

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

March 8, 2013

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:31 p.m. by Chairman Preston Littleton on Friday, March 8, 2013 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. John Gauger
 Mr. David Mellen
 Chairman Preston Littleton
 Mr. Francis Markert, Jr.
 Mrs. Jan Konesey
 Ms. Lynn Wilson
 Mr. Michael Strange

Absent: Mr. Harvey Shulman

Also Present: Ms. Terri Sullivan, Chief Building Inspector
 Mr. Mike Hoffman, Esq. of the law firm Baird Mandalas LLC on behalf of Mr. Glenn Mandalas, City Solicitor

A quorum was present.

APPROVAL OF MINUTES

No Minutes were available for approval.

CORRESPONDENCE

Emailed received January 10, 2013 from Constance C. Holland, AICP, Director of Office of State Planning Coordination announcing that the Guide for Master Planning in Delaware is available. This document is a step-by-step resource document intended to guide local governments and state agencies through the process of creating a Master Plan.

OLD BUSINESS

There was none.

NEW BUSINESS

Chairman Littleton called for the Preliminary Review Application No. 0113-01 for the property located at Lot 58, 56, 54 and the westerly portion of Lot 52 Sussex Street, into two (2) lots with Lot 58 and the westerly portion of Lot 56 becoming one (1) lot of 7,027 square feet and the easterly portion of Lot 56, 54 and the westerly portion of Lot 52 becoming one (1) lot of 7,027 square feet. The Partitioning has been requested by Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti LLC on behalf of Sussex² Inc., Alexander Martin Clark and Eileen Stroud Clark, owners of the property. Chairman Littleton provided the Preliminary Review procedures.

Mr. David Mellen and Mr. Markert noted that they have known the Clarks for many years, and they felt that there is no rational reason with regard to this matter to recuse themselves from making a decision on this partitioning.

Ms. Ann Womack, City Secretary, verified that the public notice for the Preliminary Review was posted at City Hall, the Building & Licensing Department and on the City website on February 13, 2013. The notice was advertised in the Cape Gazette on February 19 and 22, 2013, Coast Press on February 20, 2013 and Delaware State News on February 20 and 21, 2013. The mailings to property owners within 200 feet were sent out on February 20, 2013, and the sign was posted on the property on February 21, 2013. Copies of the Building Inspector's Report and Document Log were emailed to Attorney Chase Brockstedt on March 1, 2013.

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

Exhibit A – Application packet which includes:

- (1) Application and Addendum
- (2) Planning Commission Affidavit
- (3) Deeds
- (4) Existing Conditions Plan
- (5) Tree Survey/Protection/Planting Plan
- (6) Proposed Partition Plan
- (7) Photographs
- (8) Certificate of Formation
- (9) LLC Resolution

Ms. Sullivan acknowledged that based on the surveys submitted, both proposed lots can fully contain a 4,000 square foot triangle. Both proposed lots have a lot size of at least 5,000 square feet and have 50 feet of frontage on a street. As an option to the removal of the 23 inch pine tree, the house could be flipped and the proposed driveway could be moved to the opposite side of the proposed lot since the 36 inch oak tree is slated to be removed because of the proposed porch.

Mr. Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti represented Mr. Alexander Martin Clark and Ms. Eileen Stroud Clark of Sussex² Inc. He noted that if the partitioning is granted, it would be contingent upon demolition of the structure and compliance with the tree ordinance. The two proposed lots meet Section 270-22 of the Code. Attorney Brockstedt acknowledged that the dimension from the side yard lot line to the adjacent dwelling with a roof height of 34'-2" was missing from the drawings and will be added prior to the Public Hearing. On the Application, the lots are not identified but technically the better reference is the parcels which includes 58, 56 and 54 which would be all of the property. The Application can be amended to show the lots. The reason Lot 52 was not included in the Application is because it is part of Parcel 57. The legal description of Parcel 57 is all of Lot 54 and a portion of Lot 52. A portion of Lot 52 will be added to the Application for clarification.

Mr. Brian Patterson noted that the Application does not make reference to a portion of Lot 52. Mr. David Mellen said that 17 feet of Lot 52 is included in the partitioning. With regard to the dimension from the side yard lot line to the adjacent dwelling, no new drawing will be required. This dimension will be presented at the Public Hearing.

Attorney Hoffman said that the original lots that are plotted out have changed over time. When looking at Parcel 57, it includes Lot 54 and a portion of Lot 52.

Chairman Littleton summarized that the existing structure will be demolished if the partitioning is approved. Currently, the Application notes that there are plans for building two houses but nothing has been submitted.

Attorney Brockstedt noted that his client has asked for the Planning Commission to identify the areas where the curb-cuts should be located. These curb-cuts would be included in an application for a building permit. If the partitioning is granted, it would require the removal of two trees, and his client would comply with the Tree Ordinance with regard to mitigation. Aside from any curb-cuts, trees would be planted on proposed Lot 54.

Public Comment:

1. Mr. Wayne Neale, 46 Sussex Street, understood that the property is zoned R2 and the application has been made for two residences. He asked if condominiums or multi-family dwellings are permitted in the City, and if the residents in the neighborhood can be assured that the two residences will be single-family dwellings. Mr. Neale gave suggestions as to how the houses may be built in order to add appeal to the street.

Ms. Sullivan said that the density requirements for condominiums or multi-family dwellings are one unit per 5,000 square feet. With regard to the proposed 7,000 square foot lot, no more than one unit would be permitted. Chairman Littleton noted that if a partitioning would not occur, a different type of construction would be permitted within the R2 zone. There is a possibility that the lots could be remerged, but it would require a cooling off period as specified in the Code. Mrs. Jan Konesey suggested that Mr. Neale share his comments with the owners of the proposed lots.

Chairman Littleton closed the Preliminary Review and called for discussion among the members of the Planning Commission.

Mr. Mellen voiced concern with potential runoff at the site. This is an issue that will have to be handled at the time the lots are to be created.

Mrs. Konesey made motion, seconded by Mr. Patterson, that the Application is complete and accurate and will move to Public Hearing at the next scheduled meeting. Motion carried unanimously.

OTHER BUSINESS

Chairman Littleton, with regard to the Resolution Regarding the City's Trees passed by the Mayor and City Commissioners on December 21, 2012 tasking the Planning Commission "...to research and propose amendments, as necessary, to the City's ordinances, regulations or procedures which are designed to protect and augment the City's urban forest in order to ensure the environmental health, beauty and enjoyment of Rehoboth Beach's trees, called to discuss alternative plans to conduct the educational program entitled "*Trees vs. Construction: How can they best co-exist?*" that been cancelled due to the unexpected non-availability of the presenter; updates and further discussion of a work plan to carry out this assignment from the Board of Commissioners and input from the public regarding issues that should be addressed by the Planning Commission as it plans to undertake this task.

Chairman Littleton noted that the Resolution from the Board of Commissioners, which was adopted in December 2012, laid out a charge for the Planning Commission to look at the entire issue of trees within the City, construction techniques, whether or not there are changes which would be appropriate to the Tree Ordinance, and/or whether there may be appropriate changes to other sections of the Code. All of this would be with the objective of maintaining or enhancing the tree canopy within the City. Members of the Planning Commission have agreed to take on several pieces of work to assess all the applications relative to trees, what has taken place with development within the City and how availability of private land may have changed, and an educational program for the Planning Commission. Mr. Bryan Hall of the Office of State Planning Coordination had agreed to host an educational program for the Planning Commission and the public. The desire of the program was to make sure each member of the Planning Commission has a common starting point. The program was postponed to a later undetermined date due to Mr. Hall's resigning his position at the State. Mr. Hall has provided names of individuals who have knowledge useful to the Planning Commission and could present this program at a later date. Chairman Littleton, Mr. Mellen and Mr. Markert will decide who will be present the program. There is also the possibility that Mr. Hall would be willing to present the program on a weekend.

Ms. Sullivan noted that Mr. Kyle Wood will provide the promised data related to the tree canopy, how the Planning Commission can get State data and how to do an inventory.

Mr. Mellen noted that a study was done of the tree canopy for the entire City, and an inventory was done with regard to public land within the City. The fundamental questions for the Planning Commission are what the canopy is and what the canopy goal is. Other questions would be how long the natural life of the canopy would exist, how it will regrow, and replacing canopy and feasibility on private land due to loss as houses are built and lots change.

Chairman Littleton said the Planning Commission is aware that the City Commissioners have set an objective to do a percentage increase in tree canopy within the City. An analysis of this will need to be accomplished. The intent of the Planning Commission is to meet with people who have sought tree removal permits, have been denied tree removal permits, major tree companies that are doing business within the City and people who are doing construction within the City. The work plan to carry this out will remain the same. Mr. Mellen and Mr. Markert will be working on analyses.

Mr. Markert noted that records are available from the City since the inception of the Tree Ordinance in 2006. Building & Licensing has provided what is on hand with regard to what the City maintains. There is an application process and the tree removal permit. An appeal of the denial for removing a tree goes before the Parks & Shade Tree Commission. This will be an arduous task.

Public Comment:

1. Mr. Gil Thompson, 406 Bayard Avenue, voiced concern with regard to the planting of the cherry trees on Bayard Avenue. The trees were not watered until approximately three weeks later. He also voiced concern about cutting down trees. He suggested that houses should be built around the trees. Corner of Bayard and Hickman. Eventually Rehoboth will lose its trees.

Chairman Littleton noted that Mr. Mellen is currently working on an analysis to get an assessment of the lack of natural area because of development. The Planning Commission will be looking at the issues which Mr. Thompson has stated. The Planning Commission has been charged with finding out how to balance the rites of the property owner vs. the community. The Planning Commission has concern for the loss of big trees. With regard to turnover of trees, the question is what the lifecycle is and the idea of planting younger trees. These are the types of analyses the Planning Commission will be trying to do because it gets into what the Tree Ordinance is saying or not saying.

2. Mrs. Priscilla Smith, Chair of Parks and Shade Tree Commission, Queen Street, voiced concern as to where to put a tree to grow of any size at all. The Parks and Shade Tree Commission administers the appeal process. Almost every appeal is granted because it is a matter of common sense to take down the trees.

Chairman Littleton said that the Planning Commission will be looking to the Parks and Shade Tree Commission to help it understand the positives/negatives of dealing with the Tree Ordinance and appeals.

3. Ms. Anne Hubbard, member of Parks and Shade Tree Commission, 9 Oak Avenue, said that the Tree Ordinance needs to be more simplified for the public and the Commission to understand.
4. Ms. Toni Sharp, Scarborough Avenue Extended, supports the work of the Planning Commission and requested clarification to changes in other sections of the Code that might be in order. She was concerned that this will be a lengthy process. She asked how the challenge of planting trees on lots that are being legally built will be addressed. Things may need to happen on a parallel track.

Chairman Littleton noted that with regard to changes in other sections, the Code refers to natural areas and setback areas. People are running out of areas to plant trees. If the objective of the City is to increase tree canopy or at least to maintain it, the City Code relative to setbacks and/or natural area needs to be in sync with another objective of having areas to plant trees. Suggested changes could be made to the Zoning Code if the objective is on trees. The objective that was given to the Planning Commission by the City Commissioners is to maintain or enhance the tree canopy in the City. It is important for the Planning Commission to assess the realities of some of the objectives with the current or projected development of the City. The aesthetic and character of the City is important. There are also environmental issues.

Mrs. Konesey commented that there are not a lot of places in the City to plant trees. One of things that Mr. Bruce Galloway has said is that there are different styles of architecture all over the City, but what binds it and holds it together are the trees.

Ms. Wilson said that while the length of time it will take for the Planning Commission's process is ongoing, more houses will be built with unbelievable setbacks. By the time the process is completed, there may not be any place to apply it.

Mr. John Gauger noted that the City Arborist would be able to provide a wealth of information to the Planning Commission during this process.

Ms. Sullivan said the Code currently reads that if the City plants trees in the area between the sidewalk and curb, it is responsible for the sidewalk if the tree does any damage to it. The only trees that the City planted are the memorial trees and the ones on Rehoboth Avenue during streetscape. Street trees are the property owners' responsibility unless the City has planted it. The developer planted all the street trees in Country Club Estates, not the City. Mrs. Priscilla Smith noted that the memorial trees are located between Brooklyn and Virginia Avenues.

Correspondence:

1. Letter from Ms. Kathryn Cole seeking the trees to be replaced that had been cut down on the north side of Olive Avenue.

Chairman Littleton called for the Building Inspector's Report.

There was nothing to report.

Chairman Littleton called for the City Solicitor's Report.

There was nothing to report.

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. The Board of Commissioners at its February 15, 2013 meeting did not pass the Planning Commission's proposed ordinance that would ensure the public was notified of and had the opportunity for input prior to the approval of any planned construction within 25 feet of the edge of the City's lakes.

Chairman Littleton noted that this site plan review ordinance was designed to address the primary public comments received by the Planning Commission during its lakes review which was relative to a property at 6 Silver Lane. The Planning Commission went out of its way to address the issue, but the answer was that it should be doing site plan review on properties within 25 feet of the lake which would assure the public to meet with the people who are building a structure and there would not be any surprises about what is being built.

City Commissioner Patrick Gossett, 16 Dover Street, was supportive of the site plan review. Changes can be made to the proposed ordinance, and it can be brought back to the City Commissioners.

Ms. Toni Sharp, who owns a property which abuts Silver Lake, was in support of the site plan review. The City Commissioners' meeting focused on objecting letters to the ordinance. Some people did not clearly understand what was being offered. The language that in the site plan review ordinance that the Planning Commission would have the final approval was opposed by people. At the meeting, there was a lack of helping the community in attendance to understand the real benefits to them. The remedy of site plan review was not characterized with the intent the Planning Commission put behind it.

Chairman Littleton said City Solicitor Mandalas explained that this ordinance is a chance to let the public know what is taking place and articulate it.

Chairman Littleton noted that at the Regular Meeting on March 15, 2013, the City Commissioners will be discussing a no-build zone around the lake. Mr. Mellen and Mr. Markert will attend the Regular Meeting.

City Commissioner Gossett thought that it would be helpful for members of the Planning Commission to be in attendance at the Regular Meeting.

No new subdivision applications have been received to date.

City Commissioner Gossett noted that DNREC made a presentation on March 7, 2013 in the Convention Center about the Silver Lake sedimentation removal project. The project is expected to begin June 15, 2013. A verbal agreement has been received from the Cape Henlopen School Board to use the school property for storage of the geo-tubes. Funding has been procured.

Mr. Mellen said that the State has claimed control over Silver Lake and the lake bottom. No report has been issued for the PLUS review which occurred from the Office of State Planning Coordination.

Mr. Gauger said that he would like to have it placed on the next agenda for notification of building construction.

The next scheduled Regular Meeting will be held on April 12, 2012 at 6:30 p.m.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Gauger, to adjourn the meeting at 8:46 p.m.

RECORDED BY

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
APRIL 12, 2013**

(Francis Markert, Secretary)