the Planning Commission for good cause shown may extend the time for final plat filing for a period not to exceed 90 days. Section. 4. This Resolution shall take effect immediately upon its adoption by a positive vote of the members of the Planning Commission of the City of Rehoboth Beach.

Mr. Harvey Shulman assumed that the survey plan will be attached to the motion. He suggested that the survey plan should be modified because the proposed lots the Planning Commission is approving are an area of 5,000 +/- square feet. The Planning Commission cannot approve lots less than 5,000 square feet.

City Solicitor Glenn Mandalas offered that the lot lines themselves identify a 50 foot x 100 foot lot which does not refer to +/- . The evidence tends to say that it is a 5,000 square foot lot because there is no discrepancy, no +/- for the 50 feet or 100 feet.

Attorney Robertson said that the change will be made to say 5,000 square feet.

Mr. Mellen said that there are a number of whereas clauses which cause the Planning Commission to say that it has looked at the Comprehensive Development Plan in addition to looking at the Codes to make sure there is nothing in the CDP that is inconsistent with this proposal. It causes the Planning Commission to look at additional material which may or may not be relevant. The Planning Commission needs to be careful about what it is saying because it implies that the Commission has read the CDP and has made sure there is nothing in the Plan that is inconsistent with this proposal.

Motion carried unanimously.

OTHER BUSINESS

Chairman Littleton called for the follow up and possible action from September 10, 2012 Joint Meeting with the Board of Commissioners to discuss the Planning Commission's draft report on the City lakes.

Chairman Littleton noted that the request for a Preliminary Land Use Service (PLUS) review has been submitted today. Attached to the request is the Rehoboth's Lakes Report With Recommendations. Chairman Littleton has been in conversation with Mayor Samuel Cooper relative to the report and follow-up actions. The agreement was that there would be representatives from the Planning Commission and Board of Commissioners to work on drafting ordinances, along with the Building Inspector's and City Solicitor's input. Mayor Cooper has prioritized the No. 1 ordinance which has to do with the 10 foot no-build zone. The intent of Mayor Cooper is for the Planning Commission to draft an ordinance for a 10 foot no-build zone. Currently there is a moratorium in place which has an expiration date. The site plan review would go hand-in-hand with this ordinance. Chairman Littleton noted that he would like the three officers to be the Planning Commission's committee working on helping to draft the ordinances. Relative to the PLUS review, it would be likely that sometime in October 2012 there would be a meeting of the State agencies.

City Solicitor Mandalas said that if there is a three-member group put together for the purposes of drafting and recommending something to the Planning Commission, then it is a committee that has to hold public meetings. When Mayor Cooper spoke about it, he sounded like he intended to have some public meetings relating to the drafting of the ordinances.

Chairman Littleton suggested that Mayor Cooper and City Solicitor Mandalas to get together to draft the ordinances. Mr. Mellen said that City Solicitor Mandalas will draft an amendment to the Code that is consistent with the rest of the Code. He made need guidance understanding some of the rationale that went into the recommendations. City Solicitor Mandalas said that they will move forward in a way that does not violate FOIA.

Chairman Littleton said that he would like a copy from Ms. Sally Forman of SOLA3 of the Proclamation on Silver Lake from the General Assembly.

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, including:

1. Proportional side lot setbacks for lots larger than 5,000 square feet.

Mr. Anderson noted that he and Ms. Wilson have not reached any definitive conclusion with regard to this matter because there is a much bigger problem than just setbacks. The City is full of non-conforming lots such as 50 feet x 60 feet, 50 feet x 40 feet and 50 feet x 84 feet. What is done in situations like that is entirely separate from what is done with a lot that is 100 feet x 100 feet. The whole idea of the side yard setbacks being proportional would mean that with a 50 foot x 100 foot lot, the side yard setbacks would be an aggregate of 16 feet and with a 100 foot x 100 foot lot, the side yard setbacks would be an aggregate of 32 feet. He was not sure that this would be the answer any more than 10 feet on each side. It is a combination of height which could be addressed directly or it could be addressed as cubic footage instead of square footage. If there is an older house in the City, the side yard setbacks vary anywhere from two feet to six feet. Some bankers are requiring larger buildings on larger lots in order to finance them because they think that is where the market is going. Mr. Anderson said that he had not talked with Mayor Cooper or Ms. Sullivan.

Chairman Littleton said a question raised at the December meeting was whether someone with a 100 foot x 100 foot lot should have an aggregate of 16 foot side yard setbacks. The problem is that there could be a massive structure which would be out of proportion to the neighborhood, and it would become an issue. Currently, a 50 foot x 100 foot lot with an aggregate of 16 feet has an advantage because there are clearances on each side proportioned to the structure and lot. The basic question is whether the Planning Commission would want to come up with recommendations at some point that have to do with setbacks on very large lots and be proportional. The natural area can be reached in the minimum setback area with a house that is at its maximum. Three trees can be put on a lot that is at its maximum, but it is difficult. The Planning Commission should not only look at the setbacks, but also the natural area.

Mr. Mellen said that on a typical 50 foot x 100 foot lot, there is an aggregate of 16 feet as open space. If there is a 100 foot x 100 foot lot, there is an aggregate of 16 feet as open space. Sixteen feet would be given up. The question was whether a larger lot should have a proportionally larger side setback area so that it has better streetscape, better open space, etc. A lot of open space is being given up which could be used to potentially plant trees and be green, etc.

Mr. Shulman said that by focusing on the side lot lines, similar questions could be raised about the front yard setback, etc. If the Planning Commission is going to look at this issue, it would be more than a question of side yards. It would be a question of side yards, front yards, rear yards, size of the house, etc.

Chairman Littleton said that in terms of impact on a neighborhood, there is space if a 100 foot x 100 foot property is subdivided into two lots of 50 feet x 100 feet each. If the property remains 100 feet x 100 feet, there is not the same amount of space.

Ms. Sullivan thought that it may be better to look at the natural area and consider increasing that requirement because it would require houses to be smaller.

Mr. Anderson said that there probably are many different approaches, but these are all quantitative measurements that have aesthetic and environmental impacts. They could be addressed indirectly by building codes, setbacks, footprints, FAR, etc.

Mr. Markert said that the notion of having a setback of a certain dimension is primarily for privacy, fire safety, light and air space. Other beneficial things are being excluded such as the area and space for trees, etc. It would be difficult to promote those objectives so the process could be incentivized and those things could be incorporated with regard to the City in terms of a pervious surface and land for rainwater to be absorbed.

Chairman Littleton said that if Mr. Anderson and Ms. Wilson continue to scope out the issue so focus can be brought to it, then the Planning Commission will begin to discuss it. Mr. Shulman agreed. An inventory is needed of the double, triple and other lots in the City. The only way the Planning Commission can deal with these issues is in the context of subdivision although there are zoning issues for more general building inspecting. The Planning Commission has no idea of how many double or triple lots there are in the City.

Chairman Littleton said that currently the draft resolution on merging is before the Board of Commissioners. How the Board decides on the resolution will have impact with regard to this discussion. It does not have impact for the comprehensive plan view of the City. The bulk of houses and natural area, etc. are in the purview of the Planning Commission.

Mr. Patterson said that the issue of setbacks arises when someone who owns two 50 foot x 100 foot

lots submits building plans. With regard to merger, non-conforming lots or double and triple lots would not come before the Planning Commission for partitioning. The jawbone opportunity would not arise with the Planning Commission, it would arise with the Board of Adjustment or not at all.

Mr. Anderson said that merging by use would be subject to the building code and the setbacks, footprints, FAR, etc. Mr. Mellen said that the Planning Commission should have data about how the density of the City has changed. Mr. Anderson said that there are two different densities, one was cured by the FAR, and the other is the 100 foot x 100 foot lot. Building on a 100 foot x 100 foot lot creates an impact on the neighborhood.

Chairman Littleton suggested that Ms. Wilson and Mr. Anderson not be limited by the 100 foot and proportional setback. They should individually talk to the Building Inspector, Mayor Cooper, etc. The Planning Commission would like to have a sense of guidance at a future meeting on how it will move forward. There is concern among the City fathers, and the Building Inspector has encountered issues. Then Ms. Wilson and Mr. Anderson should come back to Planning Commission with their information. Mr. Shulman supported this idea. He noted that on the 75 foot x 100 foot lots, the setbacks are probably the smaller setbacks. The problem of it not appearing offensive is because they are not built to the absolute height. The setbacks should be in relation to the height of a house.

2. Application forms/documents for site plan review.

Chairman Littleton suggested that when Mr. Shulman and Mr. Patterson move on the site plan review, they should figure out how to bring site plan review per the lakes report into the Code.

Mr. Shulman said that the site plan ordinance is specific. The application by itself provides a really detailed check boxes for applicants.

Mr. Mellen said that the Planning Commission needs to look at the application in terms of what it means when applying it to houses around the lakes.

Chairman Littleton said that the application has to be tailored to recognize the differences with the lake properties.

Mr. Patterson said that the application is a check list with possibly a separate column for the lakes oriented site plan with a shorter list.

Chairman Littleton called for the report from the DNREC workshop on Dover's Mirror Lake.

Mr. Markert and Mrs. Jan Konesey were in attendance at the workshop.

Mr. Markert said that the workshop was an informational review of what is going on with Mirror Lake to see if it is applicable with regard to the lakes. A remediation is being done with Mirror Lake. The issue is that it is a tidal estuary where the water flows downriver and comes back and builds a sandbar over time. DNREC is trying to decide whether it wants to preserve the sandbar or change its shape. With regard to Silver Lake, there are no real hazardous materials in the lake as is the case with Mirror Lake. DNREC is proposing to impregnate the area with carbon graphite nodules that over time will collect and isolate the harmful PCB material. The proposal with regard to beautification of the area and reintroducing native plants would be comparable to the Silver Lake area.

Chairman Littleton called for the Building Inspector's Report.

There was nothing to report.

Chairman Littleton called for the City Solicitor's Report.

City Solicitor Mandalas reported that land use is becoming more scrutinized and the courts are not as willing to look for the reasons why a public body voted to do or not do something. It gives him comfort that there is a resolution the Planning Commission has adopted which lays out some things so that the court does not have the opportunity to say that some things were not done. It sets the stage that the Planning Commission is a thoughtful body and does not haphazardly approve or deny an application. After a lengthy discussion, it was determined that a form of the resolution would be used for future subdivisions along with the reasons of how each member votes.

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.

City Solicitor Mandalas reported that with regard to 2 St. Lawrence Street, he is waiting to see the recorded quitclaim deed.

No new subdivision applications have been received to date.

There will not be a meeting in October 2012. The next scheduled Regular Meeting will be held on November 9, 2012.

Mr. Anderson made a motion, seconded by Mr. Gauger, to adjourn the meeting at 8:38 p.m. Motion carried unanimously.

RECORDED BY

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
JANUARY 11, 2013**

(Francis Markert, Secretary)