

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

April 22, 2013

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, April 22, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Mr. Doug Popham
Ms. Myrna Kelley
Mr. Thomas Evans
Mr. Frank Cooper (arrived at 7:02 p.m.)
Mr. Clifton Hilderley

Also in attendance: Ms. Stephanie Hanson, Esq. in the absence of Mr. Craig Karsnitz, Esq., Board of Adjustment Solicitor

A quorum was present.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the November 26, 2012 Board of Adjustment meeting were distributed prior to the meeting.

Ms. Myrna Kelley made a motion, seconded by Mr. Doug Popham, to approve the minutes of November 26, 2012 meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Board Member tutorial on conflict of interest.

This item was deferred to the next meeting.

Case No. 0313-01. A REQUEST FOR VARIANCES in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to allow a two (2.0) foot variance from the four (4.0) foot side yard setback requirement for a pre-existing structure to allow the height of the roof on the structure to be increased to twelve (12.0) feet, to allow a (0.5) foot variance from the required six (6.0) foot side yard setback for the dwelling which was constructed in 1948, and to allow the HVAC system and propane tank to remain where they are presently located in the side yard of the property. The property is located in the R-1 Zoning District on Lot 15 at 15 Fourth Street. The Variances are being requested by Adam Gerber, Esq. of the law firm Hudson, Jones, Jaywork & Fisher LLC on behalf of Stephen G. Harding and David T. McKenney, Jr., 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 for this case.

Assistant Building Inspector Stephen Kordek gave the Building Inspector's report with exhibits. The Applicants are proposing to change the roof pitch on the existing garage. The garage is two feet from the property line. The Applicants are proposing to keep the roof height below the 12 foot maximum, but need a variance to be able to increase the roof pitch in the setback area. In addition, it was discovered that the house is 0.5 feet over the minimum six foot required setback, the propane tank is 3.7 feet over the minimum six foot required setback and the HVAC unit is 4.1 feet over the minimum six foot required setback. The Applicants are requesting variances to allow these items to remain where they are.

City Solicitor Glenn Mandalas said that the City generally does not take a position on variance applications. The Building & Licensing Department's job is to uphold the law. The Applicants have submitted plans that are not compliant with the City's Zoning Code. There is no strong preference on the part of the City that the variance cannot be granted. This is not an unusual variance request.

Mr. Adam Gerber, Esq. of the law firm Hudson, Jones, Jaywork & Fisher LLC, represented Mr. Stephen Harding and Mr. David McKenney, Jr., owners of the property and provided testimony for his clients. His clients were not attempting to change the footprint of the garage, but to increase the pitch of the roof for reasons of aesthetics and some safety concerns. The other variance requests are to clean up the survey. The house was built in 1948, and the original shed was converted into a garage. On the original survey, the surveyor attempted to set the home back six feet, but the measurements were off to some extent. With advanced technology, it shows that a portion of the house is located in the setback. Photographs were also provided.

Mr. David McKenney, co-owner of the property, provided testimony. The house and garage were in the same location when the house was built in 2007. The HVAC and propane tank were existing when the property was bought. Mr. McKenney and Mr. Harding would like to raise the pitch on the roof of the garage because the higher pitch would help with the load on the roof, and it would be the pitch the City allows by Code. If the pitch is raised, they would be able to put the same type of shingles on the garage roof as the house roof has. With the pitch being low, Mr. McKenney and Mr. Harding were fearful that the roof would collapse from the 1.5 feet snow two years ago. They do not want to change the existing footprint of the garage, but they want to improve it aesthetically. It would be a hardship to move the entire garage in order for it to conform with the setback requirements. One of the main issues with moving the garage would be that they would not have access to get into the garage. The entrance to the garage would be located behind a porch at the back of the house. It would definitely be a hardship to move the house. The HVAC and propane tank are located at the left side of the house in the setback area. The expense of moving them would be a hardship as well as no other room on the property to put them. Mr. Stephen Harding, co-owner of the property, provided additional testimony. The paperwork that has been submitted is correct for the proposed pitch of the garage.

Ms. Erin Martin, realtor with REMAX, said the changes that the Applicants are requesting would not diminish the property value of the surrounding properties in the neighborhood.

Correspondence:

1. Letter dated April 17, 2013 from Jayne P. Kirby, 11 Fourth Street – non-objection.

Public Comment:

1. Mr. Kevin McGuire, address unknown – in support of. Making the roofline a steeper pitch would improve the garage. In support of.

Mr. Clifton Hilderley made a motion, seconded by Mr. Popham to approve the variance request for the HVAC unit and propane tank in their existing locations.

Assistant Building Inspector Kordek noted that if more than 50% of the HVAC system is replaced which includes a compressor, the compressor would need to be relocated out of the setback. Chairman Evans said that the variance would no longer apply.

(Hilderley – for. All the issues were placed on the table. It is only reasonable to let those two pieces of equipment stay where they are. The Board has heard and has discussed amongst itself all the technicalities of what it means, and it would be unreasonable not to grant the variance. Cooper – for. It really is just codifying the existence of what is there and what they are legally allowed to keep there now and providing a clear title. Kelley – for. The standards for hardship have more than been met, and it should be approved. Popham – for. It is only logical to leave them where they are at. Evans – for, for the reasons clarified by all of the members of the Board, but particularly by Mr. Hilderley.) Motion carried unanimously.

Mr. Frank Cooper made a motion, seconded by Ms. Kelley, to grant the two foot and four foot variances on the pre-existing garage to allow the height of the roof to be increased to 12 feet on the garage.

Mr. Popham questioned the hardship because the single story glass porch of the house has a similar pitch to the garage. Mr. Hilderley agreed.

Chairman Evans Tom said that pitch can be structurally reinforced to take any snow load. Other than the fact that it would cost more money, there is no reason that a flat roof with reinforcing would not hold a snow load. Hardship is due to aesthetic and money. Anything that is done to the garage would require a variance.

Assistant Building Inspector Kordek noted that the pitch on the sunroom area has a short span. The snow load on the short span would not be as great as it is on the garage. There is more of a chance that the garage roof could collapse. Reinforcing could be done to the garage roof.

(Hilderley – against. He did not see that the Applicant has made a good enough, strong enough and reasonable enough argument and presentation of hardship. Cooper – against, for the same reason that Mr. Hilderley pointed out. Argument has not been made for hardship. Popham – against. The Applicants have done a beautiful job on the house, and it certainly would look better with another garage roof, but a hardship was not made. Aesthetics is not a hardship in his opinion. Kelley – against. The standard of hardship was not met. Evans – abstained.) Motion failed.

Ms. Kelley made a motion, seconded by Mr. Popham, to grant the request for variance of the location of the dwelling itself. (Hilderley – for. The inches in the scheme of things with the location of the house and the time it has been there is a diminimus problem. It would clearly be a hardship, and it would be unrealistic not to grant the motion. Cooper – for. It is a hardship to move the house. The Applicants are not asking for any modifications to the structure in the setback. Popham – for. There is a hardship. The house would not be moved for six inches. Kelley – for, for the same reasons in the fact that the amount of space is diminimus. It just clearly is a hardship. Evans – for, for the reasons stated by his colleagues.) Motion carried unanimously.

OTHER BUSINESS

Discussion of role of solicitor in writing decisions.

This item was deferred to the next meeting.

There being no further business, Chairman Evans declared the meeting adjourned at 7:52 p.m.

Respectfully submitted,

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
JUNE 24, 2013**

(Thomas A. Evans, Chairman)