

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

October 26, 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, October 26, 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
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 June 22, 2015 and July 27, 2015 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 June 22, 2015 Board of Adjustment Meeting as written. Motion carried unanimously.

Mr. Chuck Donohoe made a motion, seconded by Mr. Doug Popham, to approve the Minutes of the July 27, 2015 Board of Adjustment Meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0915-06. APPEAL OF THE DECISION OF THE BUILDING INSPECTOR denying a demolition permit based upon an interpretation of the Board of Adjustment's April 27, 2015 meeting minutes required by Section 270-79(C) and a request for a waiver due to the 30-day notice of demolition. The property is located in the R-1 Zoning District on Lot Nos. 28 & 29, Block No. 21, at 204 Philadelphia Street. The Appeal is being requested by Steve Mikkelsen, owner of the property. Chairman Evans read the reasons for granting a Variance or Appeal from Section 270-74 of the Zoning Code and noted the Public Hearing procedures.

Mr. Donohoe noted that he had received a telephone call from Mr. Mikkelsen in mid-September 2015. Mr. Mikkelsen had explained there was a difference between what was in the transcript of the hearing and what was in the minutes. The City would not allow him to demolish the garage apartment because the recorded minutes as opposed to the transcript did not specify that the garage apartment could be removed. The recorded transcript indicates removal of the garage apartment with part of the motion made to grant the variance. The Building Inspector has taken the position that the minutes control when there is a conflict between the minutes and the transcript. Mr. Donohoe said that he had no comment on that. He said he would look into the matter. The next day he had seen Ms. Ann Womack, City Secretary, and she had informed him that Mr. Mikkelsen had filed an appeal at that point. Mr. Donohoe contacted Mr. Mikkelsen and explained that he could not discuss the matter further with him. Mr. Donohoe noted that he has not formed an opinion as to how this appeal should be decided. He has formed no bias either because of his earlier vote against the variance or from his telephone conversation with Mr. Mikkelsen. Mr. Donohoe said that he will be fair and objective in this matter.

Building Inspector Damalier Molina read his report. The property owner is appealing a decision of the Building Inspector not to issue a demolition permit. The owner is appealing that Building & Licensing would not accept his application for cottage house demolition on September 1, 2015. The denial is based on the

reading of previous minutes.

Board Solicitor Craig Karsnitz noted that the point of order is Building Inspector Molina cast this as a denial of a request to demolish the structure. Building Inspector Molina cannot deny Mr. Mikkelsen the right to demolish, but it can be said that he cannot rebuild except in accordance with whatever the variance is.

Chairman Evans thought that this would have come before the Board as an appeal of a decision of the Building Inspector not to grant the Appellant the building permit he had asked for, not the demolition.

Building Inspector Molina interpreted the minutes from the April 27, 2015 hearing that there was not going to be a demolition and the Appellant could repair in-kind. The structure could be lifted, move it out of the present location and put it in a proper setback.

Chairman Evans noted that at the April 27, 2015 hearing, he had asked Mr. Clifton Hilderley if he meant to say something he said; and when Chairman Evans restated it the way he thought Mr. Hilderley meant it, Mr. Hilderley agreed to what Chairman Evans had said, which was to move, not remove.

Building Inspector Molina noted that the Appellant had expressed to him that there may be a fear the building may collapse in the process of moving it. The structure has water damage from what he has seen in the photographs. Building Inspector Molina did not make a determination in his own right as to whether there is difficulty or danger of moving the structure.

City Solicitor Glenn Mandalas in attendance at the meeting at 7:10 p.m.

Mr. Steve Mikkelsen, owner of the property, provided testimony in support of the appeal. The property is located in the R-1 District, not R-2 as noted in the Building Inspector's Report. On April 27, 2015, he had appeared before the Board for a variance approval, of which the Board granted approval to remove and replace in-kind the structure, raise it three feet to get it out of the flood damage which is occurring from Philadelphia Street and the Bellmoor Inn. He had agreed to move the structure to meet the current four foot setbacks. Mr. Mikkelsen explained what he had meant by "replace in-kind" which is to demolish the building and replace it in-kind with two bedrooms, one bath, a kitchen and living space as it exists today. The Board did not agree with his request to rotate the roof 90 degrees on the property, at that time. On May 14, 2015, Mr. Mikkelsen had gone to the Building & Licensing Department and met with Ms. Terri Sullivan who was the Chief Building Inspector at the time, to confirm the results of the hearing. She had agreed that he could remove and replace the building in-kind, raise the structure three feet and move the structure to meet the current setbacks; but could not rotate the roof 90 degrees. Mr. Mikkelsen did not have a written confirmation from Ms. Sullivan. Mr. Mikkelsen was aware that buildings could not be demolished in the City until after September 15th. On September 1, 2015, he had tried to submit his demolition permit for the cottage house at the Building & Licensing Department. The application was denied. The reason for the denial was that the removal and replace in-kind was not authorized by the Board of Adjustment. Mr. Mikkelsen had received a memorandum from Mr. Molina. On April 27, 2015, a court reporter's transcript was taken. He referred to the use of the terms "Version A" and "remove the building" in Mr. Hilderley's motion, and the "approval of the motion" for "Version A" by a three to one vote.

Chairman Evans noted that he had seen a conflict in what Mr. Hilderley was saying. Chairman Evans had asked Mr. Hilderley to clarify if the motion included moving the structure out of the setbacks and raising it up, Mr. Hilderley agreed. The transcript is taken in completeness, not just in pieces.

Mr. Mikkelsen said that the purpose of the entire variance was to move the structure and remove it and replace it in kind.

Board Solicitor Karsnitz noted that there is ambiguity with the motion.

Mr. Mikkelsen said that the proof is Version A. Chairman Evans had summarized that there is a "three to one vote in favor of the variance which is Version A minus the change in the roof". Mr. Mikkelsen had submitted his original variance request on March 24, 2015 and approved on April 27, 2015. On page one of the application, Version A is noted. "Version A: (1) Replace the structure in-kind, elevate current floor, sidewalls and roof height approximately 24 to 36 inches". "Changing of the roof trusses and corresponding load bearing walls so the entire structure resides under one common truss design" was disapproved. (2) Move the structure to meet the current code requirements for an out structure which requires four foot setbacks. Mr. Mikkelsen's purpose tonight is the appeal of the demolition permit, and he wants the variance as passed on April 27, 2015.

City Solicitor Glenn Mandalas noted that the transcript is the official recording of what happened that evening. To the extent there is ambiguity in the transcript, then there might be other evidence to point to. The

minutes of a meeting should be a representation of what occurred, not what was said. With regard to this case, the City's interest is that some clarity is given so a demolition permit can be issue or not issued.

Mr. Mikkelsen said that he wants to get the structure fixed correctly, move it up out of the flood waters and he appreciated the Board giving him the variance to allow him to do it. The cottage is so damaged that it will collapse.

There was no correspondence.

Public Comment:

1. Mr. Wayne Steele, 206 Philadelphia Street, attended the hearing on April 27, 2015. To the best of his memory, the Application included Option A and Option B. He thought Option A was to demolish and replace in-kind meeting current setbacks. Option B was to remodel where the structure sits. Mr. Steele thought that the Application to demolish and replace was approved. There is a stormwater management issue which has adversely affected the structure.
2. Mr. Steve Curson, 210 Philadelphia Street, attended the hearing on April 27, 2015. It was his impression that what Mr. Mikkelsen wanted to do was approved. Meetings have been held with the City Manager with regard to the flooding.
3. Ms. Sandra Curson, 210 Philadelphia Street – in favor of. The flooding s terrible and also occurs in front of their house.

Ms. Kelley made a motion, seconded by Mr. Donohoe, to grant the appeal.

Board Solicitor Karsnitz noted that the appeal is of the interpretation by the Building Inspector of the Board's decision.

Mr. Clifton Hilderley was confused over why there is the need and the requirement to get a permit for destruction of the structure when the motion that was granted and recorded by the City Secretary so meticulously and accurately that there is any question that the building had to be replaced in kind. Replacing in-kind requires something to be torn down before it can be replaced. Common sense is that it had to be torn down. The Board had discussed that Mr. Mikkelsen favored Option A.

Mr. Donohoe supported what Mr. Hilderley said. When a building is torn down and replace it in-kind, something new must be built.

(Hilderley – for, to grant the appeal. It is very clear that the Board decided and considered this earlier that the building had to be torn down, “removed” before the variance the Board granted would make any sense. Donohoe – for, for the same reasons as stated by Mr. Hilderley and expressed in Chairman Evans' comment in the record that “it is three to one in favor of the variance which is Version A minus the change in the roof. Evans – for, for the reasons stated by his colleagues. Kelley – for, because in reading the written transcript of the verbal communication, that is how she interpreted it. Popham – for, based on what the Board has already discussed.) Motion carried unanimously for the appeal of the demolition and the building permit as was originally issued.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans adjourned the meeting at 7:40 p.m.

Respectfully submitted,

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
FEBRUARY 22, 2016**

(Thomas Evans, Chairman)