

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

**May 12, 2011**

The Board of Adjustment Meeting of the City of Rehoboth Beach, was called to order at 7:02 p.m. by Chairman Thomas Evans on Thursday, May 12, 2011 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

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

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

A quorum was present.

**CORRESPONDENCE**

There was none.

**APPROVAL OF MINUTES**

Minutes of the April 25, 2011 Board of Adjustment meeting were distributed prior to the meeting.

Mr. Frank Cooper made a motion, seconded by Ms. Myrna Kelley, to approve the minutes of the April 25, 2011 meeting as written. Motion carried unanimously.

**OTHER BUSINESS**

Consider a request from Seth L. Thompson, Esq. of the law firm Hudson, Jones, Jaywork & Fisher LLC on behalf of TwoForOne LLC, 70 Rehoboth Avenue Mezzanine 101 for the Board of Adjustment to waive requirements that the application for variance or appeal must be accompanied by a dimensional drawing of the property prepared by a licensed surveyor with all proposed changes, stating the distance from all adjacent properties, the city block on which the lot or property faces, the distance of all buildings on the property from all adjacent properties, the dimension of such lot or property and location of proposed construction, alteration or building with reference to the boundary lines.

Mr. Seth Thompson, Esq., representative of Mr. Bill Shields and Mr. Joe Maggio of TwoForOne LLC, provided testimony to seek a waiver of the requirement for a licensed survey from the Application for a Variance/Appeal of the Decision of the Building Inspector. Rule 14.2 of the Board of Adjustment's Rules of Procedure provides that all appeals and applications shall be accompanied by a survey by a licensed surveyor at the subject property, except when this requirement is waived by the Board or the Building Inspector. The issue is of parking and to go through the process of having a survey would not help the Board in determining whether or not to grant the Variance or Appeal.

Mr. Williams Shields of TwoForOne LLC provided testimony that there is an agreement in the lease with the owner of the property for two onsite parking spaces.

Mr. Joe Maggio of TwoForOne LLC provided additional testimony.

Building Inspector Terri Sullivan provided testimony that the Applicants had applied for a Permit of Compliance, and the requirement is that three parking spaces are needed because there is an office in the building. The Applicants provided a lease which reads that two spaces are available onsite, but no survey was produced. The contention for her initial rejection of the Applicants' request was that Ms. Sullivan did not have a dimensional drawing by a surveyor licensed in the State of Delaware indicating that the two spaces indicated are legal parking spaces.

Mr. Clifton Hilderley made a motion, seconded by Mr. Cooper to reject the request to waive the Board of Adjustment's requirement for a certified survey.

Mr. Hilderley said that the Board of Adjustment is responsible and is required to establish a creditable document of facts. Witnesses are not sworn in, and the Board of Adjustment does not operate under the rules of civil procedure for the best evidence available. The Board of Adjustment takes the word of whomever wants to talk. In lieu of not swearing witnesses, the least the Board of Adjustment should have is written documentation from a certified type of person, i.e. surveyor, in order to establish what the Board of Adjustment is required to do as a quasi-judicial body.

(Popham – for. The Board of Adjustment needs an accurate drawing to determine. Kelley – for. For the Board of Adjustment to make a good decision coming in the future, it needs to see what there is. Evans – for. The Board of Adjustment has the ability and leeway to not require it, but he would not make a decision without having a dimensional drawing as required by the provisions of the Code. Cooper – for. The Board will need an accurate drawing in order to make a decision on the issues upcoming. Hilderley – for. It is not within the Board of Adjustment's allowable form of operating to waive such a request. It is against the Board of Adjustment's rules and is beyond its authority to not develop a creditable record.

## **OLD BUSINESS**

There was none.

## **NEW BUSINESS**

**Case No. 0110-11.** An APPEAL OF THE DECISION OF THE BUILDING INSPECTOR and a REQUEST FOR A VARIANCE in regard to Section 270-28 of the Municipal Code of Rehoboth Beach to allow the area in a given building devoted to restaurant purposes where alcoholic liquor is consumed on the premises to exceed 5,000 square feet of floor space, including seated dining area, food storage and preparation area, passageways and entrance foyer, restrooms and bar area. The property is located in the C-3 Zoning District on Lots 55, 57, 59 & 61 at 59 Lake Avenue. The Appeal of the Decision of the Building Inspector and Variance are being requested by John W. Paradee, Esq. of the law firm Prickett, Jones & Elliott on behalf of Darius Mansoor of Stingray Rock, LLC, owner of the restaurant. Chairman Evans read the reasons for granting a Variance from Section 270-74(C) of the Zoning Code and noted the Public Hearing procedures.

Building Inspector Sullivan gave her report with exhibits. (Copy attached.) In addition an Affidavit was provided by Mr. Mansoor after the application was submitted in November 2010 stating that the lounge tables are reserved for dining only. City Solicitor Mandalas added that the appeal issues are: 1. Ms. Sullivan has said a permit of compliance is needed for her to issue a building permit for the patio. 2. Ms. Sullivan has determined that the lounge area is bar area rather than permanent seated dining. The four tables added in the lounge area comply with the requirements for the permit of compliance, but Mr. Mansoor would like for what goes into the City's file to say that he is at 11% as opposed to 23% regarding liquor. An earlier motion by the Board of Commissioners was that they made a determination that the patio would be an expansion of a non-conforming use, and it would require a permit of compliance.

Mr. Hilderley said that with the three issues presented, a permit of compliance cannot be issued unless the restaurant is in compliance. It is not in compliance because it is over 5,000 square feet. A variance is required before a permit of compliance can be granted. The percentage before a liquor license can be granted is 25% maximum for the bar area, and an appeal has been made in regard to the percentages.

Mr. Darius Mansoor of Stingray Rock LLC provided testimony to allow the appeal of the decision of the Building Inspector and variance. The appeal is that as a legal non-conforming restaurant with a liquor license that was issued in June 1991 is unable to be compliant. He wanted to utilize a 750 square foot section outside of the restaurant for a zen-type patio. Mr. Mansoor said that he cannot achieve that status based on the license which was issued before 1991. The highest achievement he can reach is legal non-conforming.

There was no correspondence.

There was no public comment:

Mr. Mansoor worded the appeal that it is not required for a restaurant with a grandfathered license to achieve the status of compliance to apply for a patio, it is required only to be legal non-conforming, the highest status which is available. He has been told that he needs to be compliant, and he is appealing this decision and saying that he only needs to be legal non-conforming.

Ms. Kelley made a motion, seconded by Mr. Cooper to deny the appeal as stated by the applicant.

Chairman Evans said that the spirit of the appeal is at least clear if nothing else. The discussion of the appeal is clear and the nature of appeal has been met. The appeal and its merits to Chairman Evans are not worthy of a positive vote. He supports the motion to deny the appeal on the grounds that no case has been made that he can find any reasons for granting the appeal.

Ms. Kelley agreed with the denial of the appeal based upon the findings of what the Board of Adjustment has and the report from the Building Inspector and from the minutes of the motion made by the Board of Commissioners.

Mr. Cooper based his opinion on the opinion of the City Solicitor and the discussion of the City Commissioners. The Board of Adjustment is bound by the findings. The City made it perfectly clear that the application for an outside space is based upon compliance of the restaurant. The additional space is not included in the square footage and is based on an already compliant restaurant.

(Popham – for, because an adequate case was not made. Kelley – for, for the reasons previously stated and based upon the facts the Board has. Evans – for, for the reasons previously stated as his colleagues. Cooper – for. The application for the outside café is clear and the appellant has not indicated any hardship or reason why that should be overturned. Hilderley – for because the case has not been made consistent with what the City Commissioners have done, the Board of Adjustment’s authority and the presentation made.) Motion carried unanimously to deny the appeal.

Ms. Sullivan had no further testimony to add other than her report.

Mr. Mansoor said that he has met any criteria asked by the City and considered compliant except for being more than 5,000 square feet. The hardship for not having the patio would be coming into compliance. In order to come into compliance it would be a major construction undertaking. His business would be harmed because of the competition with restaurants having patios. He does not have the benefit of late night high alcohol influence to sales. Fall and Spring are a great time to bring another option to the diners which he currently does not have. There would be no harm to the neighborhood. The idea is to offer another style of dining.

Public Comment

1. Mr. Randy Lecates, 38 Sussex Street – opposed to any patio with loud music, chaos and drinking.

There was no correspondence.

Mr. Hilderley made a motion, seconded by Mr. Cooper, to deny the request for a variance for the purpose of leading up to the process of applying for a permit of compliance.

Mr. Cooper said that there was public comment at the permit of compliance hearing held by the Board of Commissioners. Nine comments were listed, and the majority was not in favor of the patio. Balancing hardship of the restaurant vs. the benefit or non-benefit to neighbors should be considered.

(Popham - for. The case was not made for hardship and expanding the restaurant. Kelley – for. She could not get past the fact that Mr. Mansoor has a 5,000 square foot limitation. Evans – for, based strictly on the grounds that no case was made for hardship. Cooper - for. He did not see that the hardship on the restaurant rises above the impact on the neighborhood. Hilderley – for the motion to reject the request for a variance. Hardship was never a factor in the presentation. It was only a reason or a necessity to proceed with the request for a permit of compliance. It is out of the normal pattern of requesting and presenting consideration for a variance.) Motion carried unanimously to deny the request for a variance.

There being no further business, Chairman Evans declared the meeting adjourned at 8:23 p.m.

**Respectfully submitted,**

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(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON  
JUNE 27, 2011**

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(Thomas A. Evans, Chairman)