

REPORT OF THE REHOBOTH BEACH PLANNING COMMISSION
TO THE REHOBOTH BEACH BOARD OF COMMISSIONERS
REGARDING PROPOSED PARTIAL ABANDONMENT OF BALTIMORE AVENUE
TO ACCOMMODATE IMPROVEMENTS TO REHOBOTH BEACH PATROL BUILDING

Approved by vote of the Rehoboth Beach Planning Commission on November 3, 2023

I. BACKGROUND

On September 29, 2023, the Rehoboth Beach Board of Commissioners (“BOC”) passed a resolution referring (the “Referral”) to the Rehoboth Beach Planning Commission (“RBPC”) a potential, partial abandonment/alteration of Baltimore Avenue at its easterly terminus (to accommodate enhancements to the Rehoboth Beach Patrol (“RBP”) building) for a report of impacts, both positive and negative, of the proposed abandonment (the “Proposed Abandonment”).

Specifically, the BOC’s September 29, 2023 resolution states:

“NOW THEREFORE, BE IT RESOLVED, by the Commissioners of the City of Rehoboth Beach, in session met, this 29th day of September 2023, that under 22 *Del. C.* sec. 708 the proposed alteration of Baltimore Avenue at its easterly terminus is referred to the City of Rehoboth Beach Planning Commission for report concerning the impacts, both positive and negative, of the proposed alteration.”

The RBPC convened in public meeting on October 6, 2023 to discuss the Referral and the Proposed Abandonment. This Report was drafted, based on the discussion during the October 6, 2023 RBPC meeting, for consideration and approval during the RBPC’s November 3, 2023 public meeting.

II. RELEVANT CODE AND CDP LANGUAGE

A. City Charter

Section 33 of the City's Charter provides, in relevant part, as follows:

Section 33 **Streets.**

a) The Commissioners of Rehoboth Beach shall have the power and authority to locate, lay-out and open new streets and to widen or abandon streets, or parts thereof, whenever they shall deem it for the best interest of the City.

b) In every case the procedure to be followed in respect thereto shall be as follows: The Commissioners shall adopt a resolution favorable to the opening of such new street or to the widening or altering of a street or to the vacating or abandoning of a street, or any part thereof, as the case may be. The resolution shall give a general description of the street to be opened, widened or altered or of the street, or part thereof, to be vacated or abandoned, as the case may be. The resolution shall also state the day, hour and place where the said, The Commissioners, will sit to hear objections and to award just and reasonable compensation to anyone who will be deprived of his property by reason thereof.

c) Copies of such resolution shall be posted in at least five, or more, of the most public places in the City, and at least five days prior to the date fixed by The Commissioners for the hearing as aforesaid.

d) At the time and at the place fixed in the resolution, The Commissioners shall hear such residents or taxables of the City, or owners of property affected thereby, as shall attend the hearing. After hearing all objections, The Commissioners shall, at said meeting or at a subsequent date, as it may deem proper, adopt a resolution to proceed with, or abandon the proposed locating, laying out, widening, altering, vacating or abandoning of any street or streets contemplated in its aforementioned prior resolution.

(Emphasis added.)

B. State Code

Title 22, Section 708, of the Delaware Code provides as follows:

§ 708. Reference of certain matters to planning commission.

In a city or town having a planning commission established under this chapter, but which has not adopted an official map, no public way shall be laid out, altered, relocated or discontinued unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning commission of such city or town and such commission has reported thereon or has allowed 45 days to elapse after such reference without submitting its report. Any city or town having a planning commission established under this chapter may, by ordinance, bylaw or vote, provide for the reference of any other matter or class of matters to the planning commission before final action thereon with or without provision that final action shall not be taken until the planning commission has submitted its report or has had a reasonable fixed time to submit such report. Such planning commission shall have full power to make such investigations, maps and reports and recommendations in connection therewith, relating to any of the subjects referred to under this section, as it deems desirable.

(Emphasis added.)

C. City Code

Section 270-3 (Scope) of the City Code (Zoning) provides, “This chapter shall not apply to lands owned by the City of Rehoboth Beach.”

D. City’s Comprehensive Development Plan

The Rehoboth Beach Patrol is mentioned only briefly (6 times) in the City’s current Comprehensive Development Plan (“CDP”). For purposes of the Proposed Abandonment, the most relevant discussion in the CDP is a contribution from the Boardwalk & Beach Committee (at page AC-3) related to the enhancement of restroom facilities at the Rehoboth Beach Patrol on Baltimore Avenue.

III. PRELIMINARY OBSERVATIONS AND RECOMMENDATIONS

The RBPC seeks to provide constructive input and guidance to the BOC in connection with the Referral. Unfortunately, the timing of the Referral places the RBPC in an awkward position.

On the one hand, the RBPC is cognizant that (1) the RBP project otherwise seems to be “shovel-ready” and (2) the Delaware Code provision prompting the Referral indicates the BOC can act within 45 days of the Referral, regardless of whether the RBPC returns a report.

On the other hand, as set forth below, a more detailed and complete record of the Proposed Abandonment (including its positive and negative impacts) is necessary to conduct the type of assessment the RBPC believes is necessary here. The RBPC conducted an initial public meeting one week after the Referral was made, and prepared a draft report (based on the October 6, 2023 meeting) for consideration during a special meeting on November 2 and again during a regular meeting on November 3, 2023. But the RBPC did not have adequate time, under these circumstances, to conduct a comprehensive investigation (including by way of a public hearing).

Recommendation: Under these circumstances, the RBPC recommends that the BOC schedule and conduct a public hearing to address and assess more fully and comprehensively the issues identified herein. In connection with such a public hearing, the RBPC recommends that the City ensure, and establish a record of, the provision of adequate, written notice to all the contiguous and non-contiguous property owners and businesses located along the two blocks of Baltimore Avenue.

III. FACTUAL DETERMINATIONS (SUBJECT TO BOC CONFIRMATION)

The RBPC did not conduct a formal public hearing on the Referral.

Recommendation: The RBPC recommends that the BOC confirm the following, apparent facts:

A. Baltimore Avenue is a City Street

Baltimore Avenue is a City street, not a state road.

B. The City of Rehoboth Beach Has not Adopted an Official City Map

Although the City has adopted a Zoning Map, the City has not adopted an Official City Map of the type referred to in 22 Del. C. sec. 708.

C. Exact Depiction of That Portion of Baltimore Avenue The City Intends to Abandon

The portion of Baltimore Avenue that the City proposes to abandon for the new RBP building is an irregularly shaped area (the "Proposed Abandoned Area") depicted in blue hatches on page 23 of the October 6, 2023 presentation to the RBPC of Davis Bowen & Friedel, Inc. ("Davis Bowen").

The proposed new curb would extend west approximately 46 feet, 3 inches from the existing curb for the non-landscaped portion of the Proposed Abandoned Area. The proposed new curb would extend an additional 18 feet, 6 inches west to accommodate a triangular landscaped area.

The Proposed Abandoned Area is approximately 3,843 square feet, which is approximately 6.5% of the square footage of first block of Baltimore Avenue.

However, the precise extent of the Proposed Abandoned Area is not clear.

Recommendation: The RBPC recommends that the BOC obtain, and use for reference purposes, a clearer, larger and more legible visual depiction/drawing of the Proposed Abandoned Area. It is important that all stakeholders, including members of the BOC, are aware of the exact dimensions of the Proposed Abandoned Area, including in relation to the existing street, fixtures and neighboring properties.

D. Identification of Specific Properties Immediately Adjacent to the Proposed Abandoned Area

It appears that that the properties immediately adjacent to the Proposed Abandoned Area are as follows:

- The Atlantic Sands Hotel
- The Admiral on Baltimore
- Grotto's Pizza and the site of the proposed One Rehoboth Project

Recommendation: The RBPC recommends that the BOC obtain, and use for reference purposes, a clearer, larger and more legible visual depiction of the precise boundaries and characteristics of the properties immediately adjacent to the Proposed Abandoned Area. Integrated visuals, including photographic representations demonstrating the relationship between the Proposed Abandoned Area and adjacent properties would be helpful, including not just existing buildings and uses but also proposed future buildings and uses (for example, the Proposed One Rehoboth Project in respect of, for example, garage entrances, loading berths and the like). Similar depictions of turning lanes, fire lanes, fire hydrants, emergency generators (and related fuel tanks) and other equipment within or near the Proposed Abandoned Area would also be helpful.

IV. POSITIVE IMPACTS OF THE PROPOSED ABANDONMENT

During the RBPC's October 6, 2023 public meeting, Davis Bowen articulated a number of public benefits arising from the proposed enhancements to the RBP structure itself, including enhancements to the RBP headquarters, quick response capabilities, public restrooms, locker rooms, offices, backup generator, and the like. Generally, it appears that a reconstructed RBP building is viewed as necessary to, and will, promote public safety in several ways, including by providing greater views of and access to the beach, as well as by making the station more visible and accessible to those in need of safety services.

That said, it became apparent during the RBPC's October 6, 2023 meeting that the City's outreach to affected interests was still ongoing. Moreover, although the public benefit of enhancing a public safety building such as the RBP building may be self-evident, the questions at issue in this Referral are (a) whether the abandonment is necessary to allow the RBP project to proceed and (b) if so, is the Proposed Abandoned Area properly sized?

Recommendation: The RBPC recommends that the BOC create a complete record of the public benefits arising from the enhancements to the RBP structure itself. The views expressed at the RBPC's October 6, 2023 public meeting may not be reflective of all public views regarding the positive impacts of the project. The RBPC further recommends that the BOC seek to establish and/or determine during a subsequent public hearing why the extent of the Proposed Abandoned Area is necessary for the RBP building improvements. Could the structure's improvements be accomplished with less abandoned street area, especially in view of some of the concerns described below (*e.g.*, regarding fire lanes and other emergency access along Baltimore Avenue toward the Boardwalk)?

V. NEGATIVE IMPACTS OF THE PROPOSED ABANDONMENT

Again, it became apparent during the RBPC's October 6, 2023 meeting that the City's outreach to affected interests was still ongoing.

A. One Rehoboth

During the October 6, 2023 RBPC public meeting, a representative of the owner of the property located at One Rehoboth Avenue (attorney Vince Robertson) complimented the City for its engagement with property owner. Mr. Robertson stated that his client did not have any objection to the Proposed Abandonment, either in respect of his client's current use or the proposed One Rehoboth Project. Mr. Robertson did indicate that the Proposed Abandonment will necessitate some modifications to the site plan for the proposed One Rehoboth Project.

Other individuals raised concerns that Baltimore Avenue could be damaged by construction traffic related to the One Rehoboth Project.

B. Admiral Hotel

Similarly, during the October 6, 2023 RBPC public meeting, the owner of the Admiral Hotel (Chad Moore) complimented the City for its engagement.

However, Mr. Moore expressed concern whether emergency vehicles would be able to service both his property and the proposed One Rehoboth Project as a result of the Proposed Abandonment. Mr. Moore expressed his concern that the Fire Marshal only addressed the RBP building itself and not the impact of the Proposed Abandoned Area on adjacent properties. Mr. Moore stated that although there is currently sufficient room for emergency vehicles to maneuver around large trucks that park in the loading zone at the end of the street, the Proposed Abandonment would create "a challenge" for such emergency vehicle access. These concerns are likely to be heightened during the construction and operation of the Proposed One Rehoboth project.

Mr. Moore also noted that the Admiral trash cans are roll-off dumpsters at the eastern edge of the property. He stated these will be harder to access and lead to more congestion under the Proposed Abandonment. Mr. Moore also stated that his insurer has requested a letter from the Fire Marshal and the City stating that all codes are being met and that the street abandonment does not impact life safety of any properties.

Recommendation: The RBPC recommends that the BOC create a complete record of the possible negative impacts of the Proposed Abandoned Area. The views expressed during the RBPC October 6, 2023 public meeting may not be reflective of all public views regarding potential negative impacts of the Proposed Abandonment. It is possible that the City has addressed Mr. Moore's concerns since the October 6, 2023 RBPC meeting; if so, any such arrangements or agreements should (1) be placed on the record before the BOC and (2) be confirmed in writing and be made available to the public for review.

VI. OTHER ISSUES RELATED TO THE PROPOSED ABANDONMENT

Recommendation: In addition to the foregoing recommendations, the RBPC also recommends that the BOC evaluate and resolve the following issues related to the Referral.

- A. Ensure Compliance With, Or Amend, Chapter 92 of the City Code (parking in fire lanes and parking areas for handicapped persons)

Section 92-36 of the City Code provides as follows:

92-36 Parking in fire lanes.

A. No person shall park any motor vehicle owned or operated by him in any designated fire lane. This section shall not be construed to be applicable to the parking of emergency vehicles of the City or the state when on official business.

B. There are hereby established the following fire lanes within the corporate limits of the City:

...

(13) On the north side of Baltimore Avenue for a distance of 10 feet westerly measured from the face of the curb at the east end of the street.

...

(14) On the south side of Baltimore Avenue for a distance of 10 feet westerly measured from the face of the curb at the east end of the street.

...

(33) On the south side of Baltimore Avenue, ocean block, for a distance of nine feet westerly, measured 20 feet westerly from the most easterly curb line of Baltimore Avenue.

Although there was discussion on October 6, 2023 that access to external hookups or fire hydrants at the Sands and at the Admiral would be ensured, it is not evident that the Proposed Abandonment has specifically taken into account City Code Section 92-36, which is concerned with parking in fire lanes. In fact, it appears from the Proposed Abandoned Area, that handicapped parking spaces are contemplated for the fire lane established by Section 92-35 on the north side of Baltimore Avenue; and it appears that no accommodation has been made for the fire lane established by Section 92-36 on the south side of Baltimore Avenue.

Recommendation: It is possible that compliance with Section 92-36 of the Code has addressed by the City since the RBPC's October 6, 2023 meeting. If so, that should be made clear on the record before the BOC. In any event, the RBPC recommends that the BOC address specifically (1) whether Section 92-36 of the existing City Code will have to be amended to accommodate the Proposed Abandoned Area and (2) if so, can the necessary Code amendments be accomplished without compromising fire safety needs.

Section 92-65 of the City Code provides as follows:

92-65 Parking areas for handicapped persons

Baltimore Avenue

Two spaces located, first block, north side, near the Boardwalk

Two spaces located first block, south side

The Davis Bowen presentation indicates that two handicapped parking spaces are contemplated on the north side of Baltimore Avenue, immediately west of the proposed new curb. The Davis Bowen presentation does not indicate where two additional handicapped parking spaces are contemplated on the south side of Baltimore Avenue.

Recommendation: It is possible that compliance with Section 92-65 of the Code has been addressed by the City since the RBPC's October 6, 2023 meeting, including how the proposed handicapped parking spaces would accommodate the fire lanes established by Section 92-36. In any event, the RBPC recommends that the BOC address specifically (1) whether Section 92-65 of the existing City Code will have to be amended to accommodate the Proposed Abandoned Area and (2) if so, can the necessary Code amendments be accomplished without compromising appropriate handicapped parking access.

B. Ensure Compliance With, Or Amend, Section 270-22 of the City Code (minimum lot dimensions)

During the October 6, 2023 RBPC meeting, Sam Cooper raised the issue whether the Proposed Abandonment would reduce the frontage of the One Rehoboth Property along Baltimore Avenue to less than the 50 feet required by Code.

City Code Section 270-22 provides, in relevant part, as follows:

270-22 Minimum lot dimensions.

A. No new lot shall be created nor shall any existing lot be changed in size or shape unless each new or changed lot:

- (1) Has at least 50 feet of frontage on a street; except . . .

It appears that the Proposed Abandonment would result in less than 50 feet of frontage along Baltimore Avenue for the Proposed One Rehoboth Project. This scenario is not the typical non-conforming scenario (that is, when a zoning code provision is changed thereby rendering a previously conforming lot non-conforming). Here, the Code conflict would result from the City's Proposed Abandonment of a city street.

Recommendation: The City may want to consider supporting any necessary variance request of the property owner regarding loss of frontage along Baltimore Avenue resulting from the Proposed Abandonment.

C. Document Agreements Reached with Adjacent Property Owners

Recommendation: The RBPC recommends that the BOC ensure that any agreements or understandings reached between the City and adjacent property owners related to the Proposed Abandonment be confirmed in writing and be made available to the public for review.

1. One Rehoboth

The materials submitted do not reflect any dedicated, short-term parking spaces for check-in/check-out at the Proposed One Rehoboth hotel. **If agreements with the City have been made in this, or other regards, such agreements should be confirmed in writing and made available to the public for review.**

2. Admiral Hotel

See the discussion above in Section V. of this Report. **If the City and the owner of the Admiral Hotel have reached agreement, since October 6, 2023, on the issues raised by Mr. Moore during the October 6, 2023 meeting, such agreements should be confirmed in writing and made available to the public.**

D. Infrastructure and Materials Used in the Proposed Abandoned Area

Recommendation: The RBPC recommends that the BOC address whether the Proposed Abandonment will impact (or impair the proper functioning of) infrastructure, such as sewer lines, stormwater drains, stormwater management, and any underground power lines. The RBPC also recommends that the BOC evaluate and determine whether the pavers shown in the Davis Bowen presentation should be pervious in nature.

E. Possible Zoning Designation for the RBP Building

Currently, neither City streets, nor public municipal buildings (such a City Hall) have zoning classification.

Recommendation: The RBPC recommends that the BOC consider whether to designate the new RBP building with a specific zoning classification (such as O-1 (open space) or simply “Municipal Building”).

The foregoing Report was approved by the RBPC in open session on November 3, 2023.


By: Michael Bryan, Chair, RBPC