

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

July 28, 2014

The Board of Adjustment Meeting of the City of Rehoboth Beach was called to order at 7:00 p.m. by Chairman Thomas Evans on Monday, July 28, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Mr. Clifton Hilderley
Mr. Thomas Evans
Ms. Myrna Kelley
Mr. Doug Popham

Absent: Mr. Robert Wilson

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

A quorum was present.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

No Minutes were available for approval.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0614-08. A REQUEST FOR VARIANCE in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to allow an addition to the house to be built to the 16 foot aggregate side yard setback. The property is located in the R-2 Zoning District at 401 South Boardwalk on portions of Lot Nos. 27, 28, 29 & 30, Block No. 39 and on portions of Lot Nos. 2, 3 & 4, Block No. 61. The Variance is being requested by Billy Moss on behalf of Pickwick Oceanfront LLC, owners of the property. Chairman Evans 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 read her report with exhibits. The owners are requesting a variance to allow the proposed addition to the dwelling to be built to the previous side yard setback requirements. The new setback requirement which was adopted on January 17, 2014 requires the new aggregate side yard setback for this property to be 20.18 feet. The previous aggregate side yard setback was 16 feet, a difference of 4.18 feet. The minimum side is 10 feet on this property because the side of the property is on a street per Section 270-24, Footnote 2 of the Code. There is also a patio on this property that encroaches into the street side yard setback. If this patio is allowed to remain on this side, the aggregate would need to be taken from the closest corner of the patios to the property line. Based on the survey submitted, dimension appears to be 4 feet which would make the aggregate required for the opposite side, 16.18 feet. During the resolution and ordinance adoption process, the required public notices were posted and published in newspapers. The Board of Commissioners adopted a resolution at the January 17, 2014 hearing stating that any property owner who demonstrates conclusively that prior to November 15, 2013, such property invested \$5,000.00 or more in pursuit of the construction of a structure that would comply with the then existing Section 270-26 of the Municipal Code relating to side yard setbacks, shall be entitled to proceed through the City's approval process under the side yard setback requirements in effect as of November 14, 2013. Any person desiring approval of the exception must request such approval through the City's Building & Licensing Department by January 31, 2014. Once the deadline of January 31, 2014 passed, Ms. Sullivan no longer had the authority to approve any plans that did not meet the current Zoning Code.

Ms. Ann Womack, City Secretary, had verified that the adopted ordinance had been published in the Cape Gazette, Coast Press and Delaware State News.

Mr. Alan Czerwinski, Esq. represented the owner of the property. Also in attendance at the meeting was Mr. Tim Tice, builder. In the ordinance, it states that the width of the lot is defined as the length of the street line between the points where the two side lot lines intersect or in the case of a corner lot, one side lot line and the street line of the intersecting street. One side lot line and the intersecting street is 63.05 feet. The proper setback is the total aggregate of 17.3 feet. The applicant is seeking a variance from a 16 foot aggregate setback for both side yards with a six foot minimum under the previous ordinance. The new ruling according to the reading of the adopted ordinance would add 1.261 feet proportionately to the aggregate. The variance is less than what the building inspector is stating. Currently, with what is being proposed, there is an aggregate of 20 feet for the side yard setbacks. The applicant is able to show that more than \$5,000.00 has been spent prior to the first hearing. The applicant had not applied for the building permit by January 31, 2014. With the proposed addition to the house, the intent of the ordinance is not violated. Fourteen feet of the 20 foot aggregate is located on the north side of the house which faces Philadelphia Street. There will be no change to that which faces the street. The front of the house which faces the Boardwalk will have no change. The addition will be placed on the south side which will go out to the 6 foot limit. With the argument regarding the patio, it is a brick paver patio and will be moved. Attorney Czerwinski requested that the variance should be granted because the spirit of the ordinance would be observed and substantial justice be done without interfering with the streetscape and neighbors. The variance request is less than 2 feet.

Mr. Billy Moss, owner of the property, provided testimony in support of the variance. He had placed a deposit with the builder and the architect of more than \$50,000.00 before that meeting.

Mr. Tim Tice, builder, provided testimony in support of the variance. He corroborated that more than \$5,000.00 had been given to the architect and his company. It was his understanding that the patio was not to be on the survey.

Attorney Czerwinski noted that the applicant would be glad to provide an actual survey with the exact dimensions. He also noted that the applicant would like to seek a continuance so a survey can be provided to the Board of Adjustment with the absolute values on it.

The consensus of the Board was that a continuance will be held at the August 25, 2014 meeting. Correspondence for this case will be retained and will be read into the record at the next hearing.

Case 0614-09. A REQUEST FOR VARIANCES in regard to Seciton 270-21(C) and 270-21(D) of the Municipal Code of Rehoboth Beach to allow an addition of a restaurant, retail space, 28 hotel rooms, below grade parking garage and grade level off-street parking. The property is located in the C-1 Zoning District at 110 Rehoboth Avenue on Lot Nos. 32 & 34, Block Rehoboth Avenue and Lot Nos. 31 & 33, Block Wilmington Avenue. The Variance is being requested by Alex Moore of Avenue Associates LLC, owners of the property.

Ms. Sullivan read her report with exhibits. The lot area for the new and existing lots combined is 30,073 square feet. The existing structural coverage is 19,448.5 square feet, and the proposed structural coverage for the new lots is 8,702 square feet. The total combined structural coverage is 28,151 square feet which is less than the 100% that is allowed for commercial uses and underground parking. A hotel, motel or inn is considered a Tier 2 use in the commercial district. The Tier 2 use for the proposed structure is limited to the second and third stories. The first story can be covered 100% because it is a commercial use with restaurants, retail, spa and parking. The second floor consists of 15,888 square feet of residential in the existing hotel and 7,993 square feet of residential in the proposed addition. These two combined are a total of 23,881 square feet. The third floor consists of 11,490 square feet of residential in the existing hotel and 7,104 square feet of residential in the proposed addition. These two combined are a total of 18,594 square feet. The average of these two floors equals 21,237.5 square feet which exceeds the 50% average by 6,201 square feet. The existing hotel gross floor area is 62,355 square feet which is existing non-conforming. The proposed addition gross floor area is 32,993 square feet. The combined total gross floor area proposed is 95,348 square feet. The allowed Floor Area Ratio (FAR) is two times the lot area or 60,146 square feet. The proposed hotel would exceed the FAR by 35,202 square feet.

Mr. David Hutt, Esq. of the law firm Morris James Wilson Halbrook and Bayard LLP, represented the applicants, Avenue Associates LLC and Avenue Associates II LLC, and provided testimony in support of the variances. Mr. Ken Simpler, Mr. Ken Simpler Jr., Mr. Alex Moore and Ms. Kendra Simpler Moore are the principles of those entities. They were in attendance at the meeting. Mr. Jeff Sholkopf, architect, was also in attendance. The variance request is to modify the existing building by expanding it onto Lot Nos. 35 & 37 of Wilmington Avenue. In the modification, a restaurant, retail space, 28 hotel rooms and below grade parking and parking behind the building would added.

Mr. Jeff Sholkopf provided testimony in favor of the variances. The main focus area in the Executive Summary of the Comprehensive Development Plan (CDP) is for planning for physical and functional change. It also focused on physically upgrading the first two blocks of Baltimore and Wilmington Avenues and First Street to improve commercial viable, safety, ambiance and pedestrian access. In addition, there is an action item to preserve Rehoboth's overall character and small town charm. That action encourages the mix of uses with three or more commercial uses that are mutually supportive. There are several aspects that call for increasing the pedestrian viability on Wilmington Avenue such as widening sidewalks, nicer street plantings and overall improvements along the street. Mr. Sholkopf provided testimony as the proposed addition to the hotel.

Attorney Hutt noted that a prior variance was granted in 2012 to allow 10 parking spaces to be located on a property within 700 feet. The goal of that variance was to help create a streetscape along Wilmington Avenue with the building set back allowing wider sidewalks and creating a more pedestrian friendly environment, and in addition, to move the entrance towards the middle of the block so that cars would not be congested in trying to access the parking lot and create a safer access to the hotel. The site of the proposed renovation is Lot Nos. 35 & 37 with a total area of 10,222 square feet. The plan is to demolish the structures on those lots. The proposal is for the renovations to look similar to the existing building. The structures on the existing four lots are existing non-conforming because they currently violate the FAR requirements. Lot coverage requirements are not met by the existing structures. The goal for this project is to continue revitalization along Wilmington Avenue. Nothing that is proposed will change the nature of the C-1 zoning. What is being proposed is the same as the surrounding uses in the immediate vicinity. Removal of the restriction on the applicants' property will not affect the adjacent area in a negative way. The exceptional practical difficulty is that given the existing non-conformities on the existing lots, there is no room for expansion without a variance from FAR and lot coverage requirements due to these existing non-conformities. The parking variance of 2012 can be reduced to allow for 2 parking spaces.

Mr. Ken Simpler Jr. provided testimony in support of the project. The fire marshal approval and the fire company's blessing have been received. There has been consensus of all interested parties to move forward with this project.

Correspondence:

1. Letter received July 21, 2014 from Bob Derrickson, 128 Rehoboth Avenue – in support of.
2. Letter received July 22, 2014 from Mary Beth Evans, President and Krys Johnson, Executive Director of Main Street – in support of.
3. Letter received July 22, 2014 from Sal and Bette Gallo, 210 Second Street – in support of.
4. Letter received July 23, 2014 from Joe Baker of Henlopen Oyster House, Wilmington Avenue – in support of.
5. Letter received July 24, 2014 from Eric Sugrue of Salt Air, 50 Wilmington Avenue – in support of.
6. Letter received July 24, 2014 from Hugh Fuller and Troy Roberts of Purple Parrot Grill, 134 Rehoboth Avenue – in support of.
7. Letter received July 24, 2014 from Eric Davison of Gallery 50 Contemporary Art and Frame Shop, 50 Wilmington Avenue – in support of.
8. Letter received July 24, 2014 from Dominick Pulieri of Grotto Pizza, 20376 Coastal Highway – in support of.
9. Letter received July 24, 2014 from Carol Everhart of Rehoboth Beach/Dewey Beach Chamber of Commerce – in support of.
10. Letter received July 28, 2014 from Bob Pomeranz of Brighton Suites Hotel, 34 Wilmington Avenue – in support of.
11. Letter received July 28, 2014 from Harry Miller, Fire Chief of Rehoboth Beach Volunteer Fire Company, Inc. – in support of.
12. Letter received July 28, 2014 from Kevin Salameh of Sammy's Kitchen, 32 Wilmington Avenue – in support of.
13. Letter received July 28, 2014 from John Rishko of Stoney Lonen LLC, 208 Second Street and 57 Wilmington Avenue – in support of.

There was no public comment.

Mr. Clifton Hilderley made a motion, seconded by Ms. Myrna Kelley, to accept the variance request. (Hilderley – for. We all realize that the Commissioners are the ones who develop the Code, set the standards and organize in a civilized community and set the standards for buildings. We all know a change occurs

through the years. Certainly that has been our experience here in Rehoboth over the recent years. No matter how skilled in expertise, smart and foresight the Commissioners might be in passing the Code with these requirements, this is an opportunity to point out that there are changes that should be made. This is appropriate action for the Board to take to recognize that the variance should be granted. Evans – for, for the reasons stated by his colleagues. Kelley – for. Part of her wanted to say that two wrongs make a right because we have a non-conformity, and now we are voting on another variance; but in this instance she felt it is very important for the improvement of the City. Under the circumstances, it is very warranted. Popham – for. Hardship was made. If there is any way to develop those grounds, they will have to do it the way they proposed.) Motion carried unanimously.

The meeting was recessed at 8:16 p.m. and reconvened at 8:20 p.m.

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. This is a continuance of the Public Hearing from the June 23, 2014 meeting.

Chairman Evans recused himself from this case due to his absence from the June 23, 2014 meeting.

Ms. Patty McDaniel, Boardwalk Builders, provided testimony on behalf of the owners of the property. The driveway at 21 Pennsylvania Avenue is 1.5 feet +/- higher than the driveway at 23 Pennsylvania Avenue. Both driveways are contiguous to the property line. Currently, there is an unsightly hedgerow that is located on the property line. The hedgerow has helped but has not eliminated the constant erosion of sand from 21 Pennsylvania Avenue into the driveway on 23 Pennsylvania Avenue. Currently the driveway at 21 Pennsylvania Avenue is stone, and the owner would like to pave it with a hard surface. He has been advised that a wall with a fence on top for safety would be needed to stabilize the driveway. A letter from John Roche, engineer and a drawing were provided to the Board. The variance request is to build the wall recommended by the engineer and set a fence atop the wall. The height of the fence would be limited per the Code. The lot would be regarded in order to drain the water towards the street.

Ms. Sullivan noted that the top of fence would be six feet from the lowest driveway.

Correspondence:

1. Letter received July 21, 2014 from Judy Bennett, 26 Pennsylvania Avenue – in support of.
2. Letter received July 22, 2014 from Sharon Emerson, 28 Pennsylvania Avenue – in support of.

There was no public comment.

Mr. Hilderley made a motion, seconded by Mr. Doug Popham, to grant the variance to allow the wall and fence to be built. (Hilderley – for. The discussion has been very clear that it is deserving and meritorious for the Board to grant the motion. Evans – recused. Kelley – for, for the same reasons previously stated. Popham – for. The hardship was met, and it rectifies the problem.) Motion carried.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans adjourned the meeting at 8:31 p.m.

Respectfully submitted,

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
OCTOBER 27, 2014**

(Thomas Evans, Chairman)