

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**August 8, 2014**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:32 p.m. by Chairman Preston Littleton on Friday, August 8, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Francis Markert called the roll:

Present:           Mr. Paul Hubbard  
                      Mr. David Mellen  
                      Chairman Preston Littleton  
                      Mr. Francis Markert, Jr.  
                      Ms. Lynn Wilson  
                      Mr. Michael Strange

Absent:            Mr. Brian Patterson  
                      Mr. Harvey Shulman  
                      Mrs. Jan Konesey

Also Present:     Ms. Terri Sullivan, Chief Building Inspector  
                      Mr. Kyle Gulbranson, Planner

Also Absent:     Mr. Glenn Mandalas, City Solicitor

A quorum was present.

**VERIFICATION OF MEETING NOTICE**

Ms. Ann Womack, City Secretary, verified that the Agenda was posted at City Hall, Building and Licensing Department and on the City website on August 1, 2014. The Agenda was faxed to Cape Gazette, Coast Press and Delaware State News on August 1, 2014. An E-News blast was also sent out on August 1, 2014. The Public Notice for Site Plan Review Application No. 0714-01 was posted at City Hall, Building and Licensing Department and on the City website on July 21, 2014. The Public Notice was advertised in the Cape Gazette on July 25, 2014, in the Coast Press on July 30, 2014 and in the Delaware State News on July 24, 2014. A mailing to property owners for the Public Notice was sent out on July 23, 2014, and signage was posted on the properties on July 23, 2014.

**APPROVAL OF MINUTES**

No Minutes were available for approval.

**CORRESPONDENCE**

1. Letter dated July 18, 2014 from Hon. Ronald D. and Margaret Scott Schiff, 103 Stockley Street with attachment, concerning swimming pools, rental properties and noise in residential areas.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

Chairman Littleton called for the concept review of Site Plan Review Application No. 0714-01 for the property located at 110 Rehoboth Avenue on Lot Nos. 32 & 34, Block – Rehoboth and 31 & 33, Block – Wilmington, 35 Wilmington Avenue on Lot No. 35, Block – Wilmington and 37 Wilmington Avenue on Lot No. 37, Block – Wilmington. The Site Plan Review has been requested by Alex Moore on behalf of Kendra S. Moore, Avenue Associates LLC, Avenue Associates II LLC and White Clay Holdings LLC, owners of the property.

Chairman Littleton provided a brief history regarding site plan review. A number of years ago the City Commissioners at the request of the Planning Commission modified the City Code to establish a new section called Site Plan Review within the Subdivision Code. Site Plan Review is for larger residential and commercial properties. This is the first site plan review that the Planning Commission will be entertaining. The City Code specifies what site plan review is, and it lays out options in steps. One of those steps is a concept review which

allows an applicant who is conceiving a project to come in and talk to the Planning Commission without the need to do formal plans, plats and architectural layouts. The Applicants for Site Plan Review Application No. 0714-01 have gone to considerable expense and time in laying out the design of this particular project. They have gone to the Board of Adjustment and received a variance. They could proceed to come before the Planning Commission for a formal review if steps laid out in the City Code were met. One of the steps is that the Chief Building Inspector assembles all of the department heads who would be involved with what is being proposed, gets their input and does a review of the whole Code which includes the building code, zoning code and subdivision. It's only upon the determination of the Chief Building Inspector that an application can be moved forward to the Planning Commission. The Chief Building Inspector has determined that the application is not ready to come to the Planning Commission. The Applicant has requested a concept review to educate the Planning Commission. With a project of this scope, the Planning commission has sought professional planning help through Mr. Kyle Gulbranson with URS Corporation. He will be working with the Planning Commission, City officials, and the Applicant as this project moves forward. The Planning Commission tries to articulate the views of the community, of how the City sees itself today and in the future, through the Comprehensive Development Plan (CDP). The CDP lays out a vision and provides for a number of things, one of which is great concern about the development, streetscape and appearance of several commercial streets in the City. These streets are Wilmington and Baltimore Avenues and First Street. The other thing in the CDP talks to the idea of a vision template for the redevelopment of those commercial streets. The Planning Commission met with the City Commissioners and urged that a planner should be employed to help it and to lay out a vision of a conceptual view of how those streets could be developed that would help owners as they are developing their projects and properties to see a bigger picture than their own individual properties. The City Commissioners were not receptive of that idea and thought that the developers should set the tone for those streets. The Planning Commission feels very strongly that Wilmington and Baltimore Avenues and First Street deserve attention. The Planning Commission has also been working on trees within the City and the tree ordinance, but it is the greening and effect of landscaping to contribute to the whole feel, vision and character of the City. In reading through the Code, there is reference that part of the responsibility of the Planning Commission is the vision of the CDP and whether the projects are representing what the citizens of the City are looking for. The Planning Commission is taking on this project as an example for other projects, and it will become precedence setting. Chairman Littleton provided the order of business for this concept review. No decisions will be made at this meeting.

Correspondence:

1. Letter dated July 25, 2014 from Harry R. Miller, Fire Chief of Rehoboth Beach Volunteer Fire Co. Inc. – in support of the project.

Mr. David Hutt, Esq. of Morris James Wilson Halbrook & Bayard, represented the Applicants for the Avenue Inn project. The entities involved are Avenue Associates LLC and Avenue Associates II LLC. Three of the principles of those entities are Mr. Ken Simpler, Mr. Ken Simpler Jr. and Ms. Kendra Moore who were in attendance at the meeting. Mr. Alex Moore, Chief Operating Officer (COO) of Seaboard Hotels, was also in attendance. The project is similar to what the design architect explained to the Board of Adjustment and is the vision of the Simpler family as they contemplated what they were going to do with Lot Nos. 35 & 37 on Wilmington Avenue. The structures cannot be feasibly modernized to the standards and codes of today, and would be demolished. The goal is the expansion of the Avenue Inn onto Lot Nos. 35 & 37 which would be similar to original building. The most important thing that people want to know is what the plan is.

Mr. Alex Moore described the project to the Planning Commission. When the Applicants considered this project, they looked at the CDP and wanted to create something that follows along exactly with the process. The Planning Commission's recommendations in the CDP are spot on. The Applicants came up with ideas that they thought fit well with the Planning Commission's vision and with what they want to see on Wilmington Avenue. The Applicants have a big interest in making Wilmington Avenue more attractive to residents and visitors. Mr. Moore described the different components of the design. The biggest focus was placed on design aesthetic improvements. Last year, the Applicants had appeared before the Board of Adjustment for a variance to renovate the lobby and exposed parking on the lobby level which was considered as Phase I. Now, the idea is to continue basically the same look down the street by adding a restaurant and retail space. All parking would be either underground or around the back. The Applicants do not want to see cars parked on the street. The Applicants' thought was that in order to slow down vehicle speed, curb bump-outs could be used. This would also allow for relocation of trees away from the power lines and the sidewalks could be widened. If the power lines could be buried, that would be fantastic. New improvements would also be done to the existing hotel. The existing ramp would be filled in, and the garages underneath would be connected. No parking would actually be lost. A new ramp will be created at the western part of the property.

Attorney Hutt noted that currently parking is used on Lot No. 39. There is a variance for 10 parking spaces for the current Avenue Inn so there already is a relationship between the various entities. That relationship would be expanded upon to include a perpetual easement/license/lease to have a perpetual access point to the parking which would go into the proposed Avenue Inn. Probably one of the conditions that would be placed on approval would be City Solicitor Mandalas' review and approval of whatever the form of easement/license/lease in perpetuity looks like. The entities are all related so the granting of the easement/license/lease would just be a matter of getting the language right in the document. The Applicants are Avenue Associates LLC and Avenue Associates II LLC. Lot Nos. 35 & 37 are owned by Avenue Associates II LLC. White Clay Holdings owns Lot No. 39, but this is not viewed as part of the Application. Its roll is to supply the easement/license/lease for the access. The existing hotel is owned by Avenue Associates LLC. Ms. Kendra Moore is one of the principle members of the limited liability companies.

Mr. Ken Simpler Jr. noted that he, Ken Simpler and Kendra Moore are owners of Avenue Associates LLC and Avenue Associates II LLC. The only owner of Avenue Associates is a trust which was established by Ken Simpler for the benefit of Ken Simpler, Jr., Kendra Moore and the grandchildren. Lot Nos. 35 & 37 were purchased not with the trust as part of the ownership. Pending all the approval processes that they have to go through, they did not want combine that ownership until they have the capacity to do so. Lot No. 39 as it is currently laid out is a driveway with 10 parking spaces. This lot is not figured in with the design. The idea is to only make modest improvements so it would be more attractive. Most of the parking on Lot No. 39 which is owned by White Clay Holdings would be accommodated in the new building. Two spaces on Lot No. 39 would be reserved for resident innkeepers, which currently there are none.

Attorney Hutt has spoken with City Solicitor Mandalas about the ownership, and they are currently in discussion regarding this issue.

Mr. Michael Strange noted that spacing requirements are needed for the power lines because they are high voltage transmission lines.

Mr. Moore said that that the drop-off area is not a check-in area. Guests are typically directed to go to the basement to park their vehicles. With the proposed design, there will be one restaurant, not two different restaurants. One delivery will access the parking lot in the rear. Roll-a-ways used for trash are currently stored upstairs and in the basement. They are incorporated into the design of the new building. With regard to the proposed bump-outs, one tree would be removed. It is anticipated that certain trees would need to be removed. The Applicants are trying to develop what the Planning Commission is asking for. The nature of the street is the tallness of the buildings right up to the sidewalk so not a whole lot can be done to improve the properties unless the City determines that a streetscape is needed to create things like bump-outs, etc. A walk through from Rehoboth Avenue to Wilmington Avenue will be provided through the lobby. With regard to the sidewalk, the Code calls for concrete with grass in between the sidewalk and the street. The grass has been maintained for the other property owners for years. Parking will be provided at Avenue II, and check-in will be provided at the Avenue. Mr. Moore liked the idea of a one-way street. The plans to enhance Wilmington Avenue have been contemplated for seven years. The Applicants would like to have an opening date for Avenue II in March or April 2016. They had hoped to have an approval from the Planning Commission in September 2014.

Attorney Hutt noted that at the public hearing before the Board of Adjustment there were 13 letters of support from neighboring businesses and commercial ventures in support of the application. It was reflected in the letters that Wilmington Avenue has always been a target of trying to revitalize or redevelop it.

Mr. Ken Simpler said that they are setting the precedent for the street. They own another five lots in addition to the subject lots. The Applicants are the only ones who will be changing most of the street.

Building Inspector Terri Sullivan read her report. (Copy attached.) The Board of Adjustment variances were approved at the July 28, 2015 meeting for both lot coverage and Floor Area Ratio (FAR). The owners had submitted additional plans for site plan review. Upon the Building & Licensing Department's review of these plans, there are additional design elements that do not comply with the Zoning Ordinance, such as access to the street level parking lot, not owned by Avenue Associates LLC, is through the adjacent lot; the second tower to the roof which is higher than 42 feet; there are encroachments into the setback line; two parking spaces for resident family are not included; there is no handicapped parking space at the grade level parking area; and the curb-cut is 40 feet. Ms. Sullivan received preliminary comments from the Water Department and Public Works/Parking Division. No comments were received from the Wastewater Department. With regard to the Water Department, a second meter would be required for a sprinkler system unless it is tied into the existing sprinkler system. A standpipe at the proposed stair tower would be a good idea. Water lines are located on the

opposite side of Wilmington Avenue. With regard to the Public Works/Parking Division, the street will be very narrow if further encroachment is allowed onto the existing street. Traffic issues in the summer season will need to be considered. The proposal calls for planting beds on City property, bump-outs for trees and moving sidewalks further into the street than existing. There are not zoning compliant issues, but they cannot be approved by the Building & Licensing Department. Existing trees will be removed as a result of this expansion on both Lot Nos. 35 & 37. The Applicants are proposing to plant trees in the bump-outs because there is no area of the new lot that would be able to accept new trees. Commercial property is not required to have trees, but this would result in the decrease of the existing canopy. With regard to Section 236-32, the Building Inspector is required to submit indicating preliminary approval. Since there are additional zoning issues that need to be addressed, the Building Inspector is unable to issue a preliminary approval of the site plan at this time. The owners and the Planning Commission would likely benefit from a concept review because the majority of the project is illustrated in the submitted plans. After the zoning compliant issue are resolved, the Building Inspector will issue a preliminary approval, and the project will be placed on the Planning Commission Agenda for further site plan review. Mr. Kyle Gulbranson of URS Corporation and Ms. Sullivan met onsite on August 6, 2014 upon which measurements were done based on the site plan and what is physically in the area. It appears that on the plan, the bump-outs would not go further than existing parking. Mr. Gulbranson noted that the measurements for the bump-outs are not correct on the plan. If the plan is followed without looking at the measurements on the plan, the bump-outs do not encroach any further out than the existing on-street parking. If the measurements are followed that are on the plan, the bump-outs encroach 2.3 feet into the travel lane of the street. The Applicants have indicated that they will look into this error.

Mr. Mellen noted that the two surveys for this project do not correspond to the same azimuth. There is a difference of approximately 4.5 degrees. If accommodations will possibly be made for changing the streetscape, it is critical to know where everything is and who owns it.

Mr. Gulbranson said that two different vertical datums can be used which may be part of the issue. The issue in Rehoboth is that there have been inaccuracies over the years for survey lines, and they keep getting perpetuated. A surveyor is most likely using the data from a previous survey.

Mr. Strange said that the Planning Commission does not know which survey is correct. It is the obligation of the surveyors who certify and sign the surveys.

Ms. Sullivan noted that with regard to any stormwater issues on Wilmington Avenue, Sussex County Conservation District takes care of the stormwater and sediment erosion control issues for anything over 5,000 square feet of disturbance. Sussex County will review it. Mr. Gulbranson noted that the Applicants have had initial discussions with the Conservation District regarding the engineering of this project.

Mr. Moore acknowledged that with regard to the new entranceway to the ramp and pedestrians walking by, there is enough space to place warning lights coming up the ramp. Access to the existing building from the new building will be provided via the corridors. A preliminary review of the plans has been done by the Fire Marshal which did not have any issues.

Mr. Gulbranson said that the issues with the plans are relatively minor zoning issues which can be resolved. The biggest issue with the project might be the stormwater issue and what the Conservation District might require. The bump-outs and the changes to the character of the street will have to be determined by the City, whether or not the streetscape element can happen, how it will happen or what will need to take place to make it happen. The Conservation District may say that quality improvements are needed to the runoff from the site. There will not be much opportunity to do that other than the bump-out areas. There may be an opportunity to use some of the planting areas as some type of water retention.

Attorney Hutt has spoken with City Solicitor Mandalas regarding the bump-outs. One method of approval would be that the City can license people to use City property for specific purposes. The could license the bump-outs as aesthetic features. Any license agreement would need to be approved by the City Commissioners.

Chairman Littleton said that he would like to see renderings of the building and what is taking place west of the property in the parking area. The Applicants will come back to the Planning Commission with a revised plan.

Mr. Mellen suggested that when the Applicants come back to the Planning Commission for the site plan review, they should have two sets of plans, one with the streetscape and one without it. The Planning Commission will need to know what the incursions really are because there are issues with the surveys.

Public Comment:

1. Mr. & Mrs. Torensy, 39 Delaware, thought this is a great concept. Mrs. Torensy voiced concern about delivery trucks and lightscape on Wilmington Avenue. – Torensy concerned about delivery trucks. Parking.

Mr. Gulbranson said that the lightscape issue is valid, but that can be addressed through careful planning with lighting being aimed at the right locations and using the right types of lights. This project will also need at least the Conservation District and Fire Marshal approval which typically does not happen in 30 days. The Planning Commission may find that it will need to condition the approval based on not receiving those agency approvals. There will basically be a site plan approval and a building construction approval.

City Manager Sharon Lynn said that with regard to the wastewater and water issues, the superintendents need to see detailed plans so they can hone in on exactly what the Applicants' engineers are requiring. The concept is great. She has met with the Applicants to see what their vision is which is a great vision for Rehoboth and Wilmington Avenue. City Manager Lynn had hoped that the City would have been involved several years ago to come up with a concept plan for revitalizing Wilmington Avenue. Ms. Sullivan has to determine what the Code requirements are, but this project is out of her realm. She supported the plan.

The Preliminary Review of the Site Plan Review will be held on September 12, 2014.

## **OTHER BUSINESS**

Chairman Littleton called for the final review of the transmittal reports and action to forward the reports regarding the Resolution Regarding the City's Trees passed by the Mayor and City Commissioners asking 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.

Changes were:

1. Page 4. Last word of the first part of the paragraph should be problems, not problem.
2. Add exhibit numbers.

The consensus of the Planning Commission was to make the corrections to the transmittal report and move the documents forward to the City Commissioners.

Chairman Littleton called to discuss plans and timeline to review and complete the required 5-year update of the City's Comprehensive Development Plan (CDP) that was certified by the State on July 23, 2010.

Chairman Littleton noted that the Planning Commission has asked for a joint meeting with the City Commissioners about trees, swimming pools, commercialization of the residential areas of the City. Mayor Sam Cooper has requested that there be an agenda for the joint meeting. Mr. Strange has taken the first step of laying out an agenda and will be meeting with Mayor Cooper and Mr. Gulbranson to discuss tying it into the long range plan. The City needs an outside expert to sit down and look comprehensively at all of the development code.

Mr. Strange thought that updating the CDP should be more of a dynamic process that is a continual process.

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 to discuss possible future agenda items.

Ms. Lynn Wilson suggested that swimming pools should be placed on an agenda, and the Planning Commission should suggest a moratorium on swimming pools. There are 10 completed or approved swimming pools for the first six months of this year. There were 15 total last year and seven in 2012. She would like to see something done temporarily.

Chairman Littleton said that there is nothing inherently different from a pool vs. a porch, etc. There are a lot of enforcement issues and noise control issues. A moratorium has huge adverse consequences. He would be opposed to a moratorium.

Chairman Littleton suggested that the Planning Commission should look at signage and campaign signs in terms of how long they are displayed, when they are displayed, size, number of them, etc.

Mr. Markert suggested that there should be a mechanism for the City to comprehensively track data and be responsive to its citizens.

Chairman Littleton called for a 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.

There was nothing to report.

No new applications have been timely submitted to date.

The next Regular Meeting will be held on September 12, 2014.

There being no further business, Mr. Mellen made a motion, seconded by Mr. Paull Hubbard, to adjourn the meeting at 9:03 p.m.

**RECORDED BY**

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(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON  
MARCH 13, 2015**

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(Francis Markert, Secretary)