

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

**June 23, 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, June 23, 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**

There was none.

**APPROVAL OF MINUTES**

Minutes of the April 28, 2014 and May 19, 2014 Board of Adjustment Meetings were distributed prior to the meeting.

Acting Chair Hilderley considered the minutes approved as distributed. There was no opposition from members of the Board.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

**Case No. 0514-05.** An APPEAL OF THE DECISION OF THE BUILDING INSPECTOR in regard to Section 270-4 of the Municipal Code of Rehoboth Beach that the lots have been merged per the definition of "lot" and Section 270-74(a) that the separately titled lots are merged and require partitioning and in the event the Appeal is granted, a REQUEST FOR VARIANCE in regard to Section 270-22 to allow a one square foot area variance from the 5,000 square foot requirement per lot. The property is located in the R-2 Zoning District at 1 Grove Street on Lot Nos. 1 & 2 Grove Street and Lot Nos. 141, 143 & 145 Columbia Avenue. The Appeal and Variance is being requested by James A. Fuqua, Jr., Esq. of the law firm Fuqua, Yori and Willard P.A. on behalf of Rob Burton of the Samuel J. Burton Estate, owner 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 three cases.

Building Inspector Terri Sullivan gave her report with exhibits. The property owner is requesting an appeal of the decision of the Building Inspector that the lots have merged or in the alternative an area variance of one square foot per lot so that they can partition the lots through the Planning Commission. Currently, there is one home at 1 Grove Street which is a combination of Lot Nos. 1 & 2 Grove Street and 141, 143 & 145 Columbia Avenue. The lots, while denoted as 50 feet x 100 feet are called out as an area of 4,999 square feet. As stated in the memo dated March 25, 2014 from the Building Inspector, "the Building & Licensing Department will no longer send owners to the Planning Commission for partitioning if the structures causing the merger are removed and the lots are being put back as they were originally plotted so long as they are 5,000 square feet, have 50 feet of frontage on the street and there are no non-conformities on the lots". Since these lots are 4,999 square feet, they do not meet the requirements of the Code. The evidence which shows that the lots have merged is the City's account information and photographs of when the trailers were on the site. Ms. Sullivan did not have a survey to show how the trailers were located on the property. Based on the photographs, it appears that the trailers would have crossed property lines; and if not crossing the property lines, they were within the setback areas.

City Solicitor Glenn Mandalas thought that the City would view the lots as merged even if each of the units were on separate lots. The five parcels were used collectively as one park area, and they were all in common ownership. The parcels were merged by use because the land was used collectively as one park area.

Ms. Sullivan stated that the units could not have been on separate lots because there were 11 units on five lots, and a house was located on one lot. She had no idea as to why there is one square foot less on the lots. The lot lines have not changed in any way since they were originally plotted.

Mr. Jim Fuqua, Esq. of the law firm Fuqua, Yori and Willard P.A., represented the owner of the property and provided testimony in support of the appeal and variance. The photographs do not show whether the cabins and trailers were on one lot or two lots. The sizes of the lots are not rectangular. The building inspector has determined that the lots have merged, but no merger has occurred. If the Board of Adjustment finds that merger did occur, then he will proceed with the variance request. The applicants position is under applicable law and the relevant facts that no merger of the lots has every occurred. If that is the case, then the building official's determination should be reversed. Lot Nos. 141, 143 and 145 are currently vacant with no improvements. Lot No. 1 has a 1.5 story residence located on it. The side yard setbacks of this property conform with the Zoning Code. Samuel Burton acquired the lots in four separate deeds. The lots as they exist today are shown on the plot of the grounds of the Rehoboth Beach Camp Meeting Association that is recorded in Georgetown, DE at the Record of Deeds Office in Book 84, Page 603. That plot indicates the lots to be 50 feet x 100 feet as the survey indicates. All of the Burton lots were zoned C-3 commercial when the City adopted its original Zoning Ordinance. There are no setback requirements in the C-3 Zoning District. In February 2003, the City rezoned the five Burton lots and five other lots to R-2 residential. In March 2006, the Delaware Supreme Court upheld the decision that the five lots were rezoned. Demolitions occurred twice in 2005 and 2006, but the City issued one demolition permit. The lots were put back into the original condition they were in and were never merged. There is no proof shown that there was a structure crossing over the property lines.

Mr. Rob Burton, grandson of Samuel Burton, attested that everything said was true.

There was no correspondence.

Public Comment:

1. Eugene Lawson, Esq., 12 Hickman Street, noted that the Board should be consistent with its past practice that the request be granted.

Mr. Doug Popham made a motion, seconded by Ms. Myrna Kelley that there was no merger that was documented for the Board to say that it actually occurred. (Wilson – abstained. Hilderley – for. He agreed with the presentation of the evidence. He agreed with the maker of the motion that there is lack of substantial evidence showing that a merger did take place. While it may seem that it would have been logical to say it is used as one piece of property, a merger is a very technical aspect of the Board's decision. Kelley – for. The amount of time that elapsed had a bearing and the wording of the Supreme Court decision had a bearing on her decision. Popham – for. No merger occurred.) Motion carried unanimously. There was no need for the variance request to be heard.

**Case No. 0514-06.** A REQUEST FOR VARIANCE in regard to Section 270-26(A) of the Municipal Code of Rehoboth Beach to allow the one (1) existing HVAC unit and one (1) new replacement HVAC unit to remain in the easterly side yard setback. The property is located in the R-1 Zoning District on Lot Nos. 20 & 21 and the easterly 12.5 feet of Lot No. 19, Block 16 at 212 Stockley Street. The Variance is being requested by Robert W. Worthing, owner of the property.

Building Inspector Sullivan read her report with exhibits. The property owner is requesting a variance to replace one of the existing HVAC units which is within the current setbacks. The owners are requesting a variance to allow a new HVAC unit to be installed where the current HVAC units are located. The current units were installed in 2005 when the house was built, and they were conforming at the time of construction. The new setback law that was adopted on January 17, 2014 makes the units existing non-conforming. The new unit would be required to be removed from the setback area.

Mr. Robert Worthing, owner of the property, provided testimony in support of the variance. He is seeking to install a smaller HVAC unit. The second HVAC unit would remain on the property. The retroactive enforcement of the Zoning Ordinance after his purchase of the property would force a change of the fit, form, design, use and enjoyment of the residential structure or he would have to lose some functionality of central air conditioning on the first floor by having to move the new unit to a different location as proposed by the building inspector. It has been confirmed that there was mold in the crawlspace and mold inside of the ductwork. The

ductwork needs to be replaced, and the HVAC unit needs to be replaced because it short cycles. The mold has since been eliminated from the crawlspace. There is an error on the plat. The patio measures 10'-4" x 10'-4".

Correspondence:

1. Letter from Judith Coffren, 210 Stockley Street – in support of.
2. Letter from Carol Kornheiser, 214 Stockley Street – in support of.
3. Letter from Albert F. Carter, 217 Stockley Street – in support of.

Public Comment:

1. Eugene Lawson, Esq., 12 Hickman Street – in support of.

Ms. Kelley made a motion, seconded by Mr. Popham to grant the variance as requested to replace the one HVAC unit. (Wilson – for. He has made the case that it would be a great hardship. Hilderley – for. The case is well made that hardship is quite apparent. Letters in the records are persuasive. It would be a logical conclusion for the Board to vote in favor of granting the variance request. Kelley – for. The hardship is obvious. We have no public criticism or outcry against it. Popham – for. It has been sitting there for 8-9 years, and the neighbors have no objection to it.) Motion carried unanimously.

**Case No 0514-07.** A REQUEST FOR VARIANCE in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to install a new retaining wall at the easterly property line. The property is located in the R-1 Zoning District on Lot No. 23 at 23 Pennsylvania Avenue. The Variance is being requested by Steve Otell on behalf of Helen Otell Trust, owner of the property.

Building Inspector Sullivan read her report with exhibits. The Applicants' properties are located on Lot Nos. 21 and 23 Pennsylvania. The owners are Thomas & Rosemary Lawler of Leesburg, VA and Helen Otell Trust of Lutherville, MD. The property owners are requesting a variance to build a wall on the property line between the two properties because of the elevation difference between the two driveways. The owners are requesting a variance to allow a new retaining wall to be built on the property line between 21 & 23 Pennsylvania Avenue. The grade difference is currently being stabilized by bushes and ivy. There is an approximate 18 inch difference in grade between 21 Pennsylvania Avenue and 23 Pennsylvania Avenue.

Ms. Patty McDaniel of Boardwalk Builders provided testimony on behalf of Helen Otell Trust and in support of the variance. Each driveway is along the shared property line, and each driveway is narrow so there is not a lot of room to resolve the problem. Both properties have garages at the back of the terminus of the driveways. For quite some time, the Otells have been removing sand from their driveway which erodes from the driveway on 21 Pennsylvania Avenue. Ms. McDaniel's recommendation was to regrade the driveway that would direct the water towards the street. A wall would be required of more than 14 inches in height. In the absence of the wall, the owners would like to have something more stable in the driveway. Her recommendation was for a footing and a low wall which would be clad with bricks. It would be sufficient to end the retaining wall at the garage on 23 Pennsylvania Avenue.

Chair Hilderley made a recommendation to continue this hearing so the applicants can confer with Ms. McDaniel with regard to the design and construction of the retaining wall.

Mr. Popham made a motion, seconded by Mr. Robert Wilson for a continuance of this case until the definite proposal is presented for the Board's approval. Motion carried unanimously.

There was no correspondence and no public comment.

**OTHER BUSINESS**

There was none.

There being no further business, Acting Chair Hilderley adjourned the meeting at 8:25 p.m.

**MINUTES APPROVED ON  
OCTOBER 27, 2014**

**Respectfully submitted,**

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(Clifton Hilderley, Acting Chair)

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(Ann M. Womack, City Secretary)