

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

May 23, 2016

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 Monday, May 23, 2016 on the second floor of the Rehoboth Beach Volunteer Fire Company, 219 Rehoboth Avenue, Rehoboth Beach, DE.

A moment of silence was held due to the untimely passing of Mr. Chuck Donohoe, Board of Adjustment member.

ROLL CALL

Present: Mr. Clifton Hilderley
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

No minutes were available for approval.

OLD BUSINESS

There was none.

NEW BUSINESS

Chairman Evans read the reasons for granting a Variance or Appeal from Sections 270-71 & 270-74 of the Zoning Code and noted the Public Hearing procedures.

Case No. 1215-09. An APPEAL OF A DECISION OF THE BUILDING INSPECTOR in regard to Footnote 1 of Attachment 1 – Table Use Regulations to Chapter 270 of the Municipal Code of Rehoboth Beach providing that no more than one main building may be erected on a single lot. The property is located in the C-1 Zoning District on Tax Map Parcel No. 334-20.09-7.00 generally located at the northeast corner of the intersection of Delaware Route 1 – Coastal Highway and Terrace Road. The address of the property is 20673 Coastal Highway (Route 1). The Appeal is being requested by Dennis Schrader, Esq. of the law firm Morris James Wilson Halbrook & Bayard LLP on behalf of Ocean Bay Mart Inc., owner of the property. Chairman Evans read the reasons for granting an Appeal from Section 270-71 of the Zoning Code and noted the Public Hearing procedures.

Building Inspector Damalier Molina presented his report with exhibits. The property owner is requesting an appeal of the Building Inspector's decision on the denial based on the City of Rehoboth Beach Zoning Code, Section 270, Attachment 1:1 Table of Use Regulations. The basis for the deficiency in the site plan is that no more than one main building may be erected on a single lot as indicated in Note 1 of the Table. Despite the requirements set forth in Note 1 of the Table, the Appellant is not precluded from pursuing other permitted uses for development of the site identified in the same document. Mr. Molina acknowledged that the Board of Adjustment was not here tonight to judge the quality or content of this project, but it was here to judge whether the Building Inspector was correct on whether the provision in the Code that starts in the R-1(S) District that says one main building per lot applies to this particular lot and its zoning classification. The Appellant can build as many apartments or semi-detached dwellings as he is proposing with the condominiums.

City Solicitor Glenn Mandalas noted that the Table itself has legal effect as well as the text of the Zoning Chapter itself. The functional difference in terms of zoning between allowing detached dwellings as opposed to semi-detached or apartments in the same or great amount is that attached dwelling must have firewalls between them. In a condominium project, there is one lot and the buildings can be placement wherever because they do not have to live under the zoning laws that the City Commissioners have adopted. The internal lots to the condominium will not go through the subdivision process, so another condominium regime will be created

because they are internal lots that are not City sanctioned. Those internal lots do not need to be 5,000 square feet, do not need to have 50 feet of frontage and they do not need to have setbacks which are the City requirements for subdivision of lots. The City Commissioners carefully put the footnote in the table as to all the districts leading up to this district and said that there would be one main building per lot. A condominium is a form of ownership which affects zoning.

Mr. Dennis Schrader, Esq. of the law firm Morris James Wilson Halbook & Bayard LLP represented the Appellant. This matter originally arose in June 2015 when it was submitted to the Office of State Planning Coordination for a PLUS review. At that time, the City of Rehoboth Beach and Sussex County had an opportunity to review the plan, but the City did not choose to participate in the PLUS process. The PLUS hearing was held, and the application was docketed with the office of the Chief Building Inspector. Ms. Terri Sullivan was the Chief Building Inspector at the time on June 18, 2015. On July 19, 2015, Ms. Sullivan submitted a letter to the Appellant and Mr. Davidson from Pennoni Associates, identify a number of fatal flaws in the submitted site plan. Not one of those flaws related to the issue which has been raised by Chief Building Inspector Molina. In Section 236-32, an application must be reviewed and responded to in 30 days. That same statute requires that the Building Inspector is to provide a letter that accompanies the filing of the plan with the Planning Commission for review. This matter was scheduled for review in December 2015. On November 13, 2015, the matter was brought up before the Planning Commission in which the Planning Commission, City Solicitor Mandalas and Building Inspector Molina discussed how to handle this application. Seven days later Mr. Molina wrote a letter to Mr. Davidson that he had changed his mind. Currently, the issue is if the section of the table that says "no more than one main building is permitted on a single lot" prohibits the review of this application. All of the zoning districts from R-1(S) to ER have the same footnote in the table, but in looking at the text of each of the separate regulations and uses for those district, not all of them have that. The Code is not clear and is ambiguous. There have been at least six different projects that are in residential districts which are condominium projects, and nearly every one of them are illegal geographically. Those projects were organized under the Delaware Uniform Property Act which is a form of ownership. It is not a definition that relates to the use of land. The Act applies to the City and all properties within the State. In the exhibit book, there is an exchange between Ms. Kathy Newcomb and former Building Inspector Terri Sullivan in which Ms. Sullivan confirmed the interpretation placed on this matter. There are 7.75 acres or under 600,000 square feet of property for this project. The Appellant has allocated 5,000 square feet of land for each unit, totaling 63 units. If the one main building would apply, there are two buildings that would theoretically be the main building of which the one building is 21,736 gross floor area square feet. If that would not be acceptable, the largest structure on the site is 3,839 gross floor area square feet. The Appellant is not required to have any subsidiary buildings. Attorney Schrader wanted 63 buildings with no main building.

Chairman Evans commented that under 60,000 square feet of property is noted in the application exhibits. There would not be enough property for 63 units. This error occurred in Chief Building Inspector Molina's report. The correct amount is less than 600,000 square feet.

City Solicitor Mandalas noted that the language of the Code is clear and unambiguous with regard to one main building per lot. The language appears in the footnote to the Table of Use Regulations, and it appears in the text of the Code. It is the City's position that no matter the size of the lot, if it is a single lot, than there is one main building per lot. It is the City's position that the Appellant can do many, many more buildings if the Appellant goes through the City's subdivision process. It was City Solicitor Mandalas' presumption that the Appellant would not be able to get 63 units under a subdivided project through the City's subdivision process, so it comes down to density. In conversation with former Building Inspector Sullivan today, she had mentioned that when she was writing the "fatal flaw" letter, she had stopped her review because there were so many things that needed to be addressed. She had not made a determination as to the issue of one main building per lot.

Correspondence - In support of Building Inspector's decision:

1. Letter received May 10, 2016 from James Hudson & Greig Stewart, 38166 Terrace Road, Rehoboth Beach
2. Email received May 10, 2016 from Pamela Cranston, 38198 Terrace Road, Rehoboth Beach
3. Letter received May 10, 2016 from Lawrence Shaw & Richard Freitag, 38174 Terrace Road, Rehoboth Beach
4. Letter received May 11, 2016 from Sandra Neverett, 38198 Terrace Road, Rehoboth Beach
5. Letter received May 12, 2016 from Carol Tello, 38165 Terrace Road, Rehoboth Beach
6. Letter received May 12, 2016 from James Tello, 38165 Terrace Road, Rehoboth Beach
7. Letter received May 12, 2016 from Mike Roberts & Chad Hampton, 38154 Terrace Road, Rehoboth Beach

8. Letter received May 13, 2016 from Sam & Marie Powell, 38188 & 38194 Terrace Road, Rehoboth Beach
9. Email received May 13, 2016 from Mary Ann Seidel, 38160 Terrace Road, Rehoboth Beach
10. Letter received May 13, 2016 from Linda & Tom Delany, 38179 Terrace Road, Rehoboth Beach
11. Letter received May 16, 2016 from Peter & Victoria Jennings, 38205 Terrace Road, Rehoboth Beach
12. Letter received May 17, 2016 from Gail & Barry Furman, 38199 Terrace Road, Rehoboth Beach
13. Email received May 18, 2016 from Marti Cochran, 1004 Scarborough Avenue Extended, Rehoboth Beach
14. Letter received May 18, 2016 from Philip Karsting & Michael Wroblewski, 38130 & 38132 Terrace Road, Rehoboth Beach
15. Email received May 19, 2016 from Marc Kleiman, 38311 Terrace Road, Rehoboth Beach
16. Letter received May 19, 2016 from Eileen Coughlin, 38193 Terrace Road, Rehoboth Beach
17. Letter received May 20, 2016 from Blount Hunter & J. Michael Dukes, 38282 Terrace Road, Rehoboth Beach
18. Email received May 23, 2016 from Andrew Ascher, 38311 Blackstone Avenue, Rehoboth Beach
19. Email received May 23, 2016 from Kathy & John Geraghty, 38208 Terrace Road, Rehoboth Beach
20. Email received May 23, 2016 from Bonnie & Paul Hardy, 1022 & 1024 Scarborough Avenue Extended, Rehoboth Beach
21. Email received May 23, 2016 from Bob & Eileen Keller, 38216 Terrace Road, Rehoboth Beach
22. Letter received May 23, 2016 from Jane Mazingo, 38212 Terrace Road, Rehoboth Beach

Correspondence - In support of the Appeal of the Building Inspector's decision:

1. Email received May 23, 2016 from Lynne Bowman, Henlopen Avenue, Rehoboth Beach
2. Letter received May 23, 2016 from Erin & Sage Turowski, 126 Read Street, Dewey Beach
3. Letter received May 23, 2016 from James Derrick, 20699 Coastal Highway, Rehoboth Beach
4. Letter received May 23, 2016 from Ryan Mault, 108 Stockley Street, Rehoboth Beach
5. Letter received May 23, 2016 from Alice Robinson, 38227 Terrace Road, Rehoboth Beach
6. Letter received May 23, 2016 from Christopher Timmerman, 126 Read Street, Dewey Beach
7. Letter received May 23, 2016 from Caroline Luckett, 38227 Terrace Road, Rehoboth Beach
8. Letter received May 23, 2016 from Thomas Robinson, Jr., 38227 Terrace Road, Rehoboth Beach
9. Letter received May 23, 2016 from Jill Compello, 123 Chicago Street, Rehoboth Beach
10. Letter received May 23, 2016 from Robin Howell, Paynters Mill, Milton
11. Letter received May 23, 2016 from Sandra Monigle, Patriot Way, Rehoboth Beach
12. Letter received May 23, 2016 from Cynthia Mault, 108 Stockley Street, Rehoboth Beach
13. Letter received May 23, 2016 from Kerry Monigle, Patriot Way, Rehoboth Beach
14. Letter received May 23, 2016 from James Mault, 36 West Side Drive, Rehoboth Beach
15. Letter received May 23, 2016 from Scott Dailey, 33275 Harbor Reach, Lewes

Public Comment - In support of the Building Inspector's decision:

1. Ms. Mable Granke, 1013 Scarborough Avenue Extended, Rehoboth Beach
2. Mr. Jim Tello, 38165 Terrace Road, Rehoboth Beach
3. Ms. Carol Tello, 38165 Terrace Road, Rehoboth Beach
4. Ms. Shannon Burton, Esq. of the law firm Sergovic, Carmean Weidman McCartney & Owens, represents Martha Finleader, 38219 Terrace Road, Rehoboth Beach
5. Mr. Larry Shaw of Terrace Road, Rehoboth Beach

There was no public comment in support of the Appeal of the Building Inspector's decision.

Attorney Karsnitz thought that there is an ambiguity in the Code itself when looking at what is allowed in the R-1(S) District and the geographic limitations, and what is allowed in the other districts. A limitation of one building per 7.5 acre lot makes no sense.

Mr. Clifton Hilderley made a motion, seconded by Ms. Myrna Kelley, to grant the appeal to reverse the decision of the Building Inspector.

Chairman Evans clarified that the motion is to overturn the decision of the building inspector and therefore to support the appeal.

(Hilderley – for. He did not want to get too involved with the emotions that have been expressed across the board in the letters and otherwise. There is no question that the language of the Code is ambiguous and confusing. Evans – for, for the same reasons as his colleagues. Kelley - for. She regretted that there is some

ambiguity here that the Board is trying to deal with. This is a justified appeal of this case. Popham – for. To say that only one unit can be built on seven acres is ridiculous.) Motion carried unanimously.

The meeting was recessed at 8:30 p.m. and reconvened at 8:39 p.m.

Case No. 0316-04. A REQUEST FOR VARIANCE from the minimum 50% of the gross lot area requirement of Section 270-21(A) – Natural Area of the Municipal Code of Rehoboth Beach, to permit 42% natural area. The property is located in the R-1 Zoning District on Lot Nos. 22 & 23, Block 33, at 2 St. Lawrence Street. The Variance is being requested by James A. Fuqua, Jr., Esq. on behalf of R. William & Pamela Hard, Trustees, owners of the property. Chairman Evans read the reasons for granting a Variance from Section 270-74 of the Zoning Code and noted the Public Hearing procedures.

Building Inspector Damalier Molina noted that no formal application was submitted for the shed and patio addition for compliance with zoning regulations under §270-27(A) – Minimum natural area 50%, §270-21(C) – Maximum lot coverage 40%, §270-25(A) – Rear yard 15 feet and §270-26(A) – Minimum side yard aggregate of 16 feet. With regard to the approved site plan on May 19, 2015, the approved natural area was 48.9% when there was a minimum of 40% required, The lot coverage was 51.1%, the rear yard setback was 10 feet and the minimum side yard aggregate was 16 feet. Mr. Molina acknowledged that the revised plan which was submitted would have complied with the Code as it existed when originally submitted, but it does not now comply with the Code. The Applicants are asking for 42% natural area based on the prior Code.

Mr. James Fuqua, Jr., Esq., represented the owners of the property who were also in attendance at the meeting and provided testimony on their behalf. The provision of the Code currently requires 50% natural area. The Applicants are asking for a variance from that requirement only. On May 19, 2015, the building permit was approved, and the plans indicated a natural area of 48.9% of the lot. At that time, the Code required a minimum of 40% natural area of the total lot area. Changes to the approved plans were permitted, but were required to be approved by the Building Inspector prior to doing any work. As the construction of the house progressed, the Applicants decided to reconfigure the rear yard by adding a 6 foot x 10 foot shed and a patio grill area. These two items were not on the original plans. These proposed changes would result in a reduction of the natural area to 42%. In June 2015, the City Commissioners proposed an amendment to the Zoning Code which was then adopted and eventually went to a referendum vote to uphold it. The change in the ordinance increased the amount of natural area from 40% to 50%. This is a minor change to an existing building permit that predated the ordinance change. It was the City's position that the change would require a new building permit, and the new permit would be held to the terms of the law in effect at the time when the new building permit would be issued. To date, the house has not been completed. The proposed change should be grandfathered because it is a modification of the existing building permit. The variance is the result of the change of the ordinance in the middle of construction. The increase in the natural area requirement results in the exceptional practical difficulties by prohibiting the Applicants from having the shed and patio area. The standard is not hardship; it is practical difficulty. The practical difficulty would be the reasonable use of the back yard. A barbeque area would need to have grass instead of a patio. The shed would replace the area that was incorporated into the house for storage. It was not intended that the change would affect someone who currently has something under construction.

City Solicitor Glenn Mandalas noted that the City takes no position on this matter.

Correspondence

1. Email received May 18, 2016 from Richard Cooch, 3 St. Lawrence Street – in opposition to the variance request.

Public Comment

1. Linda Kauffman, 206 Laurel Street – in opposition to.

Ms. Myrna Kelley made a motion, seconded by Mr. Doug Popham, to grant the variance as requested at 2 St. Lawrence Street. (Popham – for. There is a minimal amount of change involved. Kelley – for. Not having a shed is a pretty major hardship in her book. Evans – against. He did not see that it met the burden of exceptional practical difficulty. It was a difficulty, but it did not meet the burden for him. He did not see any hardship. Hilderley – for. He thought what the Applicant wants to do in the big scheme of Rehoboth Beach and their lot is de minimis and would not change the character of the neighborhood. Certainly, there is a hardship attached to this.) Motion carried.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans adjourned the meeting at 9:12 p.m.

Respectfully submitted,

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
JULY 25, 2016**

(Thomas Evans, Chairman)