

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

**March 28, 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, March 28, 2016 on the second floor of the Rehoboth Beach Library, 226 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Present: Mr. Clifton Hilderley  
Mr. Chuck Donohoe  
Mr. Thomas Evans  
Ms. Myrna Kelley  
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 February 22, 2016 Board of Adjustment Meetings were distributed prior to the meeting.

Ms. Myrna Kelley made a motion, seconded by Mr. Clif Hilderley, to approve the Minutes of the February 22, 2016 Board of Adjustment Meeting as written. (Hilderley – aye, Donohoe – abstained, Evans – aye, Kelley – aye, Popham – abstained.) Motion carried.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

Board of Adjustment Solicitor Craig Karsnitz noted that the Board will be dealing with the appeal of a decision of the Building Inspector. The focus of that is whether the Building Inspector, under the law and facts as presented, made the correct choice.

**Case No. 1215-13.** An APPEAL OF A DECISION OF THE BUILDING INSPECTOR to deny a building permit for failure to satisfy the requirements of Ordinance No. 0715-01. The property is located in the R-1 Zoning District on Lot Nos. 45 & 46 and the easterly portion of Lot No. 47, Block No. 24 at 105 St. Lawrence Street. The Appeal is being requested by Eugene M. Lawson, Jr. Esq. of The Lawson Firm LLC on behalf of Barry & Sharon Covington, owners of the property.

City Solicitor Glenn Mandalas presented a Motion to Dismiss the two applications before the Board of Adjustment this evening on the basis of the Board of Adjustment's lack of subject matter jurisdiction. The Appellant has asked the Board of Adjustment to look at a provision of the City Charter and make a determination that an ordinance is suspended based upon the Board's interpretation of the City Charter. The City and the Appellant disagree over the meaning of the Charter provision. In order for this Board to decide the appeal before it, each of the Board members will need to interpret a provision of the City Charter. The problem is that the Board of Adjustment has considerable power to interpret the City's zoning laws in Chapter 270 of the City Code, but it has no power to interpret the City's Charter. Accordingly, if the Board would need to interpret the Charter to decide the appeals before it this evening, the Board must decline to hear the appeals because it involves subject matter the Board has not been empowered to review. The Board of Adjustment is created by State statute, and it has limited jurisdiction. The Board's jurisdiction is limited in hearing matters related to Chapter 3 of Title 22 of the State Code and Chapter 270 of the City Code. The Board can look at the building official's interpretation of the ordinance and apply it directly to the application; but the Board is precluded from thinking about the Charter. The Board can listen to the reasons for which the applications were rejected. Courts have confirmed that the Board of Adjustments' jurisdiction is limited. Case law was cited. In the Appellants' argument of the appeal, the first sentence confirms that this is an appeal that is based on expressed

language contained in the City's Charter and its preemption over any contrary language contained in an ordinance. City Solicitor Mandalas had not heard the Appellant say that he disagrees with the Building Inspector's review of the Code. He was not sure if the plans are compliant with the old Zoning Code. The plans are not compliant with the Zoning Code that was the subject of the ordinance. The Board can review the Building Inspector's application of the ordinance, but it cannot go beyond the ordinance and review and interpret the Charter. If the Board needs to interpret the Charter in order to answer the appeals, the it has to decline to take the applications and grant the Motion to Dismiss for lack of subject matter jurisdiction.

Mr. Eugene Lawson, Esq. of The Lawson Firm LLC represented the Appellants for both cases this evening. He was not completely prepared this evening to respond to the Motion, but he did not want to put off his clients and the City for another month or two. Attorney Lawson referred to a letter submitted with the documents for this case indicating that all these people were able to file their plans and if they were rejected, they would have their right to be heard before the Board of Adjustment. The Appellants' argument is that Ordinance No. 0715-01 is not part of the ordinance, and the word suspended needs to be dealt with. It does not make any sense if the Board of Adjustment is not able to make that decision, but yet the City Manager or Building Inspector can make the decision whether "suspended" means suspended. Attorney Lawson suggested that the meeting should be recessed in order for him to speak with his clients.

The meeting was recessed at 7:26 p.m. and reconvened at 7:36 p.m.

Attorney Lawson and his clients determined that they would like to move forward and have the Board make a decision whether it believes it has jurisdiction. If the Board decides it does have jurisdiction, he will argue the Zoning Ordinance. Ordinance No. 0715-01 is the only thing being argued about, and it is either part of the ordinance now or it was suspended. Previously, the City Solicitor had argued that the pending ordinance doctrine applied, and Attorney Lawson did not think it had anything to do with the Charter. With regard to the litigation, the City took the position that the lawsuit was not right because administrative remedies had to be exhausted before the Board of Adjustment. Mr. Max Walton, Esq., who represented the City in the litigation, had sent a letter Mr. David White, Esq. which stated that for any such applications, if building permits are denied, the applicant shall have preserved their right to appeal to the Board of Adjustment (including without limitation regarding the City's interpretation of the application of Ordinance No. 0715-01 and the pending ordinance doctrine).

City Solicitor Mandalas added that with regard to the previous litigation, the argument was made that Attorney Lawson's clients had to exhaust administrative remedies and come before the Board of Adjustment. This was not in the context of a challenge to the ordinance and the referendum. The administrative remedy which had to be exhausted was the strict application of the ordinance to the development plans in the specific areas they were rejected under. This was based on the pending ordinance doctrine.

Attorney Karsnitz did not think there was enough information and time to absorb everything before the Board to make a decision tonight. He has viewed this case and it appeared that all the parties had viewed this case as an appeal from the Building Inspector over which the Board of Adjustment has jurisdiction. It is correct that in analyzing what the Building Inspector did, the Board needs to look at the City Charter to see what effect the ordinance had. Attorney Karsnitz has not read any of the cases that were cited earlier and has not done an analysis because this issue had not been raised before tonight. With regard to a legal opinion, it is helpful to review what the attorneys have said and what cases they cited.

Mr. Chuck Donohoe made a motion, seconded by Ms. Myrna Kelley, to continue the hearing. (Hilderley – for. Continuing to another meeting would be most appropriate for both of the parties. Donohoe – for. The issue is very important and strikes at the very core of whether or not the Board can make a decision. The Board members should read the cases, the briefing and have a chance to see Attorney Lawson's rebuttal in writing so they can make an informed decision on this important issue. Evans – for. Kelley – for. The Board members need more time to reconsider this jurisdictional issue. Popham – for.) Motion carried unanimously.

The Argument from the City Solicitor to the Board of Adjustment will be required to be filed by April 7, 2016, and the Argument from Attorney Lawson will be required to be filed by April 18, 2016.

**Case No. 1215-14.** An APPEAL OF A DECISION OF THE BUILDING INSPECTOR to deny a building permit for failure to satisfy the requirements of Ordinance No. 0715-01. The property is located in the R-1 Zoning District on the easterly portion of Lot No. 29 and Lot Nos. 30 & 31, Block 24, at 102 Rodney Street. The Appeal is being requested by Eugene M. Lawson, Jr. Esq. of The Lawson Firm LLC on behalf of Real Property Development LLC, owner of the property.

This case was continued to the next meeting.

**OTHER BUSINESS**

There was none.

There being no further business, Chairman Evans adjourned the meeting at 7:53 p.m.

**Respectfully submitted,**

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

**MINUTES APPROVED ON  
APRIL 25, 2016**

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**(Thomas Evans, Chairman)**