



# **REHOBOTH BEACH BOARD OF COMMISSIONERS**

## **Supporting Document Packet**

**MEETING:  
February 10, 2014**

**\*\*DISCLAIMER\*\***

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THE COMMISSIONERS OF REHOBOTH BEACH

Workshop Meeting

Monday, February 10, 2014; 9:00 a.m.

**WORKSHOP AGENDA**

1. Call to Order
2. Invocation, Pledge of Allegiance to the Flag and Roll Call
3. Correspondence
4. Old Business
  - A. Discuss with the City's engineer, Bob Palmer, budgeting and contracting for inspecting, flow testing and painting of the City's fire hydrants and inspecting and exercising the in-ground valves within the water system.
  - B. Discuss revising the following sections of the City Charter to modernize them and bring them in line with practice:
    - 22 Board of Assessment
    - 23 Assessment of Taxes
    - 24 Levy of Annual Taxes
    - 25 Collection of Annual Taxes
    - 26 Scrap Assessment for Sewers
  - C. Discuss whether or not to expand smoke-free areas in Rehoboth Beach beyond the current six park/tot lot areas to new areas such as the beach, Boardwalk, Bandstand, additional park areas and other areas – Commissioner Mills.
  - D. Report on the progress and status of the city-wide reassessment project – Commissioner Gossett.
5. New Business
  - A. Discuss processes and conditions for merging and unmerging lots to determine if any changes are warranted – Commissioner Mills.
  - B. Discuss a proposal from Verizon Wireless that they lease space on, within and outside of the City's Lincoln Street Elevated Water Storage Tank to establish a cell site – Mayor Cooper.
6. City Manager's Report
7. Committee Reports
  - A. Streets and Transportation – Commissioner Sargent
    1. Report on items discussed at the Committee's January 27, 2014 meeting.
8. City Solicitor's Report
9. Commissioner Announcements/Comments
10. Discuss items to include on future agendas.
11. Citizen Comment

## 12. Adjournment

### AGENDA ITEMS MAY BE CONSIDERED OUT OF SEQUENCE.

Citizen comment regarding Old Business, New Business and Committee Reports will be heard during each agenda topic after initial discussion by the Commissioners at the discretion of the chair. Speakers shall state their name and address. Comments are limited to three minutes or at the discretion of the chair. Comments on non-agenda items will be heard under "Citizen Comment".

\*For additional information or special accommodations, please call (302) 227-6181 (TDD Accessible) 24 hours prior to the meeting.

\*\*Next scheduled meeting – (Regular) Friday, February 21, 2014; 7:00 p.m.

amw: 02/03/14; posted 02/03/14

pc (Via Fax) Cape Gazette, Coast Press, State News



January 15, 2014

Dear Mayor and Commissioners,

Some time ago the Planning Commission sent to you a proposal that would explicitly incorporate into the City Code, with clear language, what has been a practice of the City for decades in regard to the treatment of “merged” lots. We understand that you have been studying this issue since our proposal, but that other matters have required more immediate priority. However, because the “merger” matter has taken on a greater sense of urgency in the past few months, we hope that you are able to act on this matter as soon as possible.

By way of background, there are many lots in the City which are categorized as double lots (or sometimes triple lots) – meaning that although the minimum lot size under Chapter 270 is now 5,000 square feet, many larger lots of 10,000 or more square feet exist because they resulted from the “merger” of two or more adjacent lots. This merger has occurred because the lot owner has built structures that straddle the adjacent lots or has otherwise used the adjacent lots as if they were one lot (for example, parking for the structure).

Over the years the owners of merged lots have filed with the Planning Commission applications for partitioning (or minor subdivision) of the larger lots into the original lots (or some variation of the original lots) so that each lot could then be sold and/or developed separately. Under the Subdivision Ordinance, the Planning Commission must grant these applications if they meet the requirements of the Subdivision Ordinance and the Zoning Ordinance, although the Subdivision Ordinance permits the Planning Commission to impose reasonable conditions upon the development of the partitioned lots in order to prevent “adversely affecting the development of the remainder of the parcel or adjoining property.”

The ability of the Planning Commission to impose reasonable conditions that help avoid “adverse impact” is extremely important. For the most part, individual streets and neighborhoods have developed and their character has been established over the past several decades based upon what has been “built on the ground” – namely, although a street may have been initially laid out with all 5,000 square foot lots (or, in some cases, even smaller lots), many lot owners chose to buy, develop and use multiple adjoining lots as one lot. Hence, the City is dotted with these larger, merged lots. Sometimes when a merged lot is partitioned and the development of multiple lots will follow, it can cause an adverse impact on the adjoining properties. Thus, when granting a partitioning application, the Planning Commission has on occasion required that a curb cut should be made only within a certain part of the lot frontage in order to minimize potential safety problems with adjoining properties, or that a driveway should not be paved with impervious surface in order to minimize potential water run-off problems with adjoining properties. Imposing these and other reasonable conditions, when warranted by the facts, has had only a

minor impact or no impact on an owner of the newly-created lot, but it has contributed to the health, safety and general welfare of the adjoining lot owners and the neighborhood.

Recently, however, some owners of merged lots have avoided filing an application for partitioning (or minor subdivision) with the Planning Commission by demolishing all structures and eliminating combined uses on the merged lot. They have claimed that, as a result of their actions, the merged lot has become “unmerged” into the original lots – and so there is nothing for the Planning Commission to approve under the Subdivision Ordinance. The City’s Building Inspector has rejected that view and has denied building permits for construction on each of the allegedly separated lots – and the lot owners have appealed such denials to the Board of Adjustment. Although the Board of Adjustment has no authority to partition merged lots, it has taken the position that the previously merged lot has become “unmerged” by the lot owners’ actions, so that there is no need for a partitioning application and thus the Building Inspector should have granted the building permit. The Board of Adjustment has acted, in part, because it has not been involved in the decades-old practice of the Planning Commission of handling merger situations and interpreting the city’s ordinances as they relate to merged lots.

The Board of Adjustment’s actions demonstrate the need for the Mayor and Commissioners to address this situation as soon as possible. There are at least four reasons why this is necessary.

First, the Board of Adjustment’s actions are at odds with decades of practice by the Planning Commission – and the Building Inspector – who have interpreted the City’s ordinances to require that owners of merged lots must file a partitioning (or minor subdivision) application with the Planning Commission in order to “unmerge” the lots. In other words, a lot owner cannot unilaterally “unmerge” a larger lot simply by razing the structures and discontinuing combined use.

Second, the conflict between the Planning Commission and Building Inspector, on the one hand, and the Board of Adjustment, on the other hand, will almost certainly lead to unnecessary and expensive court litigation – unnecessary because the City Commission can eliminate any doubt about the situation by adopting the proposal regarding merger.

Third, the Board of Adjustment’s approach has the potential to make the Subdivision Ordinance meaningless in the typical partitioning situation. If every lot owner of a merged lot could avoid the partitioning process simply by razing the structures and discontinuing combined use, probably 75% of all partitioning applications historically filed with the Planning Commission would no longer face Planning Commission review. This would represent an upheaval in a subdivision process that has been in place for decades.

Fourth, and probably most important, the Board of Adjustment has no authority to impose reasonable conditions on any proposed development of lots created by “unmerger” – i.e. all it can do is to reverse the Building Inspector’s decision to deny a building permit, but it cannot take any action to minimize adverse impact on adjoining properties resulting from any unmerger. As is all too clear, one common result of partitioning a lot is that a single, reasonably-sized structure that has existed for 50 or more years on a merged lot is being replaced by two large structures built to the maximum (height, lot coverage, setbacks, FAR) on adjacent unmerged lots. This type of infill has the potential to cause significant adverse impacts on adjoining properties, and the Planning Commission has the tools – in the Subdivision Ordinance – to reasonably address these situations. But if owners of merged lots can completely by-pass the Planning Commission, these protections for neighbors and neighborhoods will disappear.

For all of the above reasons, we urge the Mayor and Commissioners to enact, as soon as possible, the proposal for dealing with merged lots. Please note, our action to inform the Mayor and Commissioners was adopted by a unanimous vote of 7-0 at our recent meeting held on January 10, 2014.

Respectfully,

Preston A. Littleton, Jr.  
Chair, Planning Commission

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**AN ORDINANCE TO AMEND CHAPTER 270 OF  
THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH,  
DELAWARE, 2001, BY AMENDING SECTIONS 270-4 AND 270-46.1,  
RELATING TO LOT MERGER FOR ZONING PURPOSES.**

**WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes”; and

**WHEREAS**, Article X, Amendment Procedure, Sections 270-86 and 270-88 of the Municipal Code of the City of Rehoboth Beach provides the following procedure to be followed by the City Commissioners before exercising the aforesaid authority:

1. Hold a public hearing at which hearing parties in interest and citizens shall have an opportunity to be heard;

2. Provide at least fifteen (15) days’ notice of such hearing by publishing notice of the time and place of such hearing in an official newspaper of the City of Rehoboth Beach or a newspaper of general circulation in the City; and

**WHEREAS**, a public hearing was conducted on \_\_\_\_\_.

**WHEREAS**, at least fifteen (15) days’ notice of such hearing was provided by publishing notice of the time and place of such hearing in an official paper or a paper of general circulation in the City; and

**WHEREAS**, the City has historically interpreted the Code as permitting automatic merger for zoning purposes of two or more lots utilized as one parcel through the placement of a structure or structures thereon, and further requiring Planning Commission approval to unmerge previously merged lots; and

**WHEREAS**, the City Commissioners deem it appropriate to eliminate any uncertainty as to the necessity of a formal subdivision application to unmerge lots previously merged for zoning purposes; and

**WHEREAS**, the proposed amendments will promote the health, safety, and general welfare of the Rehoboth Beach community.

**BE IT ORDAINED** by the Commissioners of the City of Rehoboth Beach, in session met, a quorum pertaining at all times thereto, in the manner following to-wit:

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**Section 1.** Chapter 270, Section 270-4, Definitions, of the Municipal Code of the City of Rehoboth Beach, Delaware, be and the same is hereby further amended by deleting the definition of “LOT” in its entirety and inserting a new definition of “LOT” as follows:

**LOT**

The parcel of land on which a main building and any accessory buildings are placed, together with the required yards. The area of the lot shall be measured to the street line only. A lot shall be as shown on the Zoning Map of the City.

**Section 2.** Chapter 270, Section 270-46.1, Merger of lots in residential districts, of the Municipal Code of the City of Rehoboth Beach, Delaware, be and the same is hereby further amended by deleting Section 270-46.1 in its entirety and inserting in lieu thereof new Section 270-46.1 as follows:

- A. Two or more lots as shown on the Zoning Map shall be considered merged for purposes of this Chapter if the lots are utilized as one parcel through their use or through the placement of a structure or structures thereon, regardless of when the structure or structures were originally placed or the use originated. Once merged, the lots shall remain merged unless subdivision approval is obtained from the Planning Commission.
- B. Notwithstanding anything contained in this chapter to the contrary, in all residential districts, no structure shall be constructed that would result in the merger of two or more lots unless all such merged lots shall have contiguous and continuous frontage on the same street.

**Section 3.** If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

**Section 4.** This Ordinance shall take effect immediately upon its adoption by a majority vote of the Commissioners of the City of Rehoboth Beach.



VERSION: June 2, 2012

88 Adopted by the Commissioners  
89 Of the City of Rehoboth Beach  
90 \_\_\_\_\_, 2012  
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96 Secretary of the Commissioners of  
97 the City of Rehoboth Beach  
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100 **SYNOPSIS:** This Ordinance provides that a property owner shall seek a formal subdivision to  
101 unmerge two or more lots previously merged for zoning purposes under the provision of the Zoning  
102 Code.

DRAFT

**BACKGROUND NOTE TO THE BOARD OF COMMISSIONERS RELATIVE TO UNMergERS:** The following is the original June 4, 2012 transmittal memo to the Mayor and Commissioners concerning two Code Amendments unanimously recommended by the Planning Commission. The Board of Commissioners did amend the Code relative to performance guarantee bonding in 2012. The second recommended amendment relative to lot merger/unmerger remains outstanding and is the subject on the Board's upcoming February workshop meeting agenda.



June 4, 2012

TO: Mayor and City Commissioners

FROM: Preston A. Littleton, Jr.  
Chair, Planning Commission

SUBJECT: Submission for Adoption – Two (2) Code Amendments

Attached are two proposed amendments to the City Code that were prepared by the City Solicitor at the request of the Planning Commission. Both are intended to address issues in the Code that have been discovered by Commission as it has carried out its responsibilities. By unanimous vote, the Planning Commission recommends that these amendments to the City Code be adopted by the Board of Commissioners.

The first amendment is to better protect the City regarding performance guarantee bonding for the satisfactory completion of requisite infrastructure for major subdivision and timely performance. The second is to ensure that the wording in the definition of a lot in the Code is consistent with how the City has historically interpreted the Code relative to the merger and unmerger of lots.

Mr. Mandalas can provide further information to the Board should there be questions about either of these proposed amendments. Further, should the Board so request, representatives of the Planning Commission can explain how the issues addressed in these amendments were identified during the course of its business and how the City and/or its citizens will be better protected by their adoption.

Attachments:

1. AN ORDINANCE TO AMEND CHAPTER 236 OF THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH, DELAWARE, 2001, BY AMENDING SECTIONS 36-15 AND 236-17, RELATING TO A SUBDIVISION IMPROVEMENT PERFORMANCE GUARANTY, AND SECTION 236-7, RELATING TO A MAJOR SUBDIVISION SUN SETTING PROVISION.

2. AN ORDINANCE TO AMEND CHAPTER 270 OF THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH, DELAWARE, 2001, BY AMENDING SECTIONS 270-4 AND 270-46.1, RELATING TO LOT MERGER FOR ZONING PURPOSES

cc:

City Manager  
City Solicitor  
City Building Inspector  
Planning Commission