

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

June 24, 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, June 24, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Mr. Clifton Hilderley
Mr. Frank Cooper
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 22, 2013 Board of Adjustment meeting were distributed prior to the meeting.

Mr. Frank Cooper made a motion, seconded by Mr. Doug Popham, to approve the minutes of April 22, 2013 meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0413-03. A REQUEST FOR VARIANCES in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to allow a 0.1 foot variance from the six (6.0) foot side yard setback requirement on the easterly side of the property and to allow a 0.2 foot variance from the required six (6.0) foot side yard setback on the westerly side of the property. The property is located in the R-1 Zoning District on Lot Nos. 9 & 10, Block 34 at 16 Rodney Street. The Variances are being requested by Richard & Christine DiSabatino, Jr., prior owners of the property and Peter & Kathryn Scudera, 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.

Building Inspector Terri Sullivan gave her report with exhibits and provided testimony in support of the variance requests. The property owner is requesting a variance to the existing side yard setbacks. The house was built 5.8 feet from the western property line and 5.9 feet from the eastern property line. The owners are requesting the variances to allow items to remain as they are since being built in 1985. The total variances being granted would be 0.1 feet on the east side and 0.2 feet on the west side since the setbacks were six feet on both sides in 1985.

Mr. Eugene Bayard, Esq. of the law firm Morris James Wilson Halbrook & Bayard LLP represented the prior and current owners of the property. A letter dated June 19, 2013 was sent from Attorney Bayard to Ms. Sullivan regarding 16 Rodney Street. Attached to the letter was a memorandum dated June 18, 2013 from Attorney Bayard to the Board of Adjustment regarding 16 Rodney Street. As part of the settlement process on April 30, 2013, Mr. & Mrs. Scudera commissioned a placement survey of the property which revealed the two side yard encroachments. An agreement between the sellers and Mr. & Mrs. Scudera was reached, under the terms of which settlement would occur, but the bulk of the settlement proceeds would be held in escrow pending receipt of a variance so that the Scuderas' title insurance company will issue an owners' title insurance policy without any exception. The property at 16 Rodney Street is a traditional 50 foot x 100 foot lot with no irregularity in lot size or unique topographical or other physical condition peculiar to the property. The yard encroachments were created by surveyor or contractor error or inadvertence in 1985. The 1.2 and 2.4 inch

variances are the minimum that will afford relief and represent the least modification possible of the City's side yard setback requirements and will enable Mr. & Mrs. Scudera to acquire owners' title insurance without exception.

There was no correspondence.

Public Comment

1. Ms. Kathryn Scudera, owner of the property – in support of.
2. Mr. Richard & Mrs. Christine DiSabatino, prior owners of the property – in support of.

Mr. Clifton Hilderley made a motion, seconded by Ms. Myrna Kelley, to grant the variance requested for both setbacks in question, 1.2 inches and 2.4 inches. (Hilderley – for. He was very impressed with Attorney Bayard's explanation. He was particularly impressed with the second page of his letter which certainly describes, explains and supports the hardship issue. He really like Attorney Bayard's description of draconian penalty if the Board of Adjustment did not grant the request made. Cooper – for. This presents a hardship for the current owners. There was no malice intended. It is an established property. Nothing is being done other than codifying what is present. Evans – for, for the reasons stated by his colleagues. This is an excellent example of the reasons for an administrative variance. Kelley – for, for the reasons such as there has been no malice intended, no intentional problem with this and the fact that it is. Popham - for. The hardship was clearly met. This is just correcting a mistake that was made almost 30 years ago.) Motion carried unanimously.

OTHER BUSINESS

Board Member tutorial on conflict of interest.

Attorney Craig Karsnitz had forwarded a copy of the Diane Hanson for Dewey Beach vs. Delaware State Public Integrity Commission decision concerning conflict of interest. If a Board of Adjustment member thinks he/she has a conflict of interest or a special interest in a case, the first rule is to disclose that. Then the member should ask himself/herself whether his/her relationship with a party to this case would influence his/her decision to either consciously or unconsciously be fair. If the answer to the question is yes, then the member should stay out of the case. Any decision that the Board of Adjustment makes which follows the rules of the City would impact the quality of everyone living in the City of Rehoboth. If there are things that might specially affect each Board member in connection with a case, it needs to be disclosed and given some consideration to whether it is a perceived or actual conflict.

Chairman Evans noted that it is up to each individual, case by case, to do disclose on their own behalf. It is incumbent upon each member to make sure that it is not something which may affect the Board as a whole, should the case be appealed in Superior Court.

Discussion of role of solicitor in writing decisions.

Chairman Evans noted that approximately five years ago, the Board decided that Attorney Karsnitz would no longer write decision. Ms. Ann Womack, City Secretary, would do a brief write-up, the Board Secretary would write the motion and who voted how.

Attorney Karsnitz said that when the Board of Adjustment reaches a decision, each member must vote and state the reasons why. Attorney Karsnitz found when he was writing decision that he was quoting or restating what the Board members did. He thought this was a waste of time. He also thought that if it ever got to the point where something he said was different than what was on the record, what was on the record was going to control. Attorney Karsnitz summarizing and writing a decision was superfluous and an extra expense that the City did not need to bear.

Chairman Evans and Attorney Karsnitz decided that the Board Secretary would continue writing the motion and how each member voted. Ms. Womack will translate that into a paragraph stating the motion and how each member voted. No reasons need to be written on the decision.

There being no further business, Chairman Evans declared the meeting adjourned at 7:41 p.m.

**MINUTES APPROVED ON
JULY 22, 2013**

Respectfully submitted,

(Clifton Hilderley, Acting Chair)

(Ann M. Womack, CMC, City Secretary)