

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**September 12, 2014**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:36 p.m. by Chairman Preston Littleton on Friday, September 12, 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. Paull Hubbard  
                      Chairman Preston Littleton  
                      Mr. Francis Markert, Jr.  
                      Ms. Lynn Wilson  
                      Mr. Michael Strange

Absent:            Mr. David Mellen  
                      Mrs. Jan Konesey

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

A quorum was present.

**APPROVAL OF MINUTES**

Minutes of the July 11, 2014 Planning Commission Regular Meeting were distributed prior to the meeting. Minutes of the June 13, 2014 and August 8, 2014 Planning Commission Regular Meetings were not available for approval.

Mr. Markert made a motion, seconded by Ms. Lynn Wilson, to approve the July 11, 2014 Planning Commission Regular Meeting minutes as written. (Patterson – aye, Shulman – abstain, Hubbard – aye, Littleton – aye, Markert – aye, Wilson – aye, Strange – aye.) Motion carried.

**CORRESPONDENCE**

Correspondence regarding swimming pools, large rentals, commercialization of residential neighborhoods, etc. has been received for the Joint Meeting with the Mayor & Commissioners and Planning Commission that was held on September 12, 2014 at 3:00 p.m. and is part of the public record.

**OLD BUSINESS**

Chairman Littleton called for the report from the Building Inspector concerning conditions being met for previously conditionally approved Partitioning Application No. 1113-04 for a property located at 49 Park Avenue and possible action to finalize the partitioning.

Building Inspector Terri Sullivan reported that the conditions set by the Planning Commission have been met. The structures which encroached have been moved, and the new addresses are 47 Park Avenue and for Lot G and 49 Park Avenue for Lot H. An extension had been granted for the power company to do the connection. The connection has been completed.

Mr. Markert made a motion, seconded by Mr. Paull Hubbard, to finalize Application No. 1113-04 for a property located at 49 Park Avenue. Motion carried unanimously.

Chairman Littleton called for the report from the Building Inspector concerning conditions being met for previously conditionally approved Partitioning Application No. 1110-03 for a property located at 807 King Charles Avenue and possible action to finalize the partitioning.

Ms. Sullivan reported that the conditions set by the Planning Commission have been met. The structures which encroached have been moved, and the new addresses are 805 King Charles Avenue for Lot Nos. 38 & 39

and 807 King Charles Avenue for Lot Nos. 40 & 41. The conditions had been completed in October 2013 and inspected on October 30, 2013, but the partitioning had not been finalized. Everything was completed in the timeframe that was scheduled.

Mr. Markert made a motion, seconded by Ms. Wilson, to finalize Application NO. 1110-03 for a property located at 807 King Charles Avenue. Motion carried unanimously.

### **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 September 5, 2014. The Agenda was faxed to Cape Gazette, Coast Press and Delaware State News on September 5, 2014. An E-News blast was also sent out on September 5, 2014. The Public Notices Partitioning Application No. 0814-02 and Site Plan Review Application No. 0714-01 were posted at City Hall, Building and Licensing Department and on the City website on August 20, 2014. The Public Notice was advertised in the Cape Gazette on August 22, 2014 and August 26, 2014, in the Coast Press on August 27, 2014 and in the Delaware State News on August 27, 2014 and August 28, 2014. A mailing was sent to property owners for the Public Notices, and signage was posted on the properties.

### **NEW BUSINESS**

Chairman Littleton called for the Preliminary Review of Partitioning Application No. 0814-02 for the property located at 104 Rodney Street, Lot Nos. 27, 28, 29, 30 & 31, Block 24, into two (2) lots with Lot Nos. 27, 28 and the westerly portion of Lot No. 29 becoming one (1) lot of 7,253 square feet and the easterly portion of Lot No. 29 and Lot Nos. 30 & 31 becoming one (1) lot of 5,250 square feet. The Partitioning has been requested by Lee S. Waples on behalf of Yvonne S. Waples Trust and John F. Waples Trust, owners of the property. Chairman Littleton noted the Preliminary Review procedures for both cases.

Building Inspector Terri Sullivan read her report with exhibits.

Exhibit A – Application packet which includes:

1. Cover letter from Lee S. Waples and David G. Waples
2. Executive Summary
3. Table of Contents
4. Application
5. Application Additional/Clarification Information (Sections G, H & J)
6. Trust Resolution and Planning Commission Affidavit
7. Lot Photographs
  - a. Diagram of All Adjoining Lots
  - b. Existing Lot (125 feet known as 104 Rodney Street)
  - c. Adjoining Lot (east edge of proposed 102 Rodney Street)
  - d. Adjoining Lot (west edge of proposed 104 Rodney Street)
  - e. Adjoining Lot (rear east edge of proposed 102 Rodney Street)
  - f. Adjoining Lot (rear west edge of proposed 102 Rodney Street)
  - g. Adjoining Lot (rear west edge of proposed 104 Rodney Street)
8. Lot Surveys
  - a. Entire Existing Property
  - b. Proposed Partition
  - c. Tree Survey/Planting/Protection Plan
9. Current Deed(s)

The owners wish to subdivide Lot Nos. 27 through 31, Block 24, into two lots with Lot No. 27, 28 and part of Lot No. 29 becoming one lot known as 104 Rodney Street and Lot Nos. 30, 31 and part of Lot No. 29 becoming one lot known as 102 Rodney Street and consisting of 5,250 square feet. The existing garage will be removed, and the existing home will be retained. The existing shed will be retained, but the size will be increased. Currently, there are seven trees located on the property with none of these trees proposed to be removed. Three trees will be on 102 Rodney Street, and four trees will be on 104 Rodney Street. Based on the surveys submitted, both proposed lots can fully contain a 4,000 square foot rectangle. Both proposed lots have a lot size of at least 5,000 square feet and have at least 50 feet of frontage on a street.

Mr. Lee Waples represented he and his brother in this process. The setbacks have changed the way he and his brother originally were looking at settling his mother's estate. This resulted in two administrative errors: 1. Cover page of the Application says two equal lots. 2. Page 14 in the header says two equal lots. The intent is to keep the original cottage as is on 104 Rodney Street. The existing garage will either be removed or

demolished. It is his intent to leave all the trees as is. With regard to a curb-cut, Mr. Waples proposed that there would be parking for two cars at the two-story portion of the house. He had considered a driveway on the east side of the property, but he would like to preserve all the green space and not put a driveway in that location.

There was no correspondence and no public comment.

The consensus of the Planning Commission was to move the Application to Public Hearing.

City Solicitor Glenn Mandalas read the resolution.

Mr. Shulman made a motion, seconded by Mr. Mike Strange, that the Application is substantially complete and accurate; and as a condition, the corrections should be made to the notations of equal lots and the intent of the Applicants is that there are no plans to take down any trees. Motion carried unanimously.

The Public Hearing will be held on October 31, 2014.

Chairman Littleton called for the Preliminary Review of Site Plan Application No. 0714-01 for the property located at 110 Rehoboth Avenue on Lot Nos. 32 & 34, Block – Rehoboth and Lot Nos. 31, 33, 35, 37 & 39, Block – Wilmington. The Site Plan Review has been requested by Alex Moore on behalf of Avenue Associates LLC and Avenue Associates II LLC, owners of the property.

Ms. Sullivan read her report with exhibits.

1. Exhibit A –
  1. Application packet which includes:
    2. Application
    3. Survey of Lot Nos. 32 & 34 Rehoboth Avenue and Lot No. 31 and part of Lot No. 33 Wilmington Avenue
    4. Survey of Lot Nos. 35 & 37 Wilmington Avenue
    5. Cover Sheet & Site Plan (CS)
    6. Landscape Plan (C1)
    7. Overall Floor Plan (A1.3)
    8. Floor Plan (A2.0)
    9. Floor Plan (A2.1)
    10. Floor Plan (A2.2)
    11. Floor Plan (A2.3)
    12. Exterior Elevations (A3.1)
    13. Building Sections & Room Types (A4.2)
    14. Site Survey Lots 462, 465 (parcel numbers)
  2. Exhibit B –
    1. Letter from Planning Commission Chair with Mr. Moore's responses in red.
    2. Survey of Lot Nos. 31, 32, 34 & part of Lot No. 33 dated August 21, 2014
    3. Declaration of Easement dated August 22, 2014
    4. Planning Commission Affidavits dated August 22, 2014
    5. Cover Sheet & Site Plan (CS)
    6. Landscape Plan (C1)
    7. Overall Floor Plan (A1.0)
    8. Overall Floor Plan (A1.1)
    9. Overall Floor Plan (A1.2)
    10. Overall Floor Plan (A1.3)
    11. Floor Plan (A2.0)
    12. Floor Plan (A2.1)
    13. Floor Plan (A2.2)
    14. Floor Plan (A2.3)
    15. Exterior Elevations (A3.1)
    16. Building Sections & Room Types (A4.2)
    17. Site Survey Lots 462, 465 (parcel numbers)
  3. Email dated September 3, 2014 from Wastewater Department
  4. Email dated September 4, 2014 from Water Department
  5. Email dated September 5, 2014 from Public Works Department

The owners wish to extend the existing Avenue Inn onto Lot Nos. 35 & 37 Wilmington Avenue. This is a commercial project over 15,000 square feet of gross floor area and requires substantial renovation and increase in intensity of usage. The existing structures in the expansion area will be removed. The owners are proposing

to expand the existing Avenue Inn by building a three-story hotel with underground parking, street level parking, two retail spaces, a restaurant and 28 hotel rooms. The hotel rooms are located on the second and third floors. The retail, restaurant and a portion of the parking garage is located at grade. There is an additional parking garage below grade. The Board of Adjustment has approved variances for lot coverage and Floor Area Ratio (FAR) at its July 28, 2014 meeting. While a complete plan review will not be done until the engineered drawings are submitted for a building permit, the City finds no Zoning Code violations at this time.

Mr. David Hutt, Esq. represented Avenue Associates LLC and Avenue Associates II LLC which are the owners of the six lots that comprise the current Avenue Inn as well as the two lots where the Avenue Inn would be expanded to as proposed in the documents. Mr. Alex Moore, CEO of Seaboard Hotels which operates the Avenue Inn and Mr. Ken Simpler, one of the principles of both entities, were in attendance at the meeting. Mr. Jeff Sholkopf, architect for the project, was also in attendance. The concept review was helpful, particularly when it was summarized in the letter Chairman Littleton sent to Mr. Moore thereafter. Response to each issue raised at the last meeting are indicated red. The Planning Commission indicated at its last meeting a favorable view of the plans that were originally submitted in July 2014. However, in Ms. Sullivan's report in response to those plans, was that there were portions of those plans that were in conflict with requirements of the Code, and the Planning Commission noted that the City has not adopted a design image as was called for in the Comprehensive Development Plan (CDP) and this is an appropriate design image for Wilmington Avenue. The Applicants were encouraged by the Planning Commission to develop a second plan that complied with the requirements of the Zoning Code so that pursuant to the site plan section of the Code, Ms. Sullivan could give her blessing to it which would allow the Applicants to proceed to the next stage. The original plan which was submitted in July 2014 is now the alternate plan, Version B. The Code compliant plan is now Version A. The Applicants are seeking approval from the Planning Commission of Versions A and B with separate conditions for both.

Mr. Jeff Sholkopf, architect and planner, was charged by Mr. Moore and Mr. Simpler to create a more pedestrian friendly streetscape. Three areas of the CDP were focused on: 1. Resource and service capacities which discuss the planting of curbside trees and assuring the walkability of the sidewalks. 2. Resort attractiveness and favorable business climate which would increase access for people and get cars off of the street. 3. Planning for fiscal and functional change which specifically addresses the physical upgrade of the first two blocks of Baltimore and Wilmington Avenues and First Street to improve the commercial viability, safety ambience and access by pedestrians. The general action was to preserve a Rehoboth-like character and encourage mixed uses. One street tree would be removed where the proposed new ramp would be located on Lot 39, and a new tree would be planted at a different location. Two trees near the existing entrance on Wilmington Avenue may remain or be relocated out towards the street. Mr. Sholkopf distributed a handout of his presentation. The general plan of what is proposed at ground level is to have parking behind the building with extended commercial uses across the front of the building which has two retail spaces and a restaurant replacing the two existing commercial buildings. This would tie in through a small rear lobby back to the main lobby of Avenue Inn. The existing ramp to the underground parking would be moved over to the corridor between Lot Nos. 37 & 39 and would serve as an entrance to the underground parking. Currently, there are 10 parking spaces which were allowed by the Board of Adjustment to exist on a neighboring property. With this design, that number is reduced to two parking spaces which are designated as the resident innkeeper spaces. On the upper two floors, the proposal contemplates 14 rooms per floor which will be identical in size and scale to the rooms that exist in the hotel. There will be an extension of the corridor, an additional stairwell and additional elevator. This building will be served by the same lobby and laundry, and it shares the same pool, etc. The rendering, which would not be permissible, shows the existing Avenue Inn with some modifications and the addition. The height of the addition is identical. The room layout extends across similarly. The lower level which is at street level is envisioned with a porch feeling. The pieces that are not conforming with the 30 degree angle stepback are the proposed small gables and the gable roof over the existing breakfast room. It is also proposed to put a roof on top of the existing tower which is within the stepback. In addition, the proposed new stair tower will not be allowed because of the angled stepback. The requirement is that from grade immediately adjacent to the building along the front elevation, the setback goes up 14 feet and angles 30 degrees back. The roof has been designed to go to the point at the maximum height. When a small gable is added, the tip of the gable exceeds the line of the setback by one to two feet which is the edge of the roof. The same thing happens on the lower gables. On all the plans, the basic curb and the parking lane remains as is. In Version B, three bump-outs have been proposed to soften the streetscape from being all asphalt. The sidewalk, grass strips, curb and curb-cuts are all in the right-of-way, so the three bump-outs would extend further than the existing conditions in Version B in order to get the trees out from under the power lines. In Version A, there is a net increase of one to two parking spaces; and in Version B, there is no net loss of parking spaces. Current Code calls for a five foot wide sidewalk to be developed at least four feet from the curb. It is approximately

13 feet from the right-of-way to the curb, so there would be four foot strips of grass on both side of the five foot wide sidewalk. The existing sidewalk is narrower and a little skewed. The main differences in Version B besides the bump-out is that the proposed wider sidewalk goes to the curbed edge for safety reasons and that the property owners would plant more intensively in the right-of-way on the Applicants' side of the sidewalk. The existing Avenue Inn has four planter boxes towards the eastern end of the property. The Applicants would assume responsibility for maintenance of the trees in that proposed area.

Attorney Hutt said that it is within the Planning Commission's authority to approve both Versions and condition them differently. The Applicants would like to have the Public Hearing and site plan approval at the October 31, 2014 meeting. Once there is site plan approval, the Applicants can move forward with the other agencies for approvals. Demolition would be slated to begin in Winter 2015.

City Solicitor Mandalas suggested that the Planning Commission should review Plan A and get to a point where it is comfortable with moving Plan A to Public Hearing. The problem with Plan B is that it is not supposed to be before the Planning Commission until it has the zoning officer saying that it is zoning compliant. The building official has not made decision at this point in time. He suggested that the Planning Commission should move forward with Plan A and go to Public Hearing, but have both Plans A & B available at the Public Hearing so the public can comment on both. At the conclusion of the Public Hearing to the extent that the Planning Commission is comfortable with Plan A, provide site plan approval. Under the site plan review ordinance, the Planning Commission has an opportunity for a site plan amendment after the approval has been given. If they are deemed to be minor amendments, the Applicants do not have to start the process over.

Chairman Littleton noted that the Applicants could also go before the Board of Adjustment to get approval on zoning issues. Discussion ensued.

There was no correspondence.

Public Comment:

1. Mr. Frank Gunion, Henlopen Condo No. 304, noted that a tremendous amount of water is being received off of the subject property as it exists now. He suggested that the engineering should be done properly because of excavation within one foot of his property where the Cilantro restaurant is located. Surface parking would abut where people outside on the patio. There is a four foot wide corridor at the rear of the buildings that supplies a rear exit for each of the spaces.
2. Mr. Frank Cooper, 96 East Lake Drive, said that the Planning Commission should be empowered to declare things that are not in the Code which are CDP compliant as hardships so it could give them the designation of a hardship when going to the Board of Adjustment.

Mr. Sholkopf said that via an easement on neighboring Lot No. 39, which is not part of the project, there would be an entrance from the west side into the parking lot that is tucked behind the building. There are 16 parking spaces on this lot. In Version A, one handicapped space is shown. It is contemplated that the back wall will be four foot high. Additional screening would be provided to protect the abutting property. The lower level ramp would be similar to the existing ramp. It will serve 22 new parking spaces and 39 existing spaces. Lighting is being proposed along the drive aisle for the parking lot. One of the two entrances to the three spaces will service two retail spaces and the other will service the restaurant. Both accesses will be ADA compliant. Trash will be collected as it is now in a garbage room in the hotel and then directly taken out with trucks. All mechanical equipment will be located on the roof such as heat pumps, compressors, etc. A proposed generator is being proposed to power a sump pump, emergency lighting, etc. There will be a continuation of planter boxes. With regard to stormwater, a preliminary assessment report has been done. The consultant has had an initial meeting with the Conservation District. There will be no new pool in the addition. There will not be any uses on the roof, such as hot tub, etc. Changes will be planned for the Rehoboth Avenue side of the Avenue Inn at a later date. The restaurant will be leased out, but will be integral to the hotel. Mr. Sholkopf will provide calculations of parking and availability in the areas of the bump-outs with trees at the next meeting.

Chairman Littleton noted that the parking lot on Lot No. 39 is part of this project, and its streetscape is part of the project. The Code will require that this lot be paved. Stormwater management is a huge part of this project.

Mr. Shulman noted with regard to Section 270-20, (A) deals with heights and (B) deals with the 30 degree slant back. Footnote No. 2 in Section 270-20(A) applies to Tier 2 uses. Heating, ventilation and cooling devices, which are to be enclosed so as to be obscured from view, elevator shafts, one stairway entry for maintenance access to the roof, chimneys and antennas shall not be included in calculating height. Footnote No. 4 applies to dome, spire, cupola, etc. not for occupancy or storage may be erected in a height in excess of

that authorized provided the aggregate of the bases of the structure does not exceed 10 percent of the building's ground floor area. The total height of the building with such embellishments shall not exceed 50 feet. The proposed stairs that would be in a cupola would not be used for occupancy or storage, so he did not see why stairs in a cupola would take away the ability to have a cupola that takes the building height to 50 feet. If stairwell and cupola are simply decorative and it is reduce by five feet and if Footnote No. 4 applied to Subsection (B), these problems would be solved.

Mr. Sholkopf acknowledged that with regard to Footnote 4, if a cupola that would replace the stair tower would drop five feet, it would eliminate the height problem but would not eliminate the problem with the 30 degree setback. Something could look attractive there at five feet less, but it would not be quite as dramatic.

City Solicitor Mandalas read the resolution.

Mr. Strange made a motion, seconded by Mr. Markert, to adopt the Resolution as read.

Mr. Shulman said that he will be willing to work out a quick fix to the footnote. If the City Commissioners would hold a hearing, the Planning Commission would know that before the Public Hearing on this Application. He would be willing to have a special meeting in November 2014 limited solely to this issue. Mr. Markert agreed. Mr. Shulman noted that the Applicants will let the Planning Commission know at the next meeting if they are willing to do the pervious paved surface.

Mr. Patterson said he is looking for specific information as to confirming the net change, if any, in the parking spaces for Plan A and confirm the net change with the three proposed bump-outs and if there would be any additional net change in parking if there would be a fourth bump-out for a tree.

Mr. Strange and Mr. Markert agreed to the amendment.

Motion carried unanimously.

The Public Hearing will be held on October 31, 2014.

## **OTHER BUSINESS**

Chairman Littleton called to discuss and possibly make recommendations to the Board of Commissioners concerning the regulation of the size of campaign signs, when and where such signs can be posted and when they must be removed.

This item was deferred to the next meeting.

Chairman Littleton called to discuss possible follow-up actions needed from the September 12, 2014 Joint Meeting of the Planning Commission and Board of Commissioners concerning land use and development issues in the residential districts.

Chairman Littleton reported that there will be no action for the Planning Commission to take.

Mr. Markert noted that there was appreciation for the Planning Commission and Mr. Strange's presentation which was instrumental in guiding the meeting and at least directing the path forward.

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.

This item was deferred to the next meeting.

Chairman Littleton confirmed that the Friday, October 31, 2014 at 12:30 p.m. is the date and time for the Planning Commission's October Regular Meeting in order to ensure a quorum.

Chairman Littleton called for the Building Inspector's Report.

Ms. Sullivan reported the floodplain ordinance is changing based on requirements by FEMA. Chapter 152 of the Code will be eliminated with regard to fire prevention, none of which is valid. The City Commissioners are setting a policy for where HVAC units can be replaced if they currently exist. The biggest issue being discussed is moving on a moratorium for swimming pools.

Chairman Littleton called for the City Solicitor's Report.

There was nothing to report.

Chairman Littleton called to discuss possible future agenda items.

There were none.

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 October 31, 2014 at 12:30 p.m.

There being no further business, Mr. Markert made a motion, seconded by Mr. Hubbard, to adjourn the meeting at 10:13 p.m.

**RECORDED BY**

\_\_\_\_\_  
(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON  
MARCH 13, 2015**

\_\_\_\_\_  
(Francis Markert, Secretary)