

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

April 27, 2015

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, April 27, 2015 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Mr. Clifton Hilderley
Mr. Chuck Donohoe
Mr. Thomas Evans
Mr. Doug Popham

Absent: Ms. Myrna Kelley

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 March 23, 2015 Board of Adjustment Meeting were not available for approval.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0215-02. REQUEST FOR VARIANCES in regard to Section 270-24 of the Municipal Code of Rehoboth Beach to allow the encroachment of 14'-4 1/2" for the front of the house into the front yard setback, Section 270-26 to allow a 4" encroachment into the northeasterly side yard setback and Section 270-50(A) to allow the non-conforming section of the building to be elevated by 9 inches above the existing elevation and to allow a 6"-5 1/2" crawlspace below the existing house. The property is located in the R-1 Zoning District on the northerly portion of Lot No. 31, Block Pennsylvania, at 31 1/2 First Street. The Variances are being requested by Joseph & Heather Hawley, 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 all three cases.

Building Inspector Terri Sullivan read her report with exhibits. The owners are requesting a variance of 14.4 feet in the front and .3 feet on the side for the existing house. They wish to add a basement of less than 6'-6" under the existing house and increase the ceiling height on the first floor from 6'-8" to 7'-5". The existing foundation is not set on a footing and is sinking. It is currently being held up by jacks in the crawlspace. In Section 270-50(B), any legal nonconforming structure devoted to a conforming use may be extended, provided that such extension conforms to the applicable dimensional requirements of the zoning district in which the legal nonconforming structure is located. Extending the crawlspace vertically and the ceiling height on the first floor in the areas which are over the building setback would not conform to the applicable dimensional requirements of the zoning district.

Mr. Joe Hawley and Mrs. Heather Hawley provided testimony in support of the variance request. The house is leaning down in the front of the house. Photographs were provided for the Board of Adjustment to review. In order to save the house, the foundation needs to be redone. The side of the house is going below grade. Two windows in the front bedroom would have to be taken out in order to jack up the foundation of the house. The Hawleys would like to keep the aesthetic appearance of the house. Adding a basement will preserve the integrity of the house long term. The neighbors are supportive of the request.

There was no correspondence and no public comment.

Mr. Clifton Hilderley made a motion, seconded by Mr. Doug Popham, to grant the request for the variances

so the Applicants can jack up the house and make it level. (Hilderley – for. In a sense it depends on the definition of what the extent is. It is not creating a new problem. It is just making larger the nonconforming part of the house. There is no choice but to grant the variance so they can make the level of the floors even. It is certainly not going to change the character of the house or the neighborhood. Donohoe – for. If the Board of Adjustment fails to grant the variance, there would be an unnecessary hardship. He agreed with the idea that all they are doing is fixing the place up. There is no harm to the neighbors. Evans – for. He agreed with his colleagues. There is no other solution if they want to have that house or a house on that lot. Popham – for. The hardship was met. Enough of the old cottages are being torn down. This is a sign that maybe some of them can be saved.) Motion carried unanimously.

Case No. 0315-03. REQUEST FOR VARIANCES in regard to Section 270-44(B) of the Municipal Code of Rehoboth Beach to allow the existing accessory building to be closer than 4 feet from the property line, Section 270-49.1 to allow more than 50% of the structure to be removed and Section 270-50(A) to allow the accessory dwelling to be elevated by 3 feet. The property is located in the R-1 Zoning District on Lot Nos. 28 O& 29, Block No. 21, at 204 Philadelphia Street. The Variances are being requested by Steve Mikkelsen, owner of the property.

Building Inspector Terri Sullivan read her report with exhibits. The Applicant is requesting variances from the rear and side yard setbacks for an accessory dwelling which is 3.4 feet from the rear property line and 3.9 feet from the side property line. The owners wishes to change the roof line so that the roof is the same throughout. These two changes would extend the nonconforming use vertically which would require a variance per Section 270-50A(A) & (C). The owner would also like a variance to Section 270-49.1 to allow removal of more than 50% of the structure due to sill and wall rot. The owner is requesting variances so that a crawl space may be added to the existing accessory dwelling so the dwelling will no longer flood. The owner is requesting that the building be allowed to be removed from the foundation and raised. The sill plates and some of the walls will need to be replaced as the water has destroyed them. The owner would also like to change the roof line by raising a portion of it so the entire structure is under one gable. He would also like to leave the structure in its current location but would be will to move it to the required four foot rear and side yard setbacks.

Mr. Steve Mikkelsen provided testimony in support of the variances. His preference is with Option A, to replace the structure in kind, elevate it two feet and meet the four foot setbacks. If Mr. Mikkelsen cannot replace the structure in kind, the he would like a variance to the setbacks because he will be using a current foundation, but still raise it which would be Option B. There are two structures on the property, a cottage house and main house. No modifications have been made to the property since he purchase it in 2012. The hardship is the lack of proper stormwater outflow on the third block of Philadelphia Street and continual flooding. There are no storm drain lines on that street. Three quarters of the stormwater flows east towards Bayard. Additionally the stormwater outflow from the Bellmoor Inn flows onto Philadelphia Street as well. The stormwater from Philadelphia Street and the Bellmoor Inn intersect in front of his house. All of Mr. Mikkelsen's neighbor has this hardship as well. The purpose of the variance request is to elevate the cottage house, replace the rotted structure, make it a viable structure for inhabitants and an increase producing structure. Photographs were provided of flooding which also occurs of the subject and neighboring properties. He would also like to have a roof truss system as well. The square footage of the roof would not change. Option B would be approval of the setback violations, waive the 50% salvage rule, elevate the structure by 24 to 36 inches, change the roof truss and the corresponding load bearing walls and approval to disassemble the exterior walls into movable sections before replacing them to take care of the rot on the base plates, etc. The square footage of the roof will not change.

Correspondence:

1. Letter received April 13, 2015 from Ann L. Dyer, 208 Philadelphia Street – in support of.
2. Letter received April 21, 2015 from Rick Hammond, 200 Philadelphia Street – in support of.
3. Letter received April 21, 2015 from Steven & Sandra Curson, 210 Philadelphia Street – in support of.
4. Letter received April 27, 2015 from Frederick & Jeanne Bailey, 202 Philadelphia Street – in support of.
5. Letter received April 27, 2015 from Howard Frye, 205 Munson Street – in support of.

Public Comment:

1. Mr. Wayne Steele, 206 Philadelphia Street, in support of. There is a stormwater management issue on Philadelphia Street.
2. Mr. Brett Dyer, 208 Philadelphia Street, in support of
3. Mr. Howard Frye, 205 Munson Street, in support of. There is an infrastructure issue.
4. Mr. MaryAnn Frye, 205 Munson Street, in support of. She will possibly have to elevate her shed.

Mr. Hilderley made a motion, seconded by Mr. Donohoe, to grant the request for variance for Version A to allow the Applicant to move the building out of the setbacks and raise the foundation to avoid the stormwater problem, but this does not include allowing the Applicant to change or do anything to the roof line.

Mr. Hilderley said that there is no hardship with doing anything to the roof.

Mr. Donohoe concurred. There is no reason at all to change the roof trusses and the orientation of them. He saw no need to raise the roof or the foundation two to three feet high. The structure should not be raised more than one foot at the most with the same roof line and the same size garage apartment.

(Hilderley – for. The Board of Adjustment heard no testimony at all about what the elevation of raising should be, seven inches, one foot, two feet. The testimony and the facts, and that is all the Board of Adjustment is to judge, was given as the 24 to 36 inches. The roof configuration is only a matter of aesthetics and finance. That is no reason at all for the Board of Adjustment to grant a variance. The Board has many decision based on that. Donohoe – against. While he agrees that there should be no change in roof line, he is concerned about raising the foundation 24 to 36 inches. He did not think that is appropriate to do. The Applicant is not showing a hardship with respect to doing anything other than to remediate the water problem. He can do that by simply raising the garage apartment one foot together with some landscaping. Evans – for, for the reasons stated by Mr. Hilderley. Popham – for. Change in the roof line and elevating the house that height does not gain what he is trying to accomplish.) Motion carried.

Case No. 0315-04. REQUEST FOR VARIANCE in regard to Section 270-28 of the Municipal Code of Rehoboth Beach to allow the existing restaurant, Dogfish Head, to increase the square footage from 8,280 to 9,950 square feet. The property is located in the C-1 Zoning District on Lot No. 112, Block Rehoboth, at 320 Rehoboth Avenue. The Variance is being requested by Mariah Calagione of Red Wagon LLC, owner of the property.

Ms. Sullivan read her report with exhibits. The property is requesting a variance from Section 270-28 – Limitation on the size of restaurants. The area in a given building devoted to restaurant purposes where alcoholic liquor is consumed on the premises shall not be larger than 5,000 square feet of floor space, including seated dining area, food storage and preparation area, passageways and entrance foyer, restrooms, dance floor and bar area, except that where a restaurant occupies space in a building also housing a hotel/motel containing at least 25 bedrooms, the area devoted to restaurant purposes may occupy up to but not more than 7,500 square feet. The owner is requesting permission to build a new restaurant of 9,820 square feet. The owners are requesting a variance so that they may tear down the existing Dogfish Head Restaurant and build a new 9,950 square foot restaurant and eliminate the parking area. The original application called out 9,950 square feet, and the original plan called out a different square footage. The Applicant revised the plan calling out 9,820 square feet.

City Solicitor Mandalas noted that neither he nor the Building Inspector are familiar with or aware of any variances that were previously granted. It is his expectation is that this is a legal nonconforming restaurant. Board Solicitor Craig Karsnitz was not aware of any variances being granted for this property of that nature.

Mr. Mark Dunkle, Esq. of the law firm Parkowski, Guerke & Swayze P.A. provided testimony on behalf of the Applicants. The Applicants are here under the exceptional practical difficulty test since this is a restaurant and a commercial business. The proposed changes to the restaurant seat less people inside by approximately five and have fewer bar stools than they currently have. Hardship is not the test. The exceptional practical difficulty goes hand in hand with maintaining and improving a business that is restrained by the 5,000 square foot restaurant limitation. Currently, the square footage of the restaurant is 8,280 square feet. The replacement/renovation of the restaurant will still be compatible with the neighbors. The 1,400 square foot change will not have a negative impact on the neighbors from what it has now. The use and character of the area will remain the same. It will be a restaurant serving visitors and the public in the City.

Mr. Nicholas Benz, CEO of Dogfish Head, said that the building has been around for a long time. Over decades, there has been a series of add-ons, bolt-ons and wooden poles. There have been issues with outdated plumbing, and there have been electrical upgrades done. The bones of the building are in bad shape. It is time to modernize the restaurant and bring it up to par with the other properties up and down Rehoboth Avenue. The intent is that the restaurant will be at grade. Nothing will be below grade in the new building. The proposed design takes into account a better guest experience and a better visual presentation for the City and the neighbors. It also takes into account all the little things that will make it substantially a better place to work. The existing building is a restaurant, brewery and a distillery. The new building will remain the same. Throughout the brewery in Milton, the inn in Lewes and the brew pub in Rehoboth, the intent is to have the same palette of materials. The parking lot will be eliminated to expand the building and create a courtyard

concept to accommodate people to safely wait to enter the restaurant.

Mr. Mike Glick of Lighthouse Construction was also in attendance at the meeting.

Correspondence:

1. Letter received April 22, 2015 from John Erdner, President of Scarborough Village Association of Owners, was concerned that (1) the poor storm management for runoff water from Dogfish Head will get worse; (2) the foul odor from the trash bins will get worse and (3) the noise coming from Dogfish Head late in the evening will get worse if the restaurant is granted the variance.

Mr. Nicholas Benz noted that the proposed design will decrease the impervious area on the entire property. Through the use of the courtyard system, there will be a smaller impervious area. It will be a new site plan that will have to meet all the requirements of the Sussex County Conservation District for proper stormwater handling. With regard to noise issues, they will be removed because there will be street parking. The building will act as a noise barrier to the parking lot and the street noise on Rehoboth Avenue. The trash bins will be relocated to a recessed area on the western side of the building.

Public Comment

1. Mr. Kevin Downing, Executive Chef of Dogfish Head, 20362 State Road – in support of.
2. Mr. Ryan Schwamberger, General Manager of Dogfish Head, 20362 State Road – in support of.

Mr. Donohoe made a motion, seconded by Mr. Hilderley, to deny the request for variance.

Mr. Donohoe did not think the Applicants have met the test for exceptional practical difficulty. The facility is now operating and generates the intended profit and is a thriving business. All the Applicants want to do is to generate more profit and more stature which does not rise to the level of exceptional practical difficulty. The Applicants want to have the size of the restaurant, brewery and distillery facility double that which is permitted by the Code. There is no reason to do that because it is harmful to competitors to permit one company to double the size of a restaurant facility compared to that which is permitted by the Code. Parking space will be lost. There is no written acquiescence of neighboring facilities except for an objection from the neighborhood behind the facility. It is not compatible with the character of the neighborhood in that the modernistic looking structure is completely out of character with the neighboring businesses and facilities along Rehoboth Avenue.

Mr. Hilderley said that Rehoboth Beach is not the place to build a big brewery. He thought that by going out of town, they could find a place that has no resistance and could do everything they want to because sometime in the future, they will want to expand again. Rehoboth Beach is not the place to produce more beer and enhance and expand a restaurant.

Mr. Popham said that Dogfish Head is already over 3,000 square feet above the 5,000 square foot limitation for a restaurant. To grant another 1500 square feet is not in keeping with when the City's founding fathers said 5,000 square feet.

(Hilderley – for, for all the reasons he has heard. It is not the place to expand a restaurant from 5,000 square feet. Donohoe – for, for all the reasons stated. Evans – against. When looking at the core reasons for requesting this, it is clearly not to make more people walk through their door. It is clearly not to make more money. Just the mortgage or the cost of constructing the building has to be amortized over time. They are actually reducing the amount of people that it can seat, and they are not asking for very much. They are good business people in the City. Popham – for. They have already got 3,000 square feet over and above the 5,000 square feet. The Board of Adjustment should not give them an additional 1,500 square feet.) Motion carried to deny the variance.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans adjourned the meeting at 8:48 p.m.

**MINUTES APPROVED ON
JUNE 22, 2015**

Respectfully submitted,

(Thomas Evans, Chairman)

(Ann M. Womack, City Secretary)