

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

October 7, 2008

7:30 p.m.

Present at the 7:30 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Peggy Brown
Angela Dressel
Mary Lou McDowell
Rob Osborne

Commissioners Absent: Kass Sheedy

Staff Present: Maureen Feeney Roser, Interim Planning Director

Chairman James Bowman called the Planning Commission meeting to order at 7:30 p.m.

1. THE MINUTES OF THE AUGUST 5, 2008 PLANNING COMMISSION MEETING.

Mr. James Bowman: Are there any additions or corrections to the minutes from members of the Commission?

Ms. Mary Lou McDowell: On page #49, the last full paragraph, it is something that I said, near the bottom of the page, “. . . there is just an awful lot of information that has come at us that we would need to think about and probably a lot of options that may be that the developer hasn’t considered.” I think that second that shouldn’t be there.

ON MOTION BY OSBORNE, SECONDED BY BROWN, THE MINUTES OF THE AUGUST 5, 2008 PLANNING COMMISSION MEETING WERE APPROVED AS CORRECTED.

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,
OSBORNE,

NAY: NONE

ABSENT: SHEEDY

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF A MINOR SUBDIVISION OF THE .4359 ACRE PROPERTY LOCATED AT 402 SOUTH COLLEGE AVENUE FOR TWO SINGLE-FAMILY SEMI-DETACHED HOMES.

Ms. Feeney Roser summarized the 402 S. College Avenue Planning and Development Report which reads as follows:

“On August 22, 2008, the Planning and Development Department received an application for minor subdivision of the .4359 acre property located at 402 S. College Avenue to convert the existing single-family house on the site into two semi-detached

dwelling. The property is zoned RD (one family semi-detached residential) which permits semi-detached dwelling units. If approved, the minor subdivision will separate the property into two tax parcels.

Please see the attached Clifton L. Bakhsh, Jr., Inc., minor subdivision plan, architectural rendering and supporting letter.

The Planning and Development Department report on the 402 S. College Avenue project follows:

Property Description and Related Data

1. Location:

West side of S. College Avenue between Ritter Lane and Holton Place.

2. Size:

.4359 +/- acres.

3. Existing Land Use:

One large single family rental home.

4. Physical Condition of the site:

402 S. College Avenue contains a six-bedroom four-bath single family dwelling in need of renovation. The site also contains several large trees.

In terms of topography, the entire parcel is relatively flat with a very slight slope from north to south.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, the site contains both Matapeake Silt Loam and Matapeake-Sassafras Urban Land Complex soils. The Natural Resources Conservation Service indicates that these are developed soils with no development limitations are indicated for the proposed use.

5. Planning and Zoning:

The 402 S. College Avenue property is currently zoned RD. RD is a one family residential zone that permits the following:

- A. A one-family, semidetached dwelling.
- B. Accessory uses and accessory buildings subject to special requirements.
- C. Cluster development subject to site plan approval as provided in Article XXVII
- D. A one-family detached dwelling.
- E. The taking of nontransient boarders or roomers in a one-family dwelling by an owner-occupant family resident of the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling.
- F. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner-occupant family resident on the premises, is not a use as a matter of right, but is a conditional use subject to special requirements, including the requirement for a rental permit, and provided there are not more than two boarders or roomers in any one-family dwelling.
- G. Church or other place of worship, seminary or convent, parish house, or Sunday school building.
- H. Public and private elementary, junior, and senior high schools.
- I. Municipal park, playground, athletic field, recreational building, and community center operated on a noncommercial basis for recreation purposes.
- J. Municipal utilities; street rights of way.

- K. Swimming pool, private; swimming pool, public.
- L. Temporary building, temporary real estate or construction office.
- M. Utility transmission and distribution lines.
- N. Public transportation bus or transit stops for the loading and unloading of passengers.
- O. Student Homes, with special requirements

RD also permits, with a Council-granted Special Use Permit, the following:

- A. Nursing home, rest home, or home for the aged, subject to special requirements.
- B. If approved by the Council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial."
- C. Police and fire station, library, museum, and art gallery.
- D. Country club, regulation golf course, including customary accessory uses subject to special requirements.
- E. Professional office in residential dwellings for the resident-owner of single-family dwellings, with special requirements, including the requirement that the professional office is permitted only for the resident-owner of a single-family dwelling.
- F. Customary home occupations subject to special requirements.
- G. Substation, electric, and gas facilities, subject to special requirements.
- H. Day care centers, kindergartens, preschools, day nursery schools, and orphanages, subject to special requirements.
- I. Public transportation bus or transit shelters.
- J. Public transportation bus or transit off-street parking facilities.
- K. Swimming club, private (nonprofit) subject to special regulations.

Regarding the applicable RD zoning area requirements, other than the minimum lot width for one of the proposed parcels, for which the applicants sought and received a variance at the June 27, 2008 Board of Adjustment meeting, the 402 S. College Avenue proposal meets all applicable Zoning Code area requirements.

Regarding adjoining properties, the lands immediately north and south of the site are zoned RD and contain single family rental type homes. Immediately to the east of the site are the abutments of the S. College Avenue Bridge that crosses the Amtrak Railroad right-of-way and further east across S. College Avenue is the RM zoned Ivy Hall Apartments. To the west of the site is an asphalt pedestrian walkway connecting Phillips Avenue and Holton Place and the Municipal garage complex – both of these facilities are zoned RD.

Regarding comprehensive planning, the Newark Comprehensive Plan calls for “single family residential (low density) uses,” in the Planning Section within which the 402 S. College Avenue property is located. The Plan defines single family residential (low density) as “areas designated for dwellings occupied by one family, primarily single family detached with overall densities of one to three dwelling units per acre.” Please note, in this regard, that the 402 S. College Avenue plan calls for 4.58 units per acre.

Departmental Comments

The City’s Management, Planning and Development and Operating Departments have reviewed the 402 S. College Avenue project and have the comments provided below. If necessary, the plan should be revised as indicated prior to review by City Council.

1. The Planning and Development Department notes that:
 - The proposed minor subdivision conforms in general to the land use guidelines in the Newark Comprehensive Plan and conforms to the development pattern in the immediate neighborhood.

- Because the property is zoned RD, each unit will be limited to rental to a maximum of three unrelated individuals or a single family.
 - The architectural design of the structure should be consistent on all building elevations visible from public ways.
2. The Building Department indicates that:
 - The size of the proposed water service and sewer lines should be shown on the plan.
 - Sprinklering will not be required in this case because the structure is already occupied as a rental and therefore, there is no change of use.
 3. The Electric Department had no comments regarding the subdivision.
 4. The Water and Wastewater Department notes that:
 - The plan identifies separate water and sewer laterals for the units; these laterals cannot be combined without the permission of the Water and Wastewater Department.
 - The original sewer lateral will need to be videoed to determine if its condition is suitable for continued use.
 5. The Public Works Department indicates that:
 - The plan should show all the names and addresses of property owners within 200 ft.
 - The plan should provide existing contours.
 - The dimensions for the parking area should be provided as well as the typical width of the driveway and parking spaces. The 9 ft. X 18 ft., with adequate room for backing out (including the last space), should be delineated on the plan.
 - The plan should show the curb along S. College Avenue.
 6. The Parks and Recreation Department indicates the following:
 - Regarding the “tree protection zone” for the large Sycamore tree in the front yard, the developer should limited as much as possible disturbance in this area. Fencing should also be set in place prior to doing any site work. The Department suggests that the same Sycamore tree have its two main vertical leads cabled.
 - The proposed water service should be moved to the south to run parallel to the proposed driveway to prevent digging and disturbing the root system of the Sycamore tree.
 7. The Police Department notes that while they have no specific concerns with this minor subdivision, additional residents in rental units and any additional cars associated with those residents, may create an increased demand for services.

Recommendation

The Planning and Development Department, as noted above, believes that the minor subdivision of 402 S. College Avenue conforms in general to the land use guidelines in the Newark Comprehensive Plan. In addition, the plan corresponds to the development pattern in the immediate neighborhood. The Department also believes that,

with the Departmental suggestions above, the 402 S. College Avenue subdivision will not have a negative impact on adjoining and nearby properties.

The Planning and Development Department, therefore, suggests that the Planning Commission **recommend that Council approve the 402 S. College Avenue minor subdivision plan as shown on the Clifton L. Bakhsh, Jr., Inc., plan dated July 3, 2008, with the Department recommended conditions.”**

Ms. Feeney Roser: The developer is here and I will be happy to answer any questions you may have for me.

Mr. Bowman: Are there any initial questions for Ms. Feeney Roser?

Mr. Ralph Begleiter: What is the practical affect of subdividing the lot to the City?

Ms. Feeney Roser: It will allow the applicant to have two separate dwelling units on the property. One parcel will become two separate tax parcels. There is a firewall that goes in between them within the structure. If it wasn't subdivided, then they wouldn't be able to have more than three unrelated individuals in the unit. This subdivision will create two dwelling units out of one.

Mr. Bowman: Are there any other questions for Maureen from the members of the Commission?

[Secretary's note: The applicant and members of the Commission referred to visuals brought by the applicant for his presentation to the Planning Commission].

Mr. Todd Ladutko: I am the applicant. I am the managing member of Hilton Head Investments, 101 Hill Stone Drive, Newark, Delaware. The lot is RD zoning with 100 feet of frontage. The house, when we acquired the property, was occupied, but it was in very poor condition. By Code if we just subdivided the lot by 50 ft. X 50 ft. and backed to the 190 ft. of depth, we could create two parcels that would more than exceed the zoning requirements for RD zoning in that district. I have been developing in Newark and own other rental properties since 1980. One of the projects we did was Wright's Town Commons (the Doll House), where we took a Victorian house and literally moved it from behind the Burger King and restored and converted it into several apartments. Keeping that in mind, I thought we could tear it down and send it as landfill, or recycle and use it and convert it into two separate dwellings, which the Code allows. The existing house is here. The exterior does not merit what the interior condition was. What we thought we could do is save the building, recycle it and convert it from a large building that really doesn't have a lot of function in today's world. There are six bedrooms and four bathrooms for one family. We could convert it into two units where there would be three bedrooms and two baths on each side. This was an addition by the previous owner from the existing original house which was built sometime around the early 1900s. The way it was built we can add a firewall right where the break is from the old house to the new addition. Then you would have two separate dwellings. The only problem was that the house was not situated perfectly on the lot, so you couldn't get 50 feet of frontage on the one side. So, in June we went to the Board of Adjustment and they granted me a variance to waive the 50 ft. frontage on the original house side of the property. Other than that, it conforms in every way to the Code in terms of lot coverage – exceeds it, in fact. The newer side (lot #1) we are at 72 percent open space and the original house sides (lot #2) we are at 62 percent open space. We are not adding anything in terms of square footage to the building. We are adding additional parking in the rear that was not there previously. But, outside of that the footprint will remain the same as it is currently. Each house will be renovated to modern standards. It will conform to the rest of the Code in that area. In terms of trying to recycle the building, I thought that would make more sense in today's environment in terms of trying to be “green” and minimizing the use of new resources.

I will be happy to answer any questions.

Mr. Bowman: Are there any questions from members of the Commission?

Mr. Begleiter: Do you have any future plans? Once you subdivide these lots, will you be able to add additional buildings to the rear of the lots, which is quite large, actually?

Mr. Ladutko: No, there is no need for it because, again, the Code in RD zoning you are allowed to rent to three unrelated people. We have three bedrooms. It is a large living room/kitchen area, two baths. There would be no need to do so.

Mr. Begleiter: Would there be an opportunity to do so?

Mr. Ladutko: No.

Mr. Begleiter: Unless you asked for a zoning change.

Mr. Ladutko: It is not big enough to go RM. It is just a little area of .4359 acres. The odds are remote.

Mr. Bowman: I have a question for you Mr. Ladutko. Under the Building Department comments, it indicated that because you are not changing the use of the structure that they will not require you to sprinkler the property. Roughly, have you renovated the property yet or is it to be renovated or have you completed renovations, what have you done so far?

Mr. Ladutko: It was a single family house. The Building Department allowed me to fix up one side. We renovated the newer addition. We put up the firewall. The head of the Building Department inspected it.

Mr. Bowman: You have renovated only part of the structure.

Mr. Ladutko: Correct.

Mr. Bowman: I guess my problem is that I wish we had seen this sooner because I am always a little suspicious of firewalls that are added to existing structures because a good percentage of the time they don't work. And given the nature of the occupancy of this building and the fact that in this very block just a couple of doors down from you twice there have been structures burned completely to the ground. I would have much preferred to see this building sprinkler protected, both for the occupancy and for the protection of your investment. Given the cost of typical renovations and installing, even after the fact, most of the time residential sprinklers are only less than 1% of the cost of renovating the building. I would certainly, if I were you, consider doing that. I am a little hesitant since you have already put money into fixing part of it to add that as a recommendation contingent upon us approving this, but I think that is a wise thing to do. I really think you ought to consider it in spite of the fact that you can meet Code without it because I can almost assure you that if you have a problem in that structure the firewall isn't going to be worth the nails it is driven in with, just by the very nature of adding additions to this type of structure. And, I am speaking from experience. I am a retired safety and fire protection consultant by trade. I am not just throwing that out there because I don't know anything about it.

Ms. Peggy Brown: The Parking – how many spaces? That was not clear.

Mr. Ladutko: There is space in the back for four on each side – three and a guest.

Ms. Brown: How are you going to regulate that?

Mr. Ladutko: Any property you can't really regulate. They are inspected annually. The permit is three. My leases all specify exactly what the allowable occupancy is. There are probably occasions where someone is going to have one or two people over to watch TV, a date or whatever, so I thought it would be appropriate to have a spare parking spot on each side.

Ms. Brown: Do you have lines and things like that so you could go in there and easily observe whether you have twelve as opposed to eight cars?

Mr. Ladutko: You can see that from the street or when I drive by. Usually on a residential lot I don't stripe because it feels a little institutional. That can be done. It is not a problem.

Ms. Brown: You say you own the doll house.

Mr. Ladutko: West Town Commons, yes.

Ms. Brown: Have you had any Building Code violations or anything like that there?

Mr. Ladutko: The inspection was just done last month.

Ms. Brown: And you haven't had any problems with your tenants?

Mr. Ladutko: I have not received any reports from the police. They are supposed to give you a report. I understand that one of the students was arrested recently, but it didn't have anything to do with the building. The first week of the season, they are really feeling their oats. I have been in touch with their parents and we have had discussions. So, that part has been taken care of. But, I am not aware of anything major.

Ms. Brown: Do you have any nonrental neighbors that are even two or three houses away from this property?

Mr. Ladutko: None that I am aware of. The only properties I am aware of are owned by private individuals or the University of Delaware. The ones on either side of me are rented and the one further down is rented, all the way down to Holton Place is rented. I believe there are only one or two homes on that side that are owner occupied from Park Place down.

Ms. Brown: Since you said it is old, I live in an old house and we always say you grab the cat, you grab the dog and you get out if you smell smoke. I would emphasize a sprinkler system, too. We have seven smoke alarms.

Mr. Ladutko: Everything will be hardwired smoke detector.

Ms. Brown: A sprinkler system would not knock the fire out but it would suppress it long enough for the occupants to get out.

Mr. Bowman: If there are no other comments, the Chair will entertain a motion.

Mr. Begleiter: I will move approval of the requested zoning change with the recommendations of the Director of Planning and Development, and I would like to add that – and I don't know if this is appropriate – that the Commission recommend approval without any prejudice in favor or against any future zoning change that might be requested on the site. I don't think approval of this should be taken as a signal that it will be okay to rezone these properties and put more units on them. I'm not sure how to phrase that. This should not signal a favorable view toward a future rezoning.

Ms. Feeney Roser: The Comprehensive Plan calls for low density residential for the property so, in the development summary to Council we can just say that you recommend approval with conditions and with the understanding that the property will remain low density residential.

MOTION BY BEGLEITER, SECONDED BY McDOWELL THAT THE PLANNING COMMISSION RECOMMEND THAT COUNCIL APPROVE THE 402 S. COLLEGE AVENUE MINOR SUBDIVISION PLAN AS SHOWN ON THE CLIFTON L. BAKSHSH, JR., INC., PLAN DATED JULY 3, 2008, WITH THE PLANNING AND DEVELOPMENT DEPARTMENT RECOMMENDED CONDITIONS.

Mr. Bowman: Is there any discussion?

Ms. Dressel: We didn't ask for a public comment.

Mr. Bowman: Well, that is true. We didn't. Thank you for bringing it back. Is there anyone from the public who wishes to comment? Thank you for keeping the Chair honest tonight.

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,
OSBORNE

NAY: NONE

ABSENT: SHEEDY

MOTION PASSED UNANIMOUSLY

Meeting adjourned at 7:53 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission