

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

**December 21, 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, December 21, 2015 on the second floor of the Rehoboth Beach Volunteer Fire Company, 219 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**

No Minutes were available for approval.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

**Case No. 1115-07.** A REQUEST FOR VARIANCES in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to allow the removal of the existing shed and deck and replace with a new deck into the southwesterly side yard setback, and to allow the removal of the existing shower and steps and replace with new shower and steps into the northeasterly side yard setback. The property is located in the R-1 Zoning District on Lot No. 9, Block No. 7, at 308 Country Club Drive. The Variances are being requested by Matt Moffa of Sturdavant Construction on behalf of Clare Giardina, 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.

Building Inspector Damalier Molina read his report. The property owner wishes to remove the existing shed and replace with a new deck into the southwesterly side yard setback and remove the existing shower and steps and replace with new shower and steps into the northeasterly side yard. The length and width of steps on the northeasterly side yard will remain the same dimensions. The proposed new shower to also be located on the northeasterly side yard will be enlarged to 6 feet x 4 feet from 4 feet x 4 feet. The proposed new deck will project 8 feet into the southwesterly side yard. The structure was legal at the time it was built. The City maintained a neutral position with regard to this case.

Mr. Matt Moffa of Sturdavant Construction noted that the shower and deck will not encroach any more than the existing does. Currently, the shower enclosure, decks and stairs are original and need to be updated.

Ms. Claire Giardina noted that both neighbors are in support of the variances. The shed is holding up the deck. The shed will be removed.

Correspondence:

1. Letter dated August 27, 2015 from Joseph Boland, 310 Country Club Drive – in support of.
2. Letter dated September 6, 2014 from Lawrence R. Atkinson, 306 Country Club Drive – in support of.

There was no public comment.

Mr. Clifton Hilderley made a motion, seconded by Ms. Myrna Kelley, to grant the variances requested regarding the deck, shower and steps. (Hilderley – for. The Board has had testimony that this is a minimal amount of upgrading to the house. It certainly will not change the character of the neighborhood. Certainly,

decks need to rebuilt every now and then. The expansion of the shower for two feet is almost inconsequential to bring before the Board of Adjustment. There is no reason that from a sensible point of view not to grant the variance requested. Donohoe – for, for the same reasons as Mr. Hilderley. Evans – for. Everyone should have a six foot shower that no one can see someone changing. Kelley – for, for the exact same reasons previously stated. Popham – for, for the reasons already stated.) Motion carried unanimously.

**Case No. 1115-08.** An Appeal of a Decision of the Building Inspector in regard to Section 270-47(A) of the Municipal Code of Rehoboth Beach that a secondary dwelling use is not permitted at the subject property. The property is located in the R-2 Zoning District on Lot No. 41, Block Brooklyn, at 41 Brooklyn Avenue. The Appeal is being requested by Kathleen Schell and Harold Dukes, Esq. on behalf of Brian & Erika Conly, owners of the property.

Mr. Harold Dukes, Esq. of the law firm Tunnell & Raysor, represented the owners of the property. The Appellants are seeking an opportunity to remodel an existing structure. He did not think a variance is necessary because the structure will not be changed in any way except in the interior. The Appellants are going to defer on the request for variance right now and have the City present its argument. There is no practical difference to the Appellants if the Board rules to deny the appeal, but it rules in favor of the variance.

Building Inspector Damalier Molina noted that he is opposed to proceeding with the variance because there has been no advertisement reflecting that there is a variance request. He had prepared for an appeal of his decision, not for a variance. The property owner is requesting an appeal of the Building Inspector's decision on the denial of a building permit due to no record that a valid building permit had been obtained to the change of use of the garage to a dwelling and to construct the additions, pursuant to Section 270-27 of the Code. The owner wishes to remove the second dwelling from the main building and add a second story to the main building. The owner wishes to use the detached accessory garage as a dwelling. Both structures exist on Lot No. 41 at 41 Brooklyn Avenue. Pursuant to Zoning Ordinance No. 68 of 1942, a garage apartment was a permitted use in the R-2 Zoning District subject to the issuance of a valid building permit. The lawful use of a building existing at the effective date of this ordinance or authorized by a building permit issued prior was permitted to continue although such use did not conform to the provisions of this ordinance. Without proof of a valid building permit for conversion of the garage to a garage apartment as a facility for human habitation, such use is an illegal non-conforming use. Subsequent amendments to Ordinance No. 68 (April 10, 1964) placed additional requirements on garage apartments not to exceed 51% of the floor area of the entire structure. Enlargement of such structures without a valid building permit would be deemed as an illegal non-conforming use. Amendments in 1977 further required garage apartments to be detached from any other buildings. While a minimum dimensional requirement of 5,000 square feet for a lot area with a dwelling in R-2 is identified as early as 1978, this restriction was not applied to garage apartments. The City adopted Ordinance No. 608-5, a taxation on rental properties. No record of taxation was located for 41 Brooklyn Avenue. A site plan of proposed improvements was prepared on April 3, 1981 resulting in the approval of Building Permit No. 1955 to demolish the garage roof and build a side-by-side garage apartment to bring it to the 12 foot height limit, a 50% garage-50% apartment. The building permit indicated void on it. Some of the additions are identified on the property survey dated June 16, 2015. A garage apartment existed in 1968 as identified by a City Assessor. The City's property file does not contain any record of a valid building permit for the use. Under Ordinance No. 991-1, adopted September 13, 1991, added requirements for a garage apartment to be detached from any other building and separated from the main dwelling by at least 6 feet on the lot. The definition for Dwelling, a building or structure intended to be used for living or sleeping by occupants, became applicable to garage apartments and were no longer viewed as habitable facilities as in previous ordinances. A minimum lot area of 5,000 square feet became a requirement for garage apartment compliance. Without a valid building permit on the effective date of Ordinance No. 991-1, the continuation of a garage apartment would still be deemed an illegal non-conforming use. Rental licenses for three (3) units have been issued to the address at 41 Brooklyn Avenue. Lawful use of a building existing at the effective date of such ordinance or authorized by a building permit issued prior was permitted to continue although such use did not conform to the provisions of this ordinance. There is evidence of misrepresentation to the building department in April 1981 of the proposed improvements that either existed prior to submittal for a building permit that was later void. Other building extensions were made to the garage apartment without a building permit. No records of taxation on rental have been identified, and evidence of a rental license was not secured until 2001. Attempts are made to locate the placement of the vehicle with the garage apartment. Use of vehicle space in a garage dedicated to occupancy creates a separate dwelling that requires a lot dimension of 5,000 square feet for such specific use.

City Solicitor Glenn Mandalas noted that if the Board of Adjustment would grant the appeal, it would be declaring the structure to be legally non-conforming whereas today it is illegally non-conforming. He did not

think this case rises to the level of estoppel in general. Building Inspector Molina also noted that if the appeal would be granted, the lot would also be non-conforming.

Mr. Hal Dukes, Esq. of the law firm Tunnell & Raysor, represented the owners of the property. Mr. Brian Conly was in attendance at the meeting and provided testimony in support of the appeal. Attorney Dukes noted that this structure existed in 1974 as it exists today. The conclusion that this unit was expanded illegally after the building permit was apparently voided for unknown reasons, the building structure as it stands right now has been in existence in the same footprint since the 1940s.

Mr. Timothy Tice, residential building designer, was also in attendance at the meeting and provided testimony in support of the appeal. He was not directed by the owner to expand the living quarters. The building envelope is not changing. Currently, the structure has two bedrooms with a small living space and kitchenette. The footprint and the roof line would not be changing. The structure would be rehabbed. The two bedrooms would be converted into one large bedroom. The use would not be changing. It is not known what condition the foundation is in.

Attorney Dukes noted that the basis for the Appellants' argument is that the structure existed 60 years ago in the same configuration and has not been altered since the 1940s. The structure existed in the 1940s and 1950s with the porch. The door has not changed. He did not have information on whether building permits had been issued. The Appellants have the right to remodel the structure. The use is not changing.

There was no correspondence and no public comment.

Mr. Donohoe made a motion, seconded by Mr. Hilderley, to not grant the appeal. (Hilderley – for, for the motion to deny the appeal. It is an appeal only. There is such a thing that the members are supposed to consider as a Board ruling on contested matters. There is such a thing as a best evidence rule. The conversation and the pile of documents is very confusing as to the history of this piece of property. Not that there is any shenanigans or anything wrong, but it is very confusing. The members are voting on whether or not the Building Inspector did the right thing. Unequivocally, the Building Inspector did the right thing based on the real evidence before the Board. Donohoe – for. There is no record of a valid building permit. In addition to the comments that Mr. Hilderley made which he agreed to, he voted for the motion. Evans – for, for the motion to not grant the appeal. Much better luck will be had at a different level. Should the Appellant like to come back for a variance request, who knows what will happen. The Board has not seen enough evidence. Kelley – for, for the motion to deny. The comments made about what the standards should be were appropriate. She is very concerned about what may be in the future, and she felt that the Board has to look very closely at this particular case and all of the different variables within. Popham – for, for the motion to deny for all the reasons already stated.) Motion carried unanimously to deny the appeal.

#### **OTHER BUSINESS**

There was none.

There being no further business, Chairman Evans adjourned the meeting at 8:14 p.m.

**Respectfully submitted,**

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

**MINUTES APPROVED ON  
FEBRUARY 22, 2016**

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**(Thomas Evans, Chairman)**