

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

October 31, 2014

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 12:48 p.m. by Chairman Preston Littleton on Friday, October 31, 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
 Mr. Francis Markert, Jr.
 Mrs. Jan Konesey
 Ms. Lynn Wilson
 Mr. Michael Strange

Also Present: Mr. Glenn Mandalas, City Solicitor (left the meeting at 4:10 p.m.)
 Ms. Terri Sullivan, Chief Building Inspector
 Mr. Kyle Gulbranson, Planner

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 October 24, 2014. The Agenda was faxed to Cape Gazette, Coast Press and Delaware State News on October 24, 2014. An E-News blast was also sent out on October 24, 2014. The Public Notices for both Public Hearings were posted at City Hall, Building and Licensing Department and on the City website on October 8, 2014. The Public Notice was advertised in the Cape Gazette on October 10, 2014 and October 14, 2014, in the Coast Press on October 15, 2014 and in the Delaware State News on October 15, 2014 and October 16, 2014. A mailing to property owners for the Public Notice was sent out, and signage was posted on the properties.

APPROVAL OF MINUTES

No Minutes were available for approval.

CORRESPONDENCE

There was none.

OLD BUSINESS

Chairman Littleton called for the Public Hearing 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 Public Hearing procedures for both cases. The Preliminary Review was entered into the record for both cases.

Mr. David Mellen recused himself from this matter.

Chief Building Inspector Terri Sullivan read her report.

Mr. Lee Waples noted that a new survey had been submitted. The property line has not changed, but the planter his grandfather had built could be left on the property. Since the last meeting, he has planted a tree on the proposed property where the house is located. The shed has been moved. The garage will be removed from the property in two weeks to bring the proposed lot into compliance.

Public Comment:

1. Mr. Frank Cooper, 96 East Lake Drive – in support of the application.

Chairman Littleton closed the public portion of the hearing.

Mr. Harvey Shulman made a motion, seconded by Mr. Francis Markert, to approve the Partitioning based on the conditions to be read by the City Solicitor.

City Solicitor Glenn Mandalas read the resolution. Partitioning Application No. 0814-02 shall be and is hereby conditionally granted with the following conditions of Final Approval:

1. The Applicant shall remove the garage structure located on the property at 102 Rodney Street.
2. The Applicant shall provide code-compliant off-street parking on the property located at 104 Rodney Street.

Section 5. Subdivision of the Property shall be in accordance with the final plat plan prepared by Foresight Services, dated July 7, 2014, and identified as Page 21A, with no revisions noted.

Mr. Waples noted what he is required to do as part of the demolition at 102 Rodney Street, as per the Building Inspector:

1. Remove the garage, block foundation and floor.
2. Remove the gravel driveway. Grade it back to flat or flush. Seed and straw that area.
3. Remove the current apron. Add a curb over the 52.5 foot frontage
4. Fill it, seed it and straw that area.
5. If there is any damage to the sidewalk, repair it as needed.

Mr. Waples noted what he is required to do at 104 Rodney Street:

1. Add a curb-cut and gravel driveway.

(Patterson – aye, Shulman – aye, Hubbard – aye, Mellen – recused, Littleton – aye, Markert – aye, Konesey – aye, Wilson – aye, Strange – aye.) Motion carried.

A copy of the resolution will be forwarded to Mr. Waples from City Solicitor Mandalas.

Chairman Littleton noted the procedures for Final Approval by the Planning Commission.

Chairman Littleton called for the Public Hearing 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, and consideration and potential action on site plan revisions, if any, and any other related items. 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. She noted that on October 27, 2014, the Board of Adjustment granted variances for the encroachments of the gables and the rooflines into the setback lines as well as the second stair tower.

Chairman Littleton noted that at the Preliminary Review, the Applicants had presented Proposals A & B to the Planning Commission. He summarized that the Applicants had proposed Plan B which had two items which were designed aesthetic enhancements to the project: 1. Stair tower on the westerly roofline. 2. Gables which were minor encroachments into the 30 degree setback. The Board of Adjustment on October 27, 2014, granted variances for both of those items. The Planning Commission, at its concept review, was encouraged by Plan B. At its Preliminary Review, both Plans A & B were discussed. The Planning Commission encouraged the Applicant to pursue Plan B.

City Solicitor Mandalas has had a conversation with the Applicants' attorney regarding the easement agreement, and it is in substantially complete form. There is still an issue as to whether they will identify where parking would go on the lot. It is clear where the driveway will be located, but it is not clear where the two parking spaces will be located. The current easement is good for driveway access, ingress, egress and parking, but it does not identify where the two parking spaces for resident innkeepers will be located.

Mr. David Hutt, Esq. of the law firm Morris James Wilson Halbrook & Bayard, represented Avenue Associates LLC and Avenue Associates II LLC. Mr. Ken Simpler, Sr., Mr. Alex Moore and Mr. Sholkopf were in attendance at the meeting. Attorney Hutt noted that the two designated parking spaces can be shown on

the site plan. At the previous meeting, two plans were presented: 1. Code compliant - Version A. B. Architectural enhancements and features – Version B which is preferred. The Planning Commission indicated that Version B is the plan that has the type of design image that the Commission envisioned when it adopted the Comprehensive Development Plan (CDP). After considerable discussion, the Avenue Inn decided to press forward with the Board of Adjustment. The architect's initial vision and plan for this project can move forward, and Version B is now Code compliant. This version provides the following: 1. Correct scale and character for the neighborhood. 2. Provides compatibility of new construction and alterations with the existing scale and character. 3. Preservation of streetscape. The streetscape the Applicant is proposing to move forward with does not include the bump-outs at this time. The Applicant would like to keep the streetscape compliant with the City Code and have the requisite number of trees and parking spaces. The Applicants' hope is that the City will bring a design image and streetscape similar to using the bump-outs, underground utilities or possibly implementing a one-way street in the future to enhance the entire streetscape of Wilmington Avenue. 4. Protection of natural resources. This site will get the benefit of the most recent version of Delaware's stormwater management regulations which recently became effective. The Applicants have been working with Sussex County Conservation District. Both quantity and quality of stormwater leaving this site will be maintained and monitored as required. Additional trees will be added to the streetscape. 5. Protection of the public's health, safety and general welfare. Because of a safety concern, in part of this process the entrance of the hotel will be moved further towards the middle of the block so traffic will not be stacking up into an intersection. Parking will be underground or behind the building for the patrons of the hotel. Rehoboth Beach Main Street and Chamber of Commerce had submitted letters in support of both applications to the Board of Adjustment, fully supporting the project. Thirteen letter of support were submitted to the Board of Adjustment from neighboring and adjacent businesses.

Mr. Shulman noted that the Planning Commission is required to have a tree survey of the property, even though this is commercial property and there is no tree density requirement. Chairman Littleton noted that at the Preliminary Review, the Applicants submitted a narrative of what trees are currently located on the property.

Mr. Alex Moore noted that the site survey, which was done solely for the demolition permit, shows all the trees on the property. The Code does not require the Applicants to replace the trees on a commercial property.

Mr. Brian Patterson said that in Section 236-32(C) it states that site plans shall be clearly drawn to scale so that they are legible and must show 26 items. No. 25 says that such information about existing trees as prescribed in Chapter 253 of this Code. The information that is required for the tree ordinance to get a tree removal permit is supposed to be submitted as part of the site plan application.

Mr. Shulman said that a standard is being set for Wilmington Avenue. His concern was that just because it is a commercial property on Wilmington Avenue and if trees are located there and they are not required by the tree ordinance to have a certain tree density, that this will also mean that as the property is developed and trees are taken down, that under the site plan review ordinance there is no consideration given to protection of the streetscape and natural resources.

Mr. Moore has had a meeting with Delmarva Power to discuss the utilities, and a proposal is being put together for possible underground utilities.

Mr. Jeff Sholkopf, architect, clarified that the Version A site plan is still essentially the site plan that is being done. In terms of the look of the building, this would be Version B. In terms of the bump-outs and streetscape, this would be Version B. The Applicants are asking the Planning Commission to consider the site plan for Version A which became compliant with the sidewalks, curb, elevations, building, etc. The building structure is the same with the amount of rooms, amount of space, parking, lighting, etc. Chairman Littleton clarified that the only people who can change the street and its right-of-way, is the City itself. The Planning Commission is looking at no bump-outs which was shown on the site plan of Version A.

Mr. Sholkopf had distributed packets to the Planning Commission of the items to be clarified from the Preliminary Review. A survey is included which has a detailed description of the trees on the property. At this point, the Applicants are able to go forward with Version A. The second part of the packet provides more clarification on exterior lighting. A lighting schedule is shown with four types of fixtures which would be used in the parking areas. An updated illustration was provided that combines some features which were previously presented and adds the driveway. This submittal combines the building character and the landscaping and qualities of Version B with the streetscape of Version C, along with two additional trees planted. In order to do construction a City tree will need to be removed because it is located very close to the driveway. This would

require the City to grant approval to remove the tree. Improvements will be made to the entire parking lot. Fencing and screening will be provided at the rear of the parking lot. Two parking spaces will be provided for the resident innkeepers.

Chairman Littleton noted that the Applicants do not own the parking lot, but they are seeking an easement for a driveway and two parking spots. Mr. Shulman thought that it is appropriate whether the easement on the adjoining property is providing everything the Planning Commission thinks is necessary, whether it is driveway, parking, trees, lighting, etc.

City Solicitor Mandalas noted that the proposed easement has not been finalized at this point in time.

Mr. Sholkopf noted that the proposed paving is pervious with a 20 foot wide drive aisle. Property screening of the neighboring property on the north side was provided. An updated survey with trees and updated site plan were provided. Of the 18 trees on the property, four are located on Lot No. 39 and four are in the right-of-way. Five of the existing trees will continue to exist. Signage with lighting will be located over the entryway doors. Signage will be done specific to the sign ordinance.

Mr. Kyle Gulbranson of URS Corporation noted that site plan review is looking at the land, location of the building and physical improvements on the ground. The next stage is the construction plan review which entails the physical construction of the building. A separate signage plan will need to be approved which has to go through the permitting process.

Ms. Sullivan noted that if the Planning Commission wants to require conditions on signage than that is what the site plan review will state, and the Applicants will have to follow it. If the Planning Commission feels the sign ordinance is sufficient to take care of whatever signage is being proposed, then there is no need to address it.

Attorney Hutt noted that typically the Planning Commission does not put anything in conflict with its own Code because then it would be creating problems in the future.

Mr. Shulman said that the site plan ordinance is not a question of being in conflict with other Code provisions; it is a supplement. He did not think that the Planning Commission can look at this as saying that it cannot do anything more than what the other City ordinances say because it is a conflict. The other City ordinances set certain conditions, but as part of site plan review, the Planning Commission is not the building inspector and does not have a checklist to see if the Applicants are complying with all the ordinances. The Planning Commission is trying to see what makes sense in terms of the public purposes of the site plan ordinance to make sure that this is a good project which fits in. Mr. Shulman did not buy the notion that if someone wants to do the lighting that is consistent with the lighting ordinance and the signage that is consistent with the sign ordinance, that they can do that. The Planning Commission needs to decide as part of the approval what it wants to say.

Chairman Littleton summarized that the Applicant is submitting a plan which has a lot of specificity to the design. If the Planning Commission accepts their plan, that is what they are committed to do. The signage issue is that the Applicants are proposing signage. At a future time, if they choose to take the restaurant and make five retail shops out of it and unless the Planning Commission put it as a condition that there will be no more than a certain number of signs facing Wilmington Avenue, the default would be the City sign ordinance which allows three signs per business. Discussion ensued.

Ms. Cathy Corletto, address unknown, said that the City has been doing a good job; the Code needs to be respected and there are variances to change the Code.

Mr. Kyle Gulbranson of URS Corporation said that part of the site plan process, other than meeting the City's requirements, there are also State agency requirements that a plan needs to meet as well. One of those agencies is Sussex County Conservation District which enforces the state's stormwater and erosion and sediment control regulations. The Applicants have met with the Conservation District and are working through that process. Drainage calculations have been developed which have been reviewed, and he concurs with their findings to date. A condition of approval will be that the Applicants get agency approval from the Conservation District. The other agency that the Applicants will need approval from is the State Fire Marshal's office. The State Fire Marshal looks at the site plan and also the buildings. There are two separate approvals that the Applicants will need to get from that agency. Once construction plans are finalized and submitted to Building & Licensing, the City departments will need to approve them. Once the stormwater calculations and the stormwater improvements are finalized, the City Manager will approve the stormwater plan and stormwater connection. Ultimately that will be approved by the City Commissioners. There is also a building code review.

City Mandalas noted that a site plan will be attached to the easement document to identify where the two parking spaces will be located for the resident innkeepers.

Attorney Hutt said that a site plan and survey have been provided that would be recorded. The site plan designates on it the two resident innkeeper parking spaces. The survey will show the actual location of the perpetual easement for the driveway and the two parking spaces.

Mr. Mellen voiced concern with the ownership of the easement. He would be much happier if the property was owned by the Avenue Inn itself. The value of this lot far exceeds the value of the driveway. His concern was that possibly the easement could be broken, and the Avenue Inn would not have access to its driveway and the underground parking.

Mr. Shulman said that the City could be a third party beneficiary even though it is not a party to the easement. There is a difference between a perpetual easement and an unconditional easement. If the easement imposes mutual obligations and one party breaches its obligation, he did not know under Delaware law if the other party would have to continue with the easement. The Planning Commission would have to make sure that not only is the easement perpetual, but that it is unconditional.

Chairman Littleton noted that these two entities are willing to risk that future regarding the easement.

City Solicitor Mandalas noted that the City is necessarily assuming some risk also because it would be involved if at some point the easement is dissolved. There is no prohibition to do further development of that lot based upon this easement.

Mr. Patterson did not see any landscaping at all within the site that is officially under the Planning Commission's review. Part of the White Clay property is not officially part of the site plan except to the extent of the easement. The Applicants have chosen to limit the easement to the driveway and the two parking spaces which they absolutely need to gain access to the rear garage. The streetscape is limited to the street trees. The sidewalk is already the City's property. If there was green space or open space as part of the site plan, that would be a nicer streetscape. The Applicants have chosen to keep this property separate and only grant an easement to the extent of those two things and keep the other parking spaces for a different use. The Planning Commission is not officially reviewing this as part of the site plan. He did not necessarily see that this is alright. The Planning Commission could ask for open space and landscaping as part of the site plan.

Mr. Gulbranson noted that cross access easements are common in commercial development. Occasionally, they go bad but not very often. There is a trend in commercial development to try to avoid cross access easements by purchasing or re-subdividing.

Attorney Hutt said that both legal and equitable remedies need to be protected in an easement agreement. He did not think a Delaware court will say that a complete business can be undone by putting up a barricade.

Mr. Shulman was trying to give the Applicants an option to satisfy the concerns of the Planning Commission that there are separate ownership and it could disappear. He suggested that making the easement a little stronger so that the remedy could not shut down an easement.

Mr. Ken Simpler, Sr. noted that there currently is an easement on that property that goes back to the other building. It was bought with that easement. City Solicitor Mandalas noted that the easement is already encumbered.

Ms. Lynn Wilson requested that a tree should be planted in the corner of the easement back at the screening. Mr. Simpler said that if there is any property available, the Applicants will be glad to put a tree there, but they do not want it to be put to a specific location.

There was consensus among the majority of the Planning Commission members to approve the site plan review.

City Solicitor Mandalas read the resolution. Site Plan Review Application No. 0714-01 shall be and is hereby conditionally granted with the following conditions of Final Approval:

1. The Plan shall receive approval from the Sussex County Conservation District.
2. The Plan shall receive approval from the State Fire Marshal's office.
3. Construction plans shall receive approval from the City Water and Wastewater Departments.
4. Construction plans shall receive approval from the building code official prior to issuance of building permits.

5. Stormwater plans and stormwater improvements and connections shall receive approval from the City Manager.
6. Approval of the agreement for access easement between Avenue Inn applicants and owners and the owner to the parking lot to the west of the Avenue Inn that provides the driveway access and two parking spaces to the Inn proper.
7. A shade tree to be planted on Lot No. 39.

Section 5. Subdivision of the Property shall be in accordance with the final plat plan prepared by The Design Group, dated July 10, 2014, and identified as Version A.

Mrs. Konesey made a motion, seconded by Ms. Lynn Wilson, to conditionally approve the site plan review. Motion was withdrawn.

Public Comment:

1. Ms. Cathy Corletto, address unknown, was concerned about stormwater management.

Chairman Littleton closed the public portion of the hearing.

Mrs. Konesey made a motion, seconded by Ms. Wilson, approve the resolution read by the City Solicitor for Site Plan Application No. 0710-14 with all the conditions listed and read by Mr. Kyle Gulbranson. (Patterson – aye. Shulman – abstained. He totally support this project, and the Applicants have done an incredible job. There are a few loose ends that he was uncomfortable in moving ahead. At the last meeting, Mr. Shulman said if it took a separate meeting a week or two later, he is just the kind of person that there are a couple of things here particularly with what is happening with the trees, etc. and a couple of questions about the easement. It leaves too much up in the air. He did not want to vote against this because it needs to happen and it will happen. The Applicants will do a great job, but he is personally uncomfortable today to vote for it. Hubbard – aye. Mellen – aye. Littleton – aye. Markert – aye. This is obviously the first time that the Planning Commission has conducted a site plan review; and quite frankly, he thought it could not have gotten a better proposal to review. Absent that the City does not have standards for the design of Wilmington Avenue, the Applicants and their proposal have fulfilled something that is beneficial for the City. Mr. Markert commended the Applicants for having the patience to go through this process. He very much supports the Applicants' vision, and the Planning Commission has fulfilled its duty in terms of trying to understand the vision and be able to have a public forum that the public could have attended. The Planning Commission members are representatives for the City. The Planning Commission has fulfilled its obligation, and this is a good job going forward. Konesey – aye. Wilson – aye. Strange – aye.) Motion carried.

Mrs. Konesey will write a letter from the Planning Commission supporting any application for underground wiring on Wilmington Avenue and requesting that the City work with the Applicants to achieve this. This letter will be attached to the Report to the City Commissioners for their next meeting.

OTHER BUSINESS

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.

Mr. Mellen and Chairman Littleton had a brief discussion about the CDP. The Planning Commission members all recognize that the CDP does not have to be rewritten. The Planning Commission can either say that the CDP stands and there is an appendix or an addendum can be submitted of several pages of accomplishments, no accomplishments. Mr. Mellen requested that the other Planning Commission members should read the CDP and make lists of accomplishments, what needs to be accomplished, what is invalid, etc. for the next meeting. Mr. Gulbranson will be helping the Planning Commission with the update of the CDP. Another suggestion was for the Planning Commission to meet the new circuit rider, Ms. Dorothy Morris at a future date.

Mr. Shulman suggested that there should be one or two meetings where the public is invited to attend and provide input.

Chairman Littleton called to discuss and possibly make recommendations to the Board of Commissioners concerning a voluntary policy addressing the size of campaign signs, when and where such signs can be posted and when they should be removed.

This item was deferred.

Chairman Littleton called for the Building Inspector's Report.

Ms. Sullivan noted that with regard to the swimming pool moratorium and of the 16 pool applications which have been received, eight have been denied. Four applications came in prior to the announcement of the moratorium, and 12 came in the week between the announcement and the Friday where the resolution was adopted setting the public hearing for the moratorium.

Chairman Littleton called for the City Solicitor's Report.

There was nothing to report.

Chairman Littleton called to discuss possible future agenda items and determine if there is a need to hold the November 14, 2014 Regular Meeting of the Planning Commission.

There will be no November meeting. The next scheduled meeting will be held on December 12, 2014.

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.

City Commissioner Patrick Gossett noted that the tree ordinance is a major part of the density issue which the Commissioners are dealing with. The larger house issue is currently being dealt with.

No new applications have been submitted to date.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Markert, to adjourn the meeting at 4:26 p.m.

RECORDED BY

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
MARCH 13, 2015**

(Francis Markert, Secretary)