

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

February 22, 2016

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, February 22, 2016 on the second floor of the Rehoboth Beach Library, 226 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

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

Absent: Mr. Chuck Donohoe
Mr. Doug Popham

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 October 26, 2015 and December 21, 2015 Board of Adjustment Meetings were distributed prior to the meeting.

Mr. Clifton Hilderley made a motion, seconded by Ms. Myrna Kelley, to approve the Minutes of the October 26, 2015 Board of Adjustment Meeting as written. Motion carried unanimously.

Mr. Hilderley made a motion, seconded by Ms. Kelley, to approve the Minutes of the December 21, 2015 Board of Adjustment Meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 1215-11. A REQUEST FOR VARIANCES in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to permit the replacement and encroachment of stairs and the main structure in the westerly side yard setback. The property is located in the R-1 Zoning District on Lot No. 12, Block 5, at 313 Stockley Street. The Variances are being requested by Veronica O. Faust, Esq. of the law firm Morris James LLP on behalf of Philip Santoro, owner of the property. Chairman Evans read the reasons for granting a Variance or Appeal from Section 270-74 of the Zoning Code and noted the Public Hearing procedures.

Building Inspector Damalier Molina read his report. The property owner is requesting a variance from the requirements of Section 270-26 of the Code to allow the replacement of existing wooden stairs with new wooden stairs and legalize a six foot foundation encroachment on the western side yard setback. Building lots with an area of 5,009 square feet in R-1 Residential Districts require a six foot minimum width of each side yard or 16 foot minimum aggregate total of both side yards. But for the southwest corner with a 5'-6" side yard setback, the property satisfies the side yard requirement. The owner wishes to remove the existing wooden stairs and replace with new wooden stairs on the western side yard setback. Steps are permitted to project from the main structure no more than 24 inches as provided under Section 270-42(A). A variance is required to allow encroachment into the side yard setback provisions in Section 270-26. The house was not in compliance from the time it was built based on the information that had been provided to him. The deck on the eastern side is in compliance, and the shed is in compliance.

Attorney Veronica Faust of the law firm Morris James LLP, represented Mr. Philip Santoro and his wife who were in attendance at the meeting. The owners are asking for a variance for the house because they would like to make improvements to the house in the future. With regard to the steps, the formation will be changed,

and the stairwell will be reduced resulting in a decrease in the encroachment.

Correspondence:

1. Letter dated December 29, 2015 from John S. Welch, 315 Stockley Street – no objection to the variance requests.
2. Letter dated February 17, 2016 from Frances M. Kelleher, 318 Stockley Street – opposed to the variance requests.

There was no public comment.

Ms. Kelley made a motion, seconded by Mr. Hilderley, to grant the variances requested on all three requests. (Hilderley – for. The hardship has been explained very clearly, and it is obvious that this is diminimus and needs to be done. Evans – for, for the same as his colleagues. Kelley – for. The hardship standard is definitely met. The amount of requested variance is diminimus.) Motion carried unanimously.

Consider request from Eugene Lawson, Jr. Esq. of The Lawson Firm LLC to consolidate multiple cases relating to building permit applications requested at the following properties, 217 Philadelphia Street, 105 St. Lawrence Street, 102 Rodney Street, 200 Laurel Street, 11 Queen Street and 101 Lake Drive.

Attorney Craig Karsnitz said that this is a procedural issue only tonight, and that is whether the Board of Adjustment will hear the cases as a group for certain issues or if they will be heard individually. The question being raised in effect is what law and regulations apply to these cases.

Attorney Eugene Lawson of The Lawson Firm LLC represented the owners of the six subject properties, and he noted that he has consent of all six applicants for the cases to be heard as a group. The six applications are based on the same facts that are arguing against the same treatment of the applications by the Building Inspector. Attorney Lawson did not see any particular reason why the Board would need to meet six times in order to come up with what is the same requested relief for all six cases based on similar or identical facts. It would be in the best interest for the Board as well as the City and clients for this to be resolved in one proceeding. Attorney Lawson acknowledged that all six cases would be bound by the same decision, and the parties would not be allowed to re-litigate the same issue. It was Attorney's Lawson's opinion that in his reading of the laws, they should have been processed applications for the reason that all of them made application between August 21, 2015 and November 7, 2015.

City Solicitor Glenn Mandalas said that Rule 42(A) in Superior Court describes that when actions involving a common question of law or fact are pending before the court, they may order a joint hearing or trial of any or all of the matters at issue in the actions, and may order all the actions consolidated and it may make such orders concerning proceedings therein as may intend to avoid unnecessary costs or delay. He referred to a 2003 case in Superior Court and a decision to consolidate or not. The decision to consolidate is all about whether things are so similar that it makes better sense to have them consolidated. In this particular case, the facts are not so similar that the cases should be consolidated. There are not similar witnesses. There are different properties owned by different individuals, and the properties are in different stages of construction. The applications were submitted on different dates. The ordinance has an effective date, and everything is based on that effective date. The letters sent to the applicants indicating why they were denied have nothing to do with the ordinance. There is only one that cites the ordinance. None of the applications were denied for the same reasons. The City applied Ordinance No. 0715-01 to each of the applications.

Ms. Kelley made a motion to grant approval to combine these cases for this particular issue only which would be what ordinance would apply. Motion failed to gain a second.

Mr. Hilderley made a motion, seconded by Ms. Kelley, to deny the motion to consolidate the six cases as presented to the Board of Adjustment by Attorney Lawson.

Attorney Karsnitz clarified the motion that it is to deny the request of the motion to consolidate. This request falls within the rule cited by the City Solicitor that the Superior Court uses in consolidating issues. This is a legal issue that has to be decided. He had not heard any factual issues that may create differences that would require the application of one ordinance and the one set of facts and another to another set of facts. All the people applied during the window period of time that is the basis for the argument that Attorney Lawson is making to the Board of Adjustment. If the Board hears one case and makes that decision, if it decides against the City it will be collateral estoppel as to the City, or if it decides against the applicant, it will not be collateral estoppel but on that same narrow issue, the Board would have no choice but to follow through with the other cases.

(Kelley – no. Hilderley – for. He heard from the various people who have talked that the six different cases that are involved here where the request for permit was refused can be so different. The Board cannot sit here in its greatest dream and figure out what the various differences might be. The Board cannot anticipate what the differences might be. Therefore, it does not make any sense to try to pass a motion here for consolidation of one narrow aspect of what the Commissioners might do. Evans – no.) Motion was denied.

Ms. Kelley made a motion to accept and grant the motion to combine the cases subject to stipulating that it is only with regard to which of these ordinances will apply. Motion failed to gain a second.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans adjourned the meeting at 8:01 p.m.

Respectfully submitted,

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
MARCH 28, 2016**

(Thomas Evans, Chairman)