

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

**May 18, 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, May 18, 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 and April 27, 2015 Board of Adjustment Meetings were not available for approval.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

**Case No. 0315-04.** MOTION FOR RE-ARGUMENT OF THE DECISION OF THE BOARD OF ADJUSTMENT of the City of Rehoboth Beach pursuant to Rule 16 of the Board of Adjustment Rules, reached at its meeting on April 27, 2015. The Decision of the Board was in connection with a 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.

Ms. Myrna Kelley was not in attendance at the April 27, 2015 meeting. She has listened to the audio recording of this case and will be sitting to hear the request for a rehearing.

Board of Adjustment Solicitor Craig Karsnitz read Rule 16 of the Board of Adjustment Rules. A motion for rehearing shall be made not later than 10 days after the filing of the decision in the office of the Board of Adjustment. The Board of Adjustment may rehear matter for the following reasons: 1. Mistake, inadvertent surprise or excusable neglect. 2. Newly discovered evidence which by due diligence could not have been discovered at the time of the original hearing. 3. Fraud, misrepresentation or other misconduct of an adverse party. The Application in this case is on the basis of mistake. In 16.2 of the Board of Adjustment Rules, a motion for rehearing shall state the grounds therefore and may be accompanied by applicable affidavits. The motion and affidavit shall be provided by mail to the opposing party of record, if any. The opposing party shall have 10 days after receipt of the motion to file a response thereto and attach applicable affidavits. The Board shall determine the motion upon the written application any response thereto and accompanying affidavits if any. This rule, by its terms, does not ask for public comment on a motion for rehearing.

City Solicitor Glenn Mandalas noted that he has had an opportunity to speak with representatives from Dogfish Head about their application and the motion for re-argument. It has been learned that approximately 88% of the spirits produced from the distillery portion go offsite rather than staying onsite for consumption. Based upon that, it would be reconsidered under Section 270-28 – Limitation on the size of restaurant as to whether the distillery area is an area devoted to restaurant purposes. At this point, it is not believed the distillery area is an area devoted to restaurant purposes since the majority of the product goes offsite. It is

believed there is a mistake as to this portion of the square footage which has been calculated for the restaurant. The City agrees with the calculations as to the amount of space taken away from the distillery. It does not agree with the calculations as submitted by Mr. Mark Dunkle, Esq., representative of Dogfish Head. City Solicitor Mandalas also noted that while the City agrees the distillery is not part of the square footage that should be counted for this application, the City wants to make clear to the representatives of Dogfish Head and the Board of Adjustment that stand-alone distilleries are not a permitted use within the City. There may be zoning issues that will need to be dealt with at a future time. The City takes the position that there has been a mistake, and this is one reason for granting a rehearing. This was a mutual mistake between Dogfish Head and the City. At the time when the City performed its calculations, it was not aware of all the facts surrounding the distillery. When the plans were submitted, the distillery was included because it has never been an issue previously. The distillery and brewery are separate operations. The brewery should be included in the calculations for the square footage because the majority of the product is consumed or purchased on the premises. The City agrees that the merchandise shop which had been included in the calculations, should be excluded.

Mr. Mark Dunkle, Esq. of Parkowski, Guerke & Swayze P.A. provided testimony on behalf of the Applicants. The Applicants agreed with the presentation by City Solicitor Mandalas and also agreed to the mutual mistake as unique. The Application was in the range of what the Board of Adjustment has historically approved. The mutual mistake would justify a rehearing and opportunity to make another presentation to the Board so it can have all of the information.

Ms. Myrna Kelley made a motion, seconded by Mr. Doug Popham, to grant a rehearing. (Hilderley – for. The issue has been made very clear by both parties. Donohoe – against. Even if you assume the square footage figures put forth by Dogfish Head, the variance sought amounts to 36% over the 5,000 square foot limit established by the City. There is no evidence record here other than the unsupported conclusory statements of Dogfish Head through its counsel that there will be competitive disadvantage to Dogfish Head if the variance is not granted. There is no evidence in support of that, that he has seen from the record. For those reasons and actually many others he will not enumerate here, Mr. Donohoe voted against a rehearing. Evans – for, for the reasons his colleagues who voted in favor of it. It was an inexcusable mistake. Kelley – for. There was an error, a mistake made. The Board of Adjustment needs clarification and an opportunity to review all the details. Popham – for. There were errors made on both parties' part, and they need to be clarified.) Motion carried.

**Case No. 0315-05. REQUEST FOR VARIANCE** in regard to Sections 270-24 & 270-26 of the Municipal Code of Rehoboth Beach to install a new retaining wall at the southerly and easterly property lines. The property is located in the R-1 Zoning District on Lot Nos. 44 & 45, Block No. 27, at 105-A Stockley Street. The Variance is being requested by Harold E. Dukes, Esq. of the law firm Tunnell & Raysor on behalf of Greg Cornett, owner 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.

Building Inspector Terri Sullivan read her report with exhibits. The Applicant is requesting a variance to build a retaining wall on the east side of the property so he may add approximately 100 square feet to the existing driveway and support the property edge. The existing driveway is beginning to fail and has become a tripping hazard. The property slopes down dramatically between the Applicant's existing driveway and the neighbor's yard. The City is satisfied that the retaining wall is necessary for proper maintenance of the property.

Mr. Harold Dukes, Esq. of the law firm Tunnell & Rays represented the Applicant and provided testimony in support of the variance. He provided photographs of the property. The neighbor has made it clear that he is in favor of the retaining wall for his own protection. The failure is such that a parked vehicle would probably be tilted very precariously towards the neighbors' property. The retaining wall has failed and is separating from the driveway. The retaining wall will not be along the full length of the property line, only a portion.

Mr. Matthew Toback, builder, noted that the retaining wall will be increased approximately 20 feet. Currently there is a hazard between the driveway and the sidewalk. A footer would be put in with a concrete block wall and driveway.

There was no correspondence and no public comment.

Mr. Donohoe made a motion, seconded by Mr. Popham, to grant the application for variance. (Hilderley – for. The Board members have seen in the pictures that there is a need for correcting the problem here. The Board has heard expert testimony that this is a logical thing to do to allow the owner to build a retaining wall. Donohoe – for, for the reasons expressed by Mr. Popham and Mr. Hilderley. Evans – for, for the reasons stated by his colleagues. Kelley – for. It obviously is a problem for drainage more than anything else. Popham – for.

From a safety standpoint and possibly from a drainage problem, the Board of Adjustment should grant the variance.) Motion carried unanimously.

**OTHER BUSINESS**

There was none.

There being no further business, Chairman Evans adjourned the meeting at 7:33 p.m.

**Respectfully submitted,**

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

**MINUTES APPROVED ON  
JUNE 22, 2015**

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**(Thomas Evans, Chairman)**

This meeting was recorded by Joanne Perry, B&L Secretary.  
Minutes were prepared by Ann M. Womack, City Secretary.