

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

**October 27, 2014**

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 27, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Present: Mr. Clifton Hilderley  
Mr. Robert Wilson  
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**

Letter received October 27, 2014 from Mr. Robert Wilson, referring to his resignation, effective January 1, 2015.

**APPROVAL OF MINUTES**

Minutes of the June 23, 2014, July 28, 2014 and August 25, 2014 Board of Adjustment Meetings were distributed prior to the meeting.

Ms. Myrna Kelley made a motion, seconded by Mr. Doug Popham, to approve the Minutes of the June 23, 2014 Board of Adjustment Meeting as written. Motion carried unanimously.

Mr. Popham made a motion, seconded by Ms. Kelley, to approve the Minutes of the July 28, 2014 Board of Adjustment Meeting as written. Motion carried unanimously.

Mr. Popham made a motion, seconded by Ms. Kelley, to approve the Minutes of the August 25, 2014 Board of Adjustment Meeting as written. Motion carried unanimously.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

**Case No. 0914-011.** Request for Variances in regard to Section 270-30(A) and (B) of the Municipal Code of Rehoboth Beach to allow encroachments onto the 30 degree setback and a second tower to the structure. The property is located in the C-1 Zoning District at 110 Rehoboth Avenue on Lot Nos. 32 & 34, Block Rehoboth and Lot Nos. 31, 33, 35, & 37, Block Wilmington. The Variances are being requested by David C. Hutt, Esq. of the law firm Morris James Wilson Halbrook & Bayard LLP on behalf of Avenue Associates LLC and Avenue Associates II LLC, 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.

Building Inspector Terri Sullivan read her report with exhibits. The Applicant is requesting a variance to allow the proposed gables and stair tower roof to encroach into the required setback line as defined by Section 270-20(B) of the Municipal Code. The Applicant is also proposing to add a metal roof to the existing stair tower which would encroach further into the setback. This Section states that in all commercial districts for any building or structure not required to have a setback of at least 10 feet, all portions or floors thereof which face any street or the Boardwalk, except Rehoboth Avenue, shall beginning not higher than 14 feet vertically above the setback line or lines for the lot or lots involved be constructed or placed to the rear of an angled setback line which slants away from the street, streets or Boardwalk at an angle not less than 30 degrees in magnitude from a vertical line above the setback line or lines with a vertex of such angle fixed at a point not higher than 14 feet above the setback line or lines. The setback line of buildings or structures facing Rehoboth Avenue shall begin at 24 feet. The Applicant's proposal shows the new stair tower as 13'-2" above the 42 foot

maximum height allowed.

Mr. David C. Hutt, Esq. of the law firm Morris James Wilson Halbrook & Bayard LLP, represented Avenue Associates LLC and Avenue Associates II LLC, owners of the property. Mr. Ken Simpler, Ms. Kendra Moore Simpler and Mr. Alex Moore were in attendance at the meeting and provided testimony in support of the variance. A meeting was held on August 8, 2014 with the Planning Commission of which there was a concept plan review. In Ms. Sullivan's report for the Concept Plan Review, she had indicated that the features on the site plan would either have to be removed from the plan or a variance would need to be sought for them. The intention of the stepback requirement is to prevent a canyon effect on street blocks so tall structures are not built to the lot lines with the street being the bottom of the canyon. The request is for a variance to the proposed architectural features and a variance to allow the second stair tower at a similar height. The renovation is intended to extend the Avenue Inn to Lot Nos. 35 & 37 and to enhance the existing façade of the existing hotel so it looks like it is one complete hotel. The City of Rehoboth Beach Fire Company has indicated and agreed that in case of an emergency, the access provided by a second stair tower would be beneficial. Mr. Alex Moore has indicated that it would enhance worker safety when on the roof to have two points of access. The goal in this process is to comply with the Comprehensive Development Plan (CDP). This would be an exceptional practical difficult standard because it is an area variance. The Board should consider the nature of the zone in which the property lies and the character and uses of the immediate vicinity. Allowing the variance would enhance Wilmington Avenue. The difficulty that the Applicant has in complying with the requirements of the Zoning Code is that the CDP also anticipates and requires the City to develop a revitalization plan and directs the City to have a design image that encourages the commercial development of Wilmington Avenue, particularly the first two blocks.

Mr. Jeff Sholkopf, architect, was in attendance at the meeting and provided testimony in support of the variance. All of the elements in violation of the 30 degree angle are within 3.5 feet of being compliant, and they are all roof elements. The areas that protrude beyond the 30 degree line add up to approximately 250 square feet which is a minor amount of encroachment to help in effects to comply with the CDP and inspire the further creative development on the street there.

Mr. Alex Moore provided testimony in support of the variance.

Correspondence:

1. Letter received October 23, 2014 from Rehoboth Beach Main Street – in support of.
2. Letter received October 23, 2014 from Rehoboth Beach/Dewey Beach Chamber of Commerce – in support of.
3. Letter received October 24, 2014 from Rehoboth Beach Volunteer Fire Company, Inc. – in support of.
4. Letter received July 21, 2014 from Bob Derrickson, 128 Rehoboth Avenue – in support of.
5. Letter received July 22, 2014 from Mary Beth Evans, President and Krys Johnson, Executive Director of Main Street – in support of.
6. Letter received July 22, 2014 from Sal and Bette Gallo, 210 Second Street – in support of.
7. Letter received July 23, 2014 from Joe Baker of Henlopen Oyster House, Wilmington Avenue – in support of.
8. Letter received July 24, 2014 from Eric Sugrue of Salt Air, 50 Wilmington Avenue – in support of.
9. Letter received July 24, 2014 from Hugh Fuller and Troy Roberts of Purple Parrot Grill, 134 Rehoboth Avenue – in support of.
10. Letter received July 24, 2014 from Eric Davison of Gallery 50 Contemporary Art and Frame Shop, 50 Wilmington Avenue – in support of.
11. Letter received July 24, 2014 from Dominick Pulieri of Grotto Pizza, 20376 Coastal Highway – in support of.
12. Letter received July 24, 2014 from Carol Everhart of Rehoboth Beach/Dewey Beach Chamber of Commerce – in support of.
13. Letter received July 28, 2014 from Bob Pomeranz of Brighton Suites Hotel, 34 Wilmington Avenue – in support of.
14. Letter received July 28, 2014 from Harry Miller, Fire Chief of Rehoboth Beach Volunteer Fire Company, Inc. – in support of.
15. Letter received July 28, 2014 from Kevin Salameh of Sammy's Kitchen, 32 Wilmington Avenue – in support of.
16. Letter received July 28, 2014 from John Rishko of Stoney Lonen LLC, 208 Second Street and 57 Wilmington Avenue – in support of.

There was no public comment.

Mr. Clifton Hilderley made a motion, seconded by, to grant the variances for both the added gables as well as the second stair tower as requested. (Hilderley – for. The Board of Adjustment is not an Architectural Review Board, but aesthetics do come into play here. Ugly can be a handicap in some regards. The concept of preventing the canyon effect has been achieved by the 30 degree angle that is shown in the drawings and as intended to be accomplished with the structure. The added gables do not interfere with the concept of preventing a canyon appearance effect, so it is moot in a sense for argument purposes that it takes a variance. Mr. Hilderley knew that the Board has to give the variance because there is a very technical language problem here that they do extend into the setback zone. This is not a setback like in someone’s side yard; this is a setback up in the air. There is a difference, so the Board can look at that differently. He argued that the extension of the added gables into that setback zone is in effect meaningless when the concept of design and appearance comes into play in what is being talked about. Mr. Hilderley still struggled over the problem of why there is an issue over two stairwells or stair towers. It did not make any sense to him of why that it is a question. Wilson – for. This is a good example of how to work with the CDP. As this process evolves, the Board and the Planning Commission will get better at this. Evans – for, for the reasons stated by colleagues. This is another one of those things that needs to be taken up by those who make amendments to the Code. Kelley – for. She did not feel that granting this variance is in any way against public interest. The Board needs to approve this variance. Popham – for. By granting the variance, it is so minor in nature that it is not having any effect on anything, and what they are trying to do on Wilmington Avenue is greatly improving that.) Motion carried unanimously.

**OTHER BUSINESS**

Consideration of date for Board of Adjustment Meeting to be held in December 2014.

The December date for the Board of Adjustment Meeting will be December 15, 2014 at 7:00 p.m.

No meeting will be held in November 2014.

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

**Respectfully submitted,**

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

**MINUTES APPROVED ON  
JANUARY 26, 2015**

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**(Thomas Evans, Chairman)**