

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

July 25, 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, July 25, 2016 on the second floor of the Rehoboth Beach Volunteer Fire Company, 219 Rehoboth Avenue, Rehoboth Beach, DE.

Ms. Linda Kauffman was introduced as the newest member of the Board of Adjustment to fill the vacancy due to the untimely passing of Mr. Chuck Donohoe.

ROLL CALL

Present: Mr. Clifton Hilderley
Ms. Linda Kauffman
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 April 25, 2016 and May 23, 2016 Board of Adjustment Meetings were distributed prior to the meeting.

Mr. Doug Popham made a motion, seconded by Ms. Myrna Kelley, to approve the Minutes of the April 25, 2016 Board of Adjustment Meeting as written. Motion carried unanimously.

Ms. Kelley made a motion, seconded by Mr. Popham, to approve the Minutes of the May 23, 2016 Board of Adjustment Meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

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

Case No. 0616-06. – 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-3 Zoning District on Lot No. 26, Block Lake. The address of the property is 26 Lake Avenue. The Appeal is being requested by David A. Hutt, Esq. of the law firm Morris James Wilson Halbrog & Bayard LLP on behalf of Stephen L. Weber of 26 Lake LLC, owner of the property.

Building Inspector Damalier Molina gave his report with exhibits. The nature of the Appeal is applicability of Chapter 270 – Table of Use Regulation, Attachment 1.1, Note 1. The zoning relief is the two main dwelling not subject to Section 270-49.1 – Demolition and Removal.

City Solicitor Glenn Mandalas indicated that a similar issue was heard during the May 23, 2016 Board of Adjustment hearing. At that hearing, Footnote 1 was addressed regarding one main structure. The May 23, 2016 Board of Adjustment Meeting will be incorporated into the record of this particular hearing so that those arguments made at that time will be part of the argument tonight. Ms. Kauffman was in the audience at that meeting so she heard the argument made at that time relating to Footnote 1. In this particular instance, there was not a set of plans submitted for plan review. There had been discussion between the Building & Licensing office and the Appellant as to what can be done. The City took the position that if the building or the structure

was to be raised (lifted), it would be akin to removing the structure from the property and therefore, the Appellant would lose grandfathered status of having two buildings on one lot. If one of the structures is to be lifted, it is akin to removal resulting in the loss of the grandfathered status. The issue now before the Board of Adjustment is that an appeal has been filed before the Board as to whether or not Footnote 1 applies, that is if two structures can be legally allowed on one lot. If the Board reaches a determination tonight as it did with the Beach Walk application that Footnote 1 is inapplicable and two structures are allowed on one lot, the issue then becomes that there are a number of other nonconformities about these two structures. Because there has been no plan review done, it is very likely that if the Board approves the Appeal this evening, there will be another round before the Board. In the Beach Walk instance, a determination was made by the building official that everything was zoning compliant except for two structures on a lot. In this instance, that determination has not been made because there has been no plans submitted for the Building & Licensing office to perform a plan review and make that determination. City Solicitor Mandalas acknowledged that with the Beach Walk case, it had 5,000 square feet per proposed dwelling unit, and in this case, the Appellant does not have 5,000 square feet per proposed dwelling unit. He also acknowledged that Section 270-23 where it states that the minimum lot area is 5,000 square feet per dwelling or per dwelling unit, is applicable.

Mr. David Hutt, Esq. of the law firm Morris James Wilson Halbrook & Bayard LLP, represented the owner of the property. Mr. Stephen Weber of 26 Lake LLC, owner of the property, was in attendance at the meeting and provided testimony in support of the Appeal. Mr. Weber described the history of the property. There are two grandfathered single-family dwellings on the property. Each dwelling is approximately 650 square foot, and both dwellings had been built in the 1950's under valid building permits. He is appealing Footnote 1, one main building per lot. The existing dwellings encroach into some of the setbacks. The plan is to pick up the dwellings, bring them into conformance, put new foundations under them and complete the renovations and expansions. Mr. Weber was not asking to build more than the allowed total of 3,000 square feet. A plan was filed for the first house and was approved, but a permit was not pulled. The design for the second house was started. Mr. Weber had received a letter from the Building & Licensing office, saying that the house could not be raised and because of Footnote 1 and the limitation of only one main dwelling per lot, the second dwelling was considered a nonconforming use and as such, it could not be expanded.

Mr. Clifton Hilderley said that this property is zoning C-3 and has an equivalent use as R-2. In Section 270-12, the R-2 District is designated to include those residential areas where structures may be built or arranged so as to include more than one dwelling unit. With regard to Footnote 1, only one main building is allowed on a lot. The definition of main building is the principal building on a lot. It is the building in which is conducted the principal use of the lot on which it is located and which in a residential district is the residential structure on the lot with the largest gross floor area. In this case, the two residential units are conforming and are allowed on one lot. Therefore, the two units can be modified to the extent allowed in the Code.

Ms. Linda Kauffman noted that in Section 270-12 – R-2 District, it does not say that a single-family dwelling is allowed. With regard to the footnote, the only way a single-family home can be built in the R-2 District is if R-1 is referenced. If the only way a single-family home can be built is by referencing back from R-2 to R-1, then in R-1, it needs to be followed that it has to be only one single home. The only way a single-family dwelling can be done is by falling back to R-1 that says it has to have one dwelling per unit. She agreed to the 5,000 square foot per dwelling unit interpretation.

Chairman Evans said that “dwelling unit” is the issue. Dwelling unit is defined as a room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intend to be used for living, sleeping, cooking and eating.

Attorney Hutt noted that the City's interpretation ignores the stated purpose of the R-2 District which is to allow multiple dwellings. The table, in this case, is not part of the adopted Code itself; it is a summary of the Code. The table displays graphically the regulations contained in Article II and is not the regulations themselves. With regard to the issue on the number of buildings, the Code is tiered with respect to uses. To impose a one main building per one lot standard with the lot being 5,000 square feet, is in direct conflict with the stated purpose of the R-2 Zoning District in Section 270-12. Delaware law is clear that a Code is ambiguous when it is susceptible to different conclusions and interpretations. In addition, Delaware law has found that because zoning regulations are in derogation of common law, they are to be construed in favor of the property owner. The Code is ambiguous. There is a history of approving multiple dwellings in the R-2 zoning classification, and that zoning classification has carried forward through the commercial districts. Given the numerous interpretations of this code over time, the ambiguity of the provision is demonstrated with those individuals who have used it to develop their lots within the City. Because of that ambiguity, the City building

official's decision should be reversed so that this application can move forward with the condominium plans that were referenced previously. Section 270-50 indicates that a nonconforming structure can be expanded. The Application then, if ambiguity is found by the Board and Mr. Weber is allowed to proceed forward, would be to expand in areas where it would not create new nonconformities. Attorney Hutt acknowledged that the only issue before the Board is whether or not there can be two residential structures on this 5,000 square foot lot.

Mr. Weber noted that currently there are two units on the lot which is 5,000 square feet, and they are grandfathered. They are nonconforming structures, and pursuant to the Code, they can be expanded. Because of Footnote 1 which says only one main building per lot, the City has taken the position that the second unit is a nonconforming use and cannot be expanded. The footnote is totally ambiguous.

Board Solicitor Karsnitz said that in Section 270-50(B), the Code says that any legal nonconforming structure devoted to a conforming use may be extended provided that such extension conforms to the applicable dimensional requirements to the zoning district in which the legal nonconforming structure is located.

City Solicitor Mandalas referred to Exhibit 4 is the letter from the building official to Mr. Weber. Tonight, if Mr. Weber and his counsel are saying that they want to expand the two structures in conformity with Section 270-50(B) and not lift any structure, they can do that without being heard by the Board. The second building on the lot is a legal nonconforming use. The structure can remain if it is expanded only in conformity with Section 270-50. Section 270-49.1, which is listed in the letter, says that once the structure is lifted (separated from the foundation), it is being removed from the property. Once it is separated from its foundation, then there is no longer a legal nonconforming second dwelling. The two structures are also nonconforming from a lot coverage perspective. The Appeal is of a decision that relates to a table and has nothing to do with Section 270-23. He requested that the Board make a decision on the appeal that has been asked for, not a different section of the Code.

Board Solicitor Karsnitz noted and Attorney Hutt agreed that the Appeal had been removed. The Appellant can only expand within the bulk standards provided within the Zoning Code of the City.

Both parties came to a consensus that the application for appeal of a decision of the building official's decision is rendered mute because this is a nonconforming structure subject to Section 270-50(B). Mr. Weber can expand the structure so long as the expansion is in conformity with the current requirements for the C-3 and R-2 Zoning Districts, but the structure cannot be lifted from its foundation or it will lose its grandfathering. Both parties agreed to the withdrawal of the application.

The meeting was recessed at 8:15 p.m. and reconvened at 8:23 p.m.

Case No. 0616-07. A REQUEST FOR SPECIAL EXCEPTION to permit a sign otherwise not permissible in the R-2 Zoning District under Section 270-59(B) of the Municipal Code of Rehoboth Beach. The property is located on Lot Nos. 44, 45, 46 & 47, Block 29. The address of the property is 407 King Charles Avenue. The Special Exception is being requested by Nick Delcampo on behalf of St. Edmond's Catholic Church, owner of the property.

Board Solicitor Karsnitz read Section 270-13(D) that deals specifically with circumstances involving schools and churches. Anything dealing with a church must come before the Board as a special exception.

Building Inspector Damalier Molina gave his report with exhibits. The nature of the Special Exception is to replace the existing wood bulleting sign with an electronic "LED" sign structure. Section 270-59(B) prohibits changeable lit signs unless a special exception from the Board of Adjustment is granted as provided in Section 270-49.

Mr. Delcampo, representative of St. Edmond's Catholic Church provided testimony in support of the Special Exception. Most of the time the copy will amber or red on black, and possibly at the bottom a special activity for the week will listed. Currently, the staff physically changes the sign. What is being proposed is that the copy would be changed at a computer. The sign copy will not change that much. The new sign will enhance the front of the church. It will be located in the same spot with the same orientation. The monument will be bigger than the current sign. The display area is slightly bigger than the current sign.

Chairman Evans noted that the church is before the Board because it requires a Special Exception to put up any sign. He did not think that anything the Board does this evening will prohibit the City from saying the church is violating sections of the Code. Sections 270-59(A) & (B) are in force even if the Special Exception is granted.

Mr. Lynn Rogers of Rogers Signs noted that the church would like to go from a manual message to an

electronic message. The sign is all computerized with a beehive that is sensitive to light. The light on the sign cannot be adjusted by the church. At nighttime, the sign can be as dim or as bright as the City desires.

Commissioner Stan Mills noted that Mainstreet has a façade program which promotes front lit signs in the commercial districts. Some backlit signs are prohibited in the City.

Correspondence in support of (outside of City limits):

1. Letter dated July 12, 2016 and received July 14, 2016 from Barbara A. Foye, 20138 Long Meadow Lane, Lewes.
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2. Letter dated July 12, 2016 and received July 14, 2016 from Rose Marie Patin, President of St. Edmond Pastoral Council
3. Letter dated July 12, 2016 and received July 14, 2016 from Martin J. Foye, 20138 Long Meadow Lane, Lewes
4. Letter dated July 13, 2016 and received July 14, 2016 from Frank & Josephine Cilea, 12 Wauwinet Court, Rehoboth Beach
5. Letter dated July 15, 2016 and received July 15, 2016 from William & Virginia Pocock, 1 Green Haven Court, Rehoboth Beach
6. Letter dated July 15, 2016 and received July 15, 2016 from Joseph & Bernadette Polinski, 131 Blackpool Road, Rehoboth Beach
7. Letter dated July 15, 2016 and received July 15, 2016 from Edward & Rose Holley, 23592 Mallard Lane, Lewes
8. Letter dated July 15, 2016 and received July 15, 2016 from Clyde Jim Powell Sr., 13280 Sunland Drive, Milton
9. Letter received July 18, 2016 from Pauline Magargal, 129 New Road, Lewes
10. Letter dated July 13, 2016 and received July 18, 2016 from John & Noreen Buzerek, 60 Kings Creek Circle, Rehoboth Beach
11. Letter dated July 15, 2016 and received July 18, 2016 from Donald & Marie Evick, 36468 Warwick Drive, Rehoboth Beach
12. Letter dated July 16, 2016 and received July 18, 2016 from Michael & Theresa Judge, 10 Glade Farm Drive, Rehoboth Beach
13. Letter dated July 17, 2016 and received July 18, 2016 from Tom & Lillian Reynolds, address unknown
14. Letter dated July 14, 2016 and received July 19, 2016 from Jim & Antoinette Kelleher, 38302 Anna B Street, Rehoboth Beach
15. Letter dated July 14, 2016 and received July 19, 2016 from Jeannette Higgs, 16618 Shoal Road, Lewes
16. Letter dated July 14, 2016 and received July 19, 2016 from Robert & Maria Teresa Morrison, address unknown
17. Letter dated July 15, 2016 and received July 19, 2016 from Donald & Margaret Cintavey, 121 Beachfield Drive, Rehoboth Beach
18. Letter dated July 15, 2016 and received July 19, 2016 from Louis & Rita Corrozi, 10 Deefield Lane, Rehoboth Beach
19. Letter dated July 17, 2016 and received July 20, 2016 from Elaine Kennedy, 9 Kelly Drive, Rehoboth Beach
20. Letter dated July 19, 2016 and received July 21, 2016 from John & Martha Coffman, 130 Chesapeake Drive, Rehoboth Beach
21. Letter dated July 19, 2016 and received July 22, 2016 from Paul M. King, 53 Glade Circle East, Rehoboth Beach

Correspondence in support of (inside City proper):

1. Letter dated July 18, 2016 and received July 20, 2016 from Ron & Denise Allen, 503 King Charles Avenue, Rehoboth Beach
2. Letter dated July 18, 2016 and received July 20, 2016 from William Moss, 401 South Boardwalk, Rehoboth Beach

Public Comment

1. Mr. Brandon Hennigan – in support of.

Mr. Hilderley made a motion, second by Ms. Kelley, to grant the Special Exception that the church has

requested provided that they do not in any sense at all misuse, misinterpret or violate Section 270-59 – Lighting Restrictions of the Code and that they do not change the light system words more than once a day, and that the background is either black or some other dark background color. (Popham – against. Kelley – for. Evans – against. Kauffman – against. Hilderley – for.) Motion failed.

Ms. Kauffman made a motion, seconded by Mr. Doug Popham, to grant the Special Exception providing that they follow the guidance that is in Section 270-59(A) & (B) as written in the Code that would present them from having a disruptive sign. (Popham – for. The sign would enhance the front of the church and give them some flexibility in what they can do. Kelley – for. The reason is they need to use new technology. Evans – for, for the same reasons. If it is a distraction, Section 270-59 applies, and they will work with the sign maker to make it not be a problem. Kauffman – for, for the same reasons that it enhances what they need to do and the technology is there to be able to control it. Hilderley – against. He lives in the area and has to go past it all the time.) Motion carried.

Request clarification of Board of Adjustment decision of Case No. 0316-04 – 2 St. Lawrence Street.

This item had be taken care of prior to the meeting.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans adjourned the meeting at 8:57 p.m.

Respectfully submitted,

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
AUGUST 22, 2016**

(Thomas Evans, Chairman)