

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

March 14, 2014

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, March 14, 2014 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. Harvey Shulman
 Mr. Paul Hubbard
 Mr. David Mellen
 Chairman Preston Littleton
 Mrs. Jan Konesey
 Mr. Francis Markert, Jr.
 Ms. Lynn Wilson
 Mr. Michael Strange

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

A quorum was present.

VERIFICATION OF MEETING NOTICE

Ms. Ann Womack, City Secretary, verified that she had met the requirements for the meeting notice to be posted, advertised, mailed and signage.

APPROVAL OF MINUTES

Minutes of the October 11, 2013 and November 8, 2013 Planning Commission Regular Meetings were distributed prior to the meeting. Minutes of the January 10, 2014 Planning Commission Regular Meeting were not available for approval.

Mr. Markert made a motion, seconded by Mr. Harvey Shulman, to approve the October 11, 2013 Planning Commission Regular Meeting minutes as written. (Patterson – aye, Shulman – aye, Hubbard – aye, Mellen – abstain, Littleton – aye, Markert – aye, Konesey – abstain, Wilson – aye, Strange – aye.) Motion carried.

Minutes of the November 8, 2013 Planning Commission Regular Meeting were deferred to the next meeting.

CORRESPONDENCE

There was none.

NEW BUSINESS

Chairman Littleton called for the Preliminary Review of Partitioning Application No. 0114-01 for the property located at 50 Park Avenue, Lots Q & R, into two (2) lots with Lot Q becoming one (1) lot of 5,000 square feet and Lot R becoming one (1) lot of 5,000 square feet. The Partitioning has been requested by Timothy G. Willard, Esq. of the law firm Fuqua, Yori and Willard, P.A. on behalf of Michael Vardell of Vardell Realty Investments LLC, owner of the property. Chairman Littleton provided the Preliminary Review procedures for both cases.

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

Exhibit A – Application packet which includes:

1. Cover letter from Timothy G. Willard, Esq. of the law firm Fuqua, Yori and Willard, P.A.
2. List of Exhibits
3. Application
4. Filing Fee
5. Planning Commission Affidavit

6. Consent of Sole Member of Vardell Realty Investments LLC
7. Deed between Corner Cupboard Inn LLC and Vardell Realty Investments LLC dated May 10, 2010 and received on May 17, 2010 by Assessment Division of Sussex County
8. Photographs
9. Boundary Survey Plan
10. Proposed Partitioning Plan
11. Application Attachment G.2, G.3, G.4, G.6, G.7
12. Tree Protection Plan
13. Application Attachment H.1
14. Application Attachment H.2
15. License History (Vardell Realty Investments LLC)
16. License History (Corner Cupboard Inn LLC)

The owner wishes to subdivide Lots Q & R into two lots with Lot Q becoming one lot known as 50 Park Avenue which would consist of 5,000 square feet with 50 foot front and rear lot lines and 100 foot side lot lines and Lot R becoming one lot known as 48 Park Avenue which would consist of 5,000 square feet with 50 foot front and rear lot lines and 100 foot side lot lines. A 4,000 square foot rectangle with its shortest side measuring 48 feet can be fully contained on the lot. All existing structures will be removed. Currently, there are 22 trees located on the property with none of these trees proposed to be removed. Eleven trees will be located on each lot.

Mr. Timothy G. Willard, Esq. of the law firm Fuqua, Yori and Willard, P.A., represented Mr. Michael Vardell of Vardell Realty Investments LLC, owner of the property. Mr. Vardell was in attendance at the meeting. The requirements have been substantially met as far as what is needed regarding the Application. If the Partitioning is approved by the Planning Commission, Mr. Vardell plans to demolish the buildings. The proposed lots would meet the size requirement which would allow a 4,000 square foot rectangle in it.

Mr. David Mellen noted that there is an error on two of the three drawings. The Boundary Survey Plan shows the azimuth as N36°38'S. The Proposed Partitioning Plan and Tree Protection Plan show the azimuth as N36°00'S. He voiced concern with the possibility of the new plan not being recorded correctly. This is an error on the part of the surveyor, and it needs to be corrected.

Attorney Willard will contact the surveyor about the errors, and he will supplement the record with corrected surveys prior to the Public Hearing. He will also find out how the errors occurred.

Mr. Mellen suggested this subject should be placed on the agenda for a future meeting so the Planning Commission can discuss what can be done about the errors on surveys.

There was no correspondence and no public comment.

Chairman Littleton closed the public portion of the hearing.

Mr. Shulman made a motion, seconded by Mrs. Jan Konesey, to move the Application to Public Hearing as substantially complete and accurate with the requirement that the Planning Commission receives a correction with an explanation no later than 20 days in advance of the Public Hearing. Motion carried unanimously.

OLD BUSINESS

Chairman Littleton called for the continuation of the Preliminary Review of Minor Subdivision Application No. 1013-03 for the properties located at 114 and 118 St. Lawrence Street and 113 Lake Drive, Block 23, into three (3) lots with Lot Nos. 9, 10 and a portion of 11 facing St. Lawrence Street and Lake Drive becoming one (1) lot of 6,920.44 square feet, and a portion of Lot Nos. 11, 12 and 13 facing St. Lawrence Street becoming one (1) lot of 5,025 square feet; and a portion of Lot Nos. 11, 12, 13, 14, 15 and 16 facing Lake Drive becoming one (1) lot of 11, 279.91 square feet. The properties are owned by Charles R. Bailey, Jr. & Kathleen Ann O. Bailey and David I. Rowland & Suzanne B. Rowland. The Minor Subdivision has been requested by Veronica O. Faust, Esq. of the law firm Morris James LLP, on behalf of the owners of the property. The record will reflect the Preliminary Review held on November 8, 2013.

Mrs. Jan Konesey made a motion, seconded by Mr. Mellen to remove the Minor Subdivision Application from the table for the properties located at 114 & 118 St. Lawrence Street and 113 Lake Drive. Motion carried unanimously.

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

Exhibit A – Application packet which includes:

1. Cover letter from Veronica Faust, Esq. of the law firm Morris James LLP to Terri Sullivan and Planning Commission
2. Table of Contents
3. Amended Application for Minor Subdivision
4. Additions to Application responses
5. Planning Commission Affidavit for Charles R. Bailey Jr. and Kathleen Ann O. Bailey
6. Parcel No. 1, Parcel No. 2 and Parcel No. 3
7. Planning Commission Affidavit for David I. Rowland and Suzanne B. Rowland
8. Deed between Pauline L. Cottingham & Kathryn C. Yarhouse, Trustees of W. Carlton Lang Revocable Trust and David I. Rowland & Suzanne B. Rowland
9. Property Survey
10. Corrective Deed between David A. Barnett and Charles R. Bailey Jr. & Kathleen Ann O. Bailey and David I. Rowland & Suzanne B. Rowland
11. Deed between Pauline L. Cottingham & Kathryn C. Yarhouse, Trustees of W. Carlton Lang Revocable Trust and David I. Rowland & Suzanne B. Rowland
12. Agreement of Easement between W. Carlton Lang & Katherine C. Lang and the City of Rehoboth Beach
13. Existing Conditions Plan Boundary Survey Sheet 1
14. Existing Conditions Plan Without Existing Tax Parcel Lines Boundary Survey Sheet 2
17. Proposed Resubdivision Plan Boundary Survey Sheet 3
18. Photographs

The owners wish to subdivide Lot Nos. 9, 10, 11, 12 & 13, Block 23, into three lots with the northerly half of Lot Nos. 12 & 13 and a portion of Lot No. 11 becoming one lot known as 114 St. Lawrence Street which would consist of 5,025 square feet with 67 foot front and rear lot lines and 75 foot side lot lines; the entirety of Lot Nos. 9 & 10 and a portion of Lot No. 11 becoming one lot known as 116 St. Lawrence Street which would consist of 6,920.44 square feet with a 58 foot front lot line, 60.66 foot rear lot line, 128.81 foot easterly side lot line and 111.98 foot westerly side lot line; and the southerly portion of Lot Nos. 12, 13, 14, 15 & 16 and a portion of Lot No. 11 becoming one lot known as 113 Lake Drive which would consist of 11,279.91 square feet with a 151.65 foot front lot line, 142 rear lot line, 105.9 easterly side lot line and 53.81 westerly side lot line. The existing structures on Lot Nos. 9, 10, 11, 12 & 13 will be demolished if the proposed subdivision is approved. A 4,000 square foot rectangle with its shortest side measuring 48 feet can be fully contained within each proposed lot. Currently, there are 20 trees located on the property. One tree on the northerly portion of Lot No. 13 is proposed to be removed. Lot Nos. 12, 13 and a portion of Lot No. 11 will contain no trees. Three trees is the required minimum to meet the density requirements. The Application proposes three trees to be planted. All of the other lots to be subdivided meet the density requirements. The existing curb-cut in front of Lot No. 13 will be required to be closed up at the time of demolition. The Application states that the side yard setbacks are a minimum of six feet with an aggregate total of 16 feet. The side yard setback ordinance was amended on January 17, 2014, and the new side yard setbacks would apply to any new construction. Each proposed lot has 50 feet of frontage on a street. While there are four lots shown on the plats, the northerly half of Lot Nos. 14, 15 & 16 are not being changed from their current configuration.

Ms. Veronica O. Faust, Esq. of the law firm Morris James LLP represented Mr. & Mrs. Bailey and Mr. & Mrs. Rowland, owners of the property. It is believed that all the errors have been eliminated, and the changes have been addressed. The Rowlands have been individually added to the Application. A note has been added on the plat that the properties on between Lake Drive and Silver Lake are not included in the Application. The survey errors have been corrected. Three separate plats have been submitted to the Planning Commission to eliminate confusion. Trees were added to the new proposed Lot 1 to meet the tree ordinance requirements. Two easements have been shown across proposed Lot 1. One easement is for servicing the Rowlands current property. A proposed easement is shown across the proposed lot line in case there would be any service needs. Once the additional land is added to the Rowlands property, it cannot be re-subdivided as long as the building exists. There is an agreement between the parties respective to how the property will be divided between them. The additional land between Lake Drive and Silver Lake that the Rowlands own is not part of the Application and not part of the lot. The Rowlands and Baileys have a quitclaim for the lower parcel. According to the tax map records, it is believed that the State of Delaware owns the lower parcel. The previous owners of the property have used this parcel as their own for more than 40 years. With regard to the erroneous survey, the surveyor was apologetic. Apparently there are layers in the CADD system which had not been turned off, and

that is how the errors appeared. Attorney Faust, the owners of the property and the surveyor have reviewed the survey, and it is believed that the survey is now correct.

Public

1. George & Carol Warner, 113 St. Lawrence Street, endorsed the project.
2. Ike & Janice Rowland, 119 St. Lawrence Street, endorsed the project.

Chairman Littleton closed the public portion of the hearing.

Attorney Faust acknowledged that the easement agreement submitted for the original easement is an agreement between the owners of the property and the City. The intent for the proposed easement is that Mr. Rowland will own Lot 1, and he will grant an easement to have access across the parcel for sewer and water services should the need arise. Her clients would be willing to require that the proposed easement be located on the property.

Mrs. Konesey made a motion, seconded by Mr. Strange, to move the Application to Public Hearing.

Mr. Shulman noted that it is unlikely the current owners will fail to honor the easement. The Planning Commission is not saying in approving this that the City has any obligation to extend water or sewer to this property. This will be a private matter between the two parties. With regard to the creation of the new lot, the side lot line does not actually line up with the lot behind it. The larger lot which faces the lake will have the side lot line between proposed Lot 1 and the Baileys lot. All of the neighbors affected by this subdivision are not in objection to it. If a neighbor would object, the Planning Commission will not be finding that there is no adverse impact. There had been discussion on November 8, 2013 about whether it is considered a transfer, sale or agreement to sell with regard to the agreement among the parties on how the lots would be divided or how the property would be divided. The Planning Commission has not said one way or another in this situation that it falls within or outside of that prohibition. The Planning Commission has not said that what happens here would not constitute an agreement to sell and therefore, violate the Code. Even if the pre-agreement would violate Section 236-5(A) as an agreement to sell, the remedy in the Code is a fine or an injunctive action by the City. There is no requirement in the Code that the Planning Commission not entertain the Application. It is clear that whatever happened is open and above-board, and there was no private agreement. If it was an agreement to sell, it was an inadvertent one. Mr. Shulman was comfortable with voting to approve this.

Motion carried unanimously.

OTHER BUSINESS

Mrs. Konesey said that with regard to her neighbors who had to leave the meeting, they were concerned about the proliferation of swimming pools on Park Avenue which are adjacent to their house and has ruined their summers. The noise all day long is unbelievable. Her neighbors are looking at ways to address this issue with the City. It was suggested that this matter will be placed on the agenda for a future Planning Commission meeting.

Chairman Littleton called to review, discuss and possibly adopt the updated Site Plan Review Application form and associated instructions and administrative documents.

Attorney Mike Hoffman noted that the Planning Commission requested his office through City Solicitor Glenn Mandalas engage in an exercise to prepare a site plan review application. (Copy attached.) Attorney Hoffman had a conversation with Mr. Shulman in terms of the process with the Planning Commission regarding the subdivision application issues and how it would relate to the site plan application. The plan after that was to prepare a draft, work with Mr. Shulman on the process and then present the application and instructions to the Planning Commission for review and comment. Due to unforeseen obligations, preparation after the initial conversation was delayed. Attorney Hoffman decided to release what he had at that point to the Planning Commission for it to be placed on the March agenda. He had received a few comments from the Planning Commission which have been incorporated in the application and instructions.

Chairman Littleton said that approximately two years ago a site plan review application which had been prepared by Mr. Brian Patterson had been adopted by the Planning Commission.

Changes to the proposed Site Plan Application and Instruction Sheet:

1. Page 1. Paragraph 1. "... (2) the development or redevelopment of a parcel of land, or adjacent parcel of land, in excess of 20,000 square feet..." "Adjacent parcel of land" is the current language written in

the Code.

Chairman Littleton said that this would refer to if a builder had a large plot of land and submits a plan to develop half of the large plot, it is needed to be known what the impact is and what is going on with the adjacent piece of property. This would give the Planning Commission the ability to understand how development of the half of the large plot would impact the entire property.

Mr. Shulman noted that one of the triggers for site plan review is that it would benefit from clear instructions to the applicant of what comes within that trigger and what it does. Mr. Shulman had only received the proposed Site Plan Application and Instruction Sheet ten days prior to the meeting. He could not say whether or not the instruction sheet reflects the conversation he had with Attorney Hoffman.

Mr. Strange acknowledged that the linkage would be through common ownership or common control, etc.

Chairman Littleton said that currently R-1(S) in the Code consists of properties of at least 35,000 square feet. He suggested that the Planning Commission review this at a future meeting.

2. Page 1. Paragraph 1. "... (3) a commercial project over 15,000 square feet of gross floor area or which requires substantial renovation..." This is the current language written in the Code.
3. Page 1. Paragraph 4. "Project concept review" is a public meeting which is optional. If the applicant voluntarily would want feedback from the Planning Commission to get a feel where the Planning Commission stands

Mr. Shulman noted that this process is modeled after a process in the subdivision ordinance which allows someone who has a major subdivision to come before the Planning Commission with a sketched plat.

4. Page 1. Planning Commission Review. "The Planning Commission will review all site plans submitted for Site plan review to determine compliance with the City of Rehoboth Beach Comprehensive Development Plan..." changed to "[T]he Planning Commission will review all site plans submitted for Site plan review to determine whether it is consistent with the Comprehensive Development Plan of the City of Rehoboth Beach..."
5. Page 3. Simultaneous Application. "The applicant should indicate its intention to submit simultaneous applications on the attached application form" changed to "[T]he applicant must indicate its intention to submit simultaneous applications on the attached application form."
6. Page 3. Submittal Deadlines and Subsequent Meetings. "Just because an application is placed on the Planning Commission's agenda for "Preliminary Review" does not mean that no additional information is needed..." changed to "[J]ust because an application is placed on the Planning Commission's agenda for "Preliminary Review" does not mean that no additional information is needed..."
7. Page 3. Insert Subdivision Application Examples. The Subdivision Application explains what is meant by the 28 day time period. It makes sense to incorporate this in the instruction sheet.
8. Page 4. Conditions. "In cases where the Planning Commission grants a conditional approval contingent on further action, then satisfaction of that contingency..." changed to "[I]n cases where the Planning Commission grants a conditional approval contingent on further action, the satisfaction of that contingency..."
9. Page 4. Expiration of Approval. "An approved site plan is valid for one-year and will expire unless substantial building construction begins before the end of that one-year period." This is current language written in the Code.

Mr. Strange said that with regard to an additional period of time to be given, the period of time should be automatic and a fee should be paid. It would not matter if something has started if the plan is approved.

10. Page 1 of Application. A box was added at the bottom of the page for H. Civil Engineer/Mailing Address/Phone Number.
11. Page 4 of Application. No. 19. "Location, size, height and orientation of all existing and proposed signed" changed to "[L]ocation, size, height and orientation of all existing and proposed signs."
12. Page 4 of Application. No. 21. Occupancy and use density calculations.

Mr. Mellen suggested going beyond the number of rooms and use for nonresidential use. The Planning Commission needs to know the density of people who will be in an area because it will affect parking, public safety, etc. It impacts sewer, water, parking, egress on public streets, etc. He acknowledged that the same impacts are being created in residential use. This matter needs to be added specifically to the site plan review. Chairman Littleton said that the language of the ordinance allows for this to be done. Discuss ensued as to this matter.

Mrs. Konesey suggested that the parking issue should be placed on a future agenda. There are huge parking issues in the City because people are building small hotels, and they are calling them residences.

13. Page 4 of Application. No. 23. "Elevations and dimensions of each side of structure, including approximate locations and sizes of doors and windows" changed to "[E]levations and dimensions of each side of structure, including locations and sizes of doors and windows."

Chairman Littleton noted that site plan review requires that there is a public process where the citizens of the City can become more informed and express concerns or support on major things that have impact. This was the logic the Planning Commission used when it recommended site plan review for the properties that abut the lakes to allow a public process.

Attorney Hoffman said that the ultimate question is whether the Planning Commission may attach additional conditions that are not consistent with what is in the Code. He will provide a legal memorandum to the Planning Commission addressing this matter. Mr. Shulman thought it would be better phrased whether the Planning Commission can do things that are supplementary to other laws. When something is large or important enough to affect more than just the property which is being developed, but also affect the neighborhood-at-large or the City-at-large, the City Commissioners have said that there is additional review stage which gives the Planning Commission authority to do things under the site plan review ordinance that might not apply under other ordinances. Attorney Hoffman referred to Section 236-30(E). The Planning Commission shall consider the following factors and may require changes to site plans or attach conditions or restrictions when such changes, conditions or restrictions are consistent with the general purposes of site plan review described in subsection (D). A. The site plan review was developed for a purpose and the intent. B. The question is what the sustainability would be if those questions are imposed. As counsel, this would be where a memorandum should be offered because it is not appropriate to engage at this point. C. The Planning Commission is here tonight to talk about an application to institute this.

Mr. Brian Patterson thought that one of the triggers can be that Building & Licensing refers a particular project for site plan review to the Planning Commission. In Section 236-32(D), it gives Building & Licensing or Planning Commission authority to waive any of the requirements for the application in specific cases. He had not seen this waiver in the instructions or on the application; and he recommended that it be made clear in the instruction or on the application form.

Mr. Shulman said there is nothing in the application that says if the building inspector waives requirements the Planning Commission would be bound by that. It does not take away the Planning Commission's independent role. Mr. Patterson said that the Planning Commission can decide in approving an application can decide now what is waivable for an application.

Attorney Hoffman said that this is an issue which he tried to address in the application. On Page 2. Process. "Upon receiving comments from all reviewing City departments and agencies, the City Building Inspector will prepare a report indicating the status of the Department's review. If all departments and agencies determine that the subject site plan complies with their respective regulations and requirements, the City Building Inspector's report will offer the Building and Licensing Department's preliminary approval of the site plan. If the department review reveals deficiencies, the City Building Inspector will inform the applicant of those deficiencies and offer the applicant an opportunity to revise the site plan materials and resubmit the revised materials for additional department review. If the applicant chooses not to revise the materials, the City Building Inspector will note the deficiencies in his or her report and note that the application is proceeding to the Planning Commission without the Building and Licensing Department's preliminary approval." Ultimately, the Planning commission will waive requirements or determine whether something is substantial under the Code.

Mr. Mellen said that generally all the departments will review it within the scope of their particular expertise and application, not within the planning concept of the City. He did not want to see it inferred that because all of the departments may approve it that it should be waived and does not have to go to site plan

review. Chairman Littleton said that despite it meeting zoning, etc., the Planning Commission has its requirements too.

Mr. Shulman said that if all departments and agencies determine the site plan complies with their respective rules and regulations, the site plan shall be forwarded from the Building Inspector to the Planning Commission. It is an approval that the departments and agencies feel it can be submitted. The Planning Commission is then supposed to do a preliminary review, and then a final review is done after that. He mentioned that the Building Inspector, under a process approved by the Planning Commission, could forward a site plan review application and comment that there are problems; but the Building Inspector would not say that it meets the requirements of the site plan review ordinance. Attorney Hoffman said that in the process, the site plan would be submitted to Building and Licensing for its review and comment on application of the standards. It would be the Planning Commission that is reviewing a site plan and applying the requirements. To assist the Planning Commission in that review, it will be getting comments from the City departments; but that review is at the Planning Commission level review.

Mr. Patterson commented that with the proposed application, a developer could put together a site plan application in a lot of different ways that technically satisfies the 26 criteria, but it would make it very difficult for the Planning Commission as the reviewers to get what each individual member is looking for out of the application. With the existing application form, the Planning Commission could direct the developer to organize it in certain ways. Mr. Patterson asked if the proposed application could be developed in the same way as the existing application. Mr. Mellen said that the Planning Commission has the option of the preliminary presentation before getting to the details of the site plan review.

Attorney Hoffman said that the waiver piece needs to address the ability for conditions to be waived. A statement addressing waiver should be included in the application.

Chairman Littleton recommended to the Planning Commission that it instruct Attorney Hoffman to incorporate the provisions discussed, and that it approves the application materials.

Mr. Mellen suggested that a discussion of the fees associated with site plan review should be placed on a future agenda.

Mr. Mellen made a motion, seconded by Mr. Strange, to approve proceeding with the cited corrections and issuing the document as the adopted application form with the language addressing waiver from the Code. (Patterson – aye. Shulma – abstained. Hubbard – aye. Mellen – aye. Littleton – aye. Markert – aye. Konesey – aye. Wilson – aye. Strange – aye.) Motion carried.

OTHER BUSINESS

Chairman Littleton called for the Building Inspector's Report.

Ms. Sullivan reported that Walls Apartments is in the process of being sold.

Chairman Littleton called for the City Solicitor's Report and the 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.

Attorney Hoffman reported that the merger/unmerger concept is being discussed. City Solicitor Mandalas had attended a meeting with regard to addressing what the current status is of merger in the City and where to go from here. City Solicitor Mandalas is currently looking at how to address more specifically what the status is of merger from a legal standpoint. Then the conversation will continue forward. Attorney Hoffman acknowledged that part of the charge from the City Commissioners is to look at what exists in other communities. City Commissioner Stan Mills had requested the discussion to be delayed to the April Workshop Meeting of the City Commissioners.

No new applications have been received to date.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Hubbard, to adjourn the meeting at 9:11 p.m.

**MINUTES APPROVED ON
APRIL 11, 2014**

RECORDED BY