

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

**September 23, 2013**

The Board of Adjustment Meeting of the City of Rehoboth Beach was called to order at 7:01 p.m. by Chairman Thomas Evans on Monday, September 23, 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 July 22, 2013 Board of Adjustment meeting were distributed prior to the meeting.

Mr. Doug Popham made a motion, seconded by Mr. Frank Cooper, to approve the minutes of July 22, 2013 meeting as written. Hilderley – for, Cooper – for, Evans – for, Kelley – abstained, Popham – for.) Motion carried.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

**Case No. 0513-04.** An APPEAL OF THE DECISION OF THE BUILDING INSPECTOR in regard to Section 270-84 of the Municipal Code of Rehoboth Beach to not issue a building permit for certain construction plans and an APPEAL OF THE DECISION OF THE BUILDING INSPECTOR to not issue a business license, or in the alternative a REQUEST FOR A VARIANCE in regard to Section 270-23 of the Municipal Code of the City of Rehoboth Beach to allow a second dwelling unit and a REQUEST FOR A VARIANCE to allow a business license for the second dwelling unit. The property is located in the C-3 Zoning District on Lot No. 49 at 49A Lake Avenue. The Appeals of the Decision of the Building Inspector or Variances are being requested by Mr. John W. Paradee, Esq. of the law firm Prickett, Jones & Elliott on behalf of Mr. Frank A. Perna, Jr., owner 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 read her report with exhibits. The owner is requesting an Appeal of the Decision of the Building Inspector to deny the Appellant's request for a building permit to make improvements to the second structure unless and until certain non-code compliant improvements are removed or in the alternative, grant a Variance so that the improvements can be made. When Ms. Patty McDaniel of Boardwalk Builders Inc. came to speak with Ms. Sullivan regarding renovating an existing garage apartment, it was discovered that the information in the file did not match what existed on the property. The owners would need to make the rest of the structure match the approved documents in order to make any modifications. On March 21, 2013, Ms. McDaniel applied for a building permit to remodel the existing first floor living area only and replace fence panels, decking and valve at an existing outside shower along with a number of various other improvements. Per the permit issued in 2001 and the agreement signed by the owner at the time, the first floor of the accessory structure was approved as an office. Per the agreement: 1. The third floor cannot be used for habitation in any manner other than for storage. 2. The stairs to the third floor, already constructed, shall be removed, and the only access to the third floor shall be pursuant to the City's building code requirements for attics. 3. The proposed second floor shall be used solely for the owner's children with bedroom and bathroom facilities allowed to be constructed, but no kitchen facilities shall be built there; nor shall kitchen facilities be

built on any floor of the garage. 4. The first floor shall be solely used as an office or other non-dwelling use. 5. The garage will not be used in whole or in part as a dwelling unit as define in Section 270-4 and neither the whole or any part of the garage can be rented as a dwelling. The current layout of the second floor includes a kitchen, and the third floor has a bedroom with a full set of steps leading to it. The property was not allowed to have a second dwelling unit because in 2001 the zoning code required 3,300 square feet of lot for every dwelling unit. Since the lot is not 6,600 square feet, there cannot be a second dwelling unit. The permit fee was based on the square footage of the addition which was figured at 360 square feet. No third floor was figured. The plumbing permit issued on July 11, 2002 described the work as installing a lavatory and water closet on the first floor and install a lavatory, water closet and shower on the second floor. No plumbing was permitted on the third floor. No kitchen facilities of any type were to be installed on any floor, and no plumbing was permit on the third floor. The fee was paid for two water closets, two lavatories and one shower. A rough-in inspection and final inspection of the plumbing occurred. The City incorrectly issued a rental license for one house with three bedrooms over two and one apartment. Since the property should not have been given a rental license for the rear structure, Ms. Sullivan informed the owner that it would not be renewed in July. A note was made in the licensing program on April 11, 2013 stating that the rental license cannot be renewed per the previous agreement in the file. On April 29, 2013, City Solicitor Glenn Mandalas sent a letter to Mr. David Cooter, Eq. stating the reasons for the denial of the building permit as well as not renewing the rental license. Ms. Sullivan did not know how it is that the rental license was issued for about seven years when it appears that it should not have been. A raised seal survey of the property was provided on September 18, 2013 which is different from the survey which was provided with the Application.

City Solicitor Mandalas provided testimony and summarized the letter to Attorney Cooter which provided an historical recount of what had occurred. In 2001, there was a change out of building officials and a conditional Certificate of Occupancy was issued. A few days later a second Certificate of Occupancy was issued which was a final certificate. There is nothing in the file to verify whether certain items which the conditions said could not be included were removed or not removed. On the rental license, the then owner did not pursue a rental license the entire time he owned it. The next owner did not pursue a rental license for about six years until the property was marketed, and a rental license was pursued. City Solicitor Mandalas did not believe there was any wrong doing on behalf of this particular owner when he purchased this property. He thought that the owner did his due diligence and checked if there was a rental license of which a rental license had been incorrectly issued. It was only when there was a request to make modifications to the property that the City became aware of these circumstances. The Building Inspector does not have discretion to provide or not provide allowances. The Applicant's attorney thought that the first rental license was issued August 10, 2006. not a conditional one. The appropriate appeal of the rental license is taken to the Commissioners and not to the Board of Adjustment. The appeal has been filed with the Commissioners. Mr. John Paradee, Esq. of the law firm Prickett, Jones & Elliott is holding the appeal in abeyance until the outcome of this hearing. City Solicitor Mandalas did not believe that the argument being made by the Applicant was some sort of equitable estoppel or vested rights. It is not within the Board of Adjustment's jurisdiction. He referred to case law, Miller Board vs. Board of Adjustment, Dewey Beach. This case was cited to make clear that the Building Inspector has certain administrative duties and responsibilities, but she cannot confer a right on somebody that is not given to them under the Zoning Code.

Mr. John W. Paradee, Esq of the law firm Prickett, Jones & Elliott represented the owners of the property and provided testimony in favor of the appeal or variance. Attorney Paradee handed out a notebook of exhibits that he would be referring to during the hearing. What is in the notebook is a memorandum that summarizes the case, the timeline of events and then some documents that would be referred to, all of which came from the City's file records.

Chairman Evans noted that if materials provided by the Appellant are more than what is been presented to the Board, have to be easily available to the members to understand and fully comprehend it the night of the hearing. All documents that are significant to the case are supposed to be provided 15 days in advance of the hearing.

The consensus of the Board of Adjustment and Board Solicitor Karsnitz was that the hearing would be continued to the next available date on the docket to be heard in full.

This case will be placed on the November 25, 2013 docket.

Chairman Evans called for a break in the meeting at 7:30 p.m. and reconvened to the meeting at 7:33 p.m.

**Case No. 0813-06.** An APPEAL OF THE DECISION OF THE BUILDING INSPECTOR that a new HVAC unit cannot replace the existing unit in the same location or in the alternative a REQUEST FOR VARIANCE in regard to Section 270-26(A) of the Municipal Code of Rehoboth Beach to allow the replacement of an existing HVAC unit in the southeast side yard setback of the property. The property is located in the R-1 Zoning District on Lot No. 32½ Pennsylvania Avenue at 100 First Street. The Appeal of the Decision of the Building Inspector or Variance is being requested by William H. Alexander of Alexander Family Limited Partnership, owner 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 read her report with exhibits. The owner is requesting an Appeal of the Decision of the Building Inspector that the new unit cannot be placed in the same location on the east side as the existing unit or in the alternative a Variance to the existing east side yard setbacks so that they may replace their HVAC unit. The house was built 2.1 feet from the east property line, and the HVAC unit encroaches .1 feet onto the neighboring lot. Per the license agreement, the licensee agrees that no additions shall be made to increase the encroachment beyond one foot, and that the license area shall only be used for the existing or new equipment and maintenance thereon. The total variances being granted would be to the property line on the east side.

Mr. John R. (Bob) Dickens, a close personal friend of the Applicant was in attendance at the meeting. Mr. William Alexander was not in attendance at the meeting, but was available by telephone call.

Mr. Dickens noted that Mr. Alexander recently purchased Lot No. 29 which is the property adjacent to the subject property. Lot No. 29 is located on the same side as the existing HVAC unit which encroaches onto that property. Ms. Sullivan noted that currently there is common ownership between the two lots.

Mr. William Alexander was contacted via a telephone call and provided testimony in support the Appeal or Variance. Ms. Ann Womack, City Secretary, verified that Mr. Alexander was speaking via the telephone call. Mr. Alexander noted that he had authorized Mr. Dickens to speak for him at the meeting. Alternative solutions for the placement of the HVAC unit have been investigated. The only solution is what is being proposed because the building violates the setback requirements. It would not be possible to put the unit on the roof because of the slope of the roof and pitches. Placing the unit on the opposite side of the property would still cause it to be in the setback. The reason why he wanted to put the new unit where the existing unit is located is because he owns and controls the adjacent property. A license agreement was executed that would go with the title. If the Board of Adjustment approves the Appeal/Variance, the license agreement will be recorded. The old HVAC unit encroached on Lot No. 29 by .1 foot. Mr. Alexander would like a full one foot variance. It is thought that the new unit will exactly replicate the old unit, but he wants to make sure there is sufficient latitude when placing the unit and connecting it to the unit located in the basement.

There was no correspondence and no public comment.

Mr. Cooper made a motion, seconded by Ms. Kelley, to deny the appeal. (Hilderley – for. Cooper – for. There was nothing at all that the Building Inspector did incorrectly. Kelley – for. Popham – for. Evans – for.) Motion carried unanimously. The Appeal was denied.

Attorney Karsnitz noted that the Board has no power to authorize someone to violate a property law. The license agreement says that it runs with the land, and it appears to be unrevokable. This will create a violation of the setback on the other property. The Board of Adjustment has the ability to hear the case, but it does not have the ability to change any property laws.

Ms. Sullivan noted that there are two other areas on the property where the new HVAC unit would not encroach on a property line.

Mr. Cooper was hesitant to have the HVAC relocated to another area because the adjacent property owner may not have been notified that there could be an encroachment in the setback of his property.

Attorney Karsnitz spoke with Mr. Alexander and told him that the Board would be willing to consider an alternative placement of the HVAC unit, but it would not be heard this evening because the case was advertised to the public as a variance on the southeast side of the property. If the Board considers the northwest side, the neighbors would have to be notified so they would have an opportunity to comment. Mr. Alexander requested the continuance, but he will not be in attendance at the meeting. A representative will be fully briefed on the matters to be in attendance at the meeting.

The consensus of the Board was to hold the continuance of this hearing on December 16, 2013 at 7:00 p.m.

**OTHER BUSINESS**

Consideration of date for Board of Adjustment Meeting to be held in December 2013.

The Board of Adjustment Meeting will be held on December 16, 2013 at 7:00 p.m.

The next Board of Adjustment Meeting will be held on October 28, 2013 at 7:00 p.m.

There being no further business, Chairman Evans adjourned the meeting at 8:16 p.m.

**Respectfully submitted,**

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

**MINUTES APPROVED ON  
NOVEMBER 25, 2013**

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**(Thomas A. Evans, Chairman)**