

**BOARD OF ADJUSTMENT MEETING  
CITY OF REHOBOTH BEACH**

**April 28, 2014**

The Board of Adjustment Meeting of the City of Rehoboth Beach was called to order at 7:00 p.m. by Acting Chair Clifton Hilderley on Monday, April 28, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Present: Mr. Clifton Hilderley  
Mr. Robert Wilson  
Ms. Myrna Kelley  
Mr. Doug Popham

Absent: Mr. Thomas Evans

Also in attendance: Mr. Craig Karsnitz, Esq., Board of Adjustment Solicitor

A quorum was present.

**CORRESPONDENCE**

Correspondence regarding merger was addressed under Old Business.

**APPROVAL OF MINUTES**

Minutes of the March 24, 2014 Board of Adjustment Meeting were distributed prior to the meeting.

Ms. Myrna Kelley made a motion, seconded by Mr. Doug Popham, to the March 24, 2014 Board of Adjustment Meeting minutes as written. Motion carried unanimously.

**OLD BUSINESS**

Acting Chair Hilderley noted that Building Inspector Terri Sullivan had forwarded a memorandum to the Board of Adjustment regarding merger/unmerger. There was also a series of correspondence between certain Board of Adjustment members and certain City Commissioners asking if there were any questions and if the Board members would want to submit comments to the City Commissioners. The City Commissioners have under consideration adopting code language to clarify mergers of property and the unmergering or the partitioning of property.

Attorney Craig Karsnitz had been contacted last week by Commissioner Stan Mills who had also contacted Mr. Tom Evans. Attorney Karsnitz had outlined what his thoughts were, and he submitted them to Commissioner Mills. In Attorney Karsnitz's view, the problem he has with the way the merger issue is done now is that there is virtually no guidance in the Code about merger. The Board of Adjustment has always applied a rule of reason to merger. It has looked at the facts and tried to determine what use of the property had been made. The more difficult issue is on how to separate two lots that are used together and are considered merged. Attorney Karsnitz's position is that if the Board of Adjustment is going to accept a common law merger by use of the property, then it would only make logical sense that by operational law the property is separated if the structures are taken off of the property in the context of the two originally plotted lots. His problem with the whole concept is whether owners have notice of what the consequences are of what they are doing, and whether the people who are purchasing properties have notice of that. Attorney Karsnitz suggested that the City Commissioners should legislate some guidelines as to what causes merger and a process by which a landowner is informed that if they do certain things, the City will consider their property merged. The Commissioners should take the extra step of having a homeowner sign off on that document, and it should be made available for the public. Then the City would be able to take the next step and say to alter that, a person would have to go through a subdivision process. Attorney Karsnitz had received a memorandum from Chairman Preston Littleton of the Planning Commission. One of his points was that the Planning Commission thinks that owners should have to go through the subdivision process because in viewing that, the Planning Commission may want to put conditions or limitations on the subdivision. Attorney Karsnitz thought that this process is acceptable for the City to do if the owner had foreknowledge of what he was doing and the consequences of it. It is not legitimate for the Planning Commission to do this, if the person does not have that.

Acting Chair Hilderley said that the Code does not clarify or give any process for merging properties. There are common law mergers and logical and sensible rules to apply when someone merges two pieces of adjacent property.

The Code is very specific that the Planning Commission has jurisdiction over partitioning property. The Board of Adjustment can adjust the Code if a landowner has a problem. The Board of Adjustment does not have any authority to partition land. Partitioning is a very specific process of law that involves real estate. Treating real estate must be done very specifically in writing.

Attorney Karsnitz noted that the Board of Adjustment's jurisdiction is to also interpret the Code and determine whether the Building Inspector has properly interpreted the Code. He will send his letter to Commissioner Mills for delivery to the Commissioners later this week. He will also provide copies to the Board of Adjustment members.

## **NEW BUSINESS**

**Case No. 0214-02.** A REQUEST FOR VARIANCE in regard to Section 270-26(A) of the Municipal Code of Rehoboth Beach for a 2.7 foot encroachment of an existing porch into the easterly side yard setback to allow the screened porch to be enclosed with glass. The property is located in the R-1 Zoning District at 115 Laurel Street on Lot Nos. 61 & 62, Block 30. The Variance is being requested by John & Sharon Sheridan, owners of the property. Acting Chair Hilderley read the reasons for granting a Variance from Section 270-74(C) of the Zoning Code and noted the Public Hearing procedures for the following cases.

Building Inspector Terri Sullivan presented her report with exhibits. The property owner is requesting a variance to put windows in an existing screened porch which is located 3.3 feet from the side property line. The owners are requesting a variance of 2.7 feet so that they may change their screened porch to an enclosed living space. If the doors are placed on the side of the porch as it is currently, the owners will be required to put in a three foot x three foot landing per Code. This would put the landing within three feet of the property line. The variance required would then be 5.7 feet. If they choose to move the door to the front or back, the landing would be an issue.

Ms. Sharon Sheridan, owner of the property, provided testimony in support of the variance. She and her husband would like to make the porch more usable space. A burglary issue was what prompted them to seek a variance. In terms of adhering to today's rules, the hardship would be insurmountable because Ms. Sheridan is being asked to change the footprint on a house that has been there for more than four generations. She would like to keep this house as a landmark. She would like to be able to use the porch and to secure her home. In order for her to cut two feet off would be asking her to alter the integrity of a structure that has been standing there for 100 years. Adjacent neighbors have submitted letter, and they do not have any problems with the porch being enclosed with glass. The sliding doors would be placed where the current door is located. Moving the landing to the front or rear would change the look of the house and the authenticity of the house.

Mr. Blaine Burrier, friend of the family, said that the bottom would be closed in to install the windows on the front, side and rear. The porch would become a three-season room. The existing door on the side is a hinged screen door and would be replaced with an eight foot sliding door. The Applicant has requested that the sliding door be placed on the side.

### Correspondence:

1. Wilson Stewart Harrison, 117 Laurel Street – in support of.
2. Tom & Betty Ann Cordrey, 113 Laurel Street – in support of.
3. Doug Jones, 406 Bayard Avenue – in support of.

### Public Comment:

1. Ms. Eileen Barrett (sister), unknown address – in support of.

Ms. Kelley made a motion, seconded by Mr. Wilson, to grant the variance to enclose the screened porch with glass conditioned upon the moving of the door either to the front or rear. (Wilson – for. As is presented, it also presents a remedy as far as the door is concerned. Hilderley – for. The Applicant has presented a very good case. It is very clear as the Board has suggested that they understand exactly what the issue is and a hardship they would be facing. Kelley – for. It would be an undue hardship to not grant the variance, and the door should be reworked. They deserve the variance. Popham – for. As long as they comply with the relocation of the door, the Board should give them the variance.) Motion carried unanimously.

**Case No. 0214-03.** A REQUEST FOR VARIANCE in regard to Section 270-4 of the Municipal Code of Rehoboth Beach to allow a variance of six inches from the height requirement of an accessory structure. The property is located in the R-1 Zoning District at 607 Scarborough Avenue on Lot No. 17, Block 12. The Variance is being requested by Jeffrey M. Stoiber, AIA of Stoiber & Associates, on behalf of Kathy Lenszczycki, owner of the property.

Sullivan gave her report with exhibits. The property owner is requesting a variance to move an existing non-conforming shed to a new location on the same property. The shed is 12'-6" in height. The owners are requesting a variance to allow an existing shed that is 12'-6" from grade to be moved 3.6 from the rear property line to six feet from the rear property line. Accessory structures can be no more than 12 feet in height. The accessory building is .8 feet above that which is allowable per Section 270-4 Definition of Accessory Building. The permit that was issued in 1990 state the height of the structure would be 12 feet, and it would be 5'-6" from the property line.

Mr. & Mrs. Joe Lensczycki were in attendance at the meeting. Mr. Lensczycki provided testimony in support of the variance. The plan is to move the playhouse four to five feet to the right. It is within the setback limits. It would be the same setback that the shed has. This would allow a side entrance to the shed. Building & Licensing approved the moving of the shed. At that time was when Mr. Lensczycki found out that the playhouse is six inches above the 12 foot accepted height for an accessory structure. It would be impractical to remove six inches from the top of the gable roof of the playhouse. This would affect the integrity of the structure. The second option was to lower the playhouse below grade. The real issue is that alongside of the playhouse is a signature tree on the property. The roots are near to the surface, and this could possibly create a hazard of ruing or killing the tree. The best solution is to move the playhouse a few feet to the right. This will result in the preservation of the tree and would allow unfettered access to the playhouse. A variance would not impair the intent of the Code. Mr. Lensczycki will address the moving the playhouse six inches forward to be at four feet from the rear property line.

Correspondence:

1. Richard L. Mowery and Joseph L. Conn, 605 Scarborough Avenue – in support of.
2. Ernest & Dorothy Blazejak, 609 Scarborough Avenue – in support of.

There was no public comment.

Mr. Wilson made a motion, seconded by Ms. Kelley, to grant the variance request. (Wilson – for. There is a hardship. It does not appear to be within the public interest. Hilderley – for. Hardship is obvious. The tree cannot be moved. Kelley – for. There is a hardship, and it would not be against public interest to grant this variance. Popham – for. He would like to vote against it, but he did not see a solution to their problem. It is something they have to live with. It is an inherent problem.) Motion carried unanimously.

There being no further business, Acting Chair Hilderley adjourned the meeting at 8:08 p.m.

**Respectfully submitted,**

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**(Ann M. Womack, City Secretary)**

**MINUTES APPROVED ON  
JUNE 23, 2014**

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**(Clifton Hilderley, Acting Chair)**