

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

October 28, 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, October 28, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Mr. Clifton Hilderley
Mr. Thomas Evans
Ms. Myrna Kelley
Mr. Doug Popham

Mr. Frank Cooper has submitted a letter of resignation from the Board of Adjustment.

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 September 23, 2013 Board of Adjustment Meeting were not available for approval.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0813-07. A REQUEST FOR VARIANCE in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to allow construction of a new porch with a setback of 10.5 feet from the easterly property line and 10.25 feet from the westerly property line. The property at 32 Virginia Avenue is located in the R-2 Zoning District on Lot No. 32 and a portion of Lot No. 30. There is a two-family dwelling on the property. The Request for Variance is to allow an encroachment on the west side of 9.75 feet (20 feet less 10.25 feet). The total 20 feet aggregate is required because the existing structure encroaches the entire east side setback area. The Variance is being requested by S. Robert Boardman, 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 the following cases.

Chief Building Inspector Terri Sullivan gave her report with exhibits. The owner is requesting a variance to the aggregate side yard setback to allow both a two story porch and a one story porch to be added to the existing structure. The existing house was built in the 1900s prior to any zoning requirements. The existing structure is a two family dwelling which encroaches into the entire side yard setback area on the east side and onto the adjacent property. The owner has a license agreement for the encroachment onto the adjacent property. Because the existing house encroaches into the entire side yard setback area on the east side, the western side yard setback for the proposed addition is required to be 20 feet (to satisfy the 20 feet aggregate setback requirement) and the eastern side yard setback area for the proposed addition is required to be 10 feet (to satisfy the 10 feet minimum setback area).

Mr. Robert Clendaniel of R. Calvin Clendaniel Associates provided testimony in support of the variance. A revised Attachment A of the Application was provided to the Board of Adjustment. He read the revisions. The Applicant requests a variance from Section 270-26 which requires an aggregate side yard setback of 20 feet. The Applicant believes that a hardship exists because Section 270-26, as enforced, requires that when an existing structure has an encroachment on the required side yard(s), any addition to it must be set back a total of 20 feet from the property line opposite the side yard that is encroached upon. In this case, the proposed addition is required to be set back a minimum of 10 feet from the east property line and a minimum of 20 feet from the opposite property line adjacent to First Street, which results in an actual aggregate side yard setback of 30 feet.

This effectively prohibits the use of a 10 foot wide strip of the property along the west side of the lot that, if the existing structure conformed to the required setbacks, would otherwise be available for construction. The Applicant believes that his requirement presents a hardship because, as enforced, it results in an unfair prohibition of the use of his property. The Applicant believes that, if granted, the requested variance will not violate the spirit of the zoning ordinance because it is not the intent of the ordinance to prevent an addition to a non-conforming structure that, were it added to an existing conforming structure, would be in full compliance with all applicable requirements of the zoning code, including all required yard setbacks. The Applicant believes that the proposed addition will not actually increase the existing non-conforming condition. The Applicant believes that it is not the intent of the ordinance to prohibit the use of a portion of a property that in all other respects would be usable, simply due to the existence of a non-conforming dimensional condition. There is a strip 10 foot wide on the First Street side of the property that is unusable. The house extends over the property line by a few inches which is referenced in the license agreement. The Applicant modified the licensing agreement after he bought the property. No variance has been applied for in the past. There would be enough room for four cars to park off-street.

Mr. Clifton Hilderley noted that the existing house is legal non-conforming. Under Section 270-50(B), extension of a non-conforming structure, it would not meet the applicable dimensional requirements of the zoning district, which is an aggregate of 20 feet. A legal non-conforming structure devoted to a conforming use may be extended provided that such extension conforms to the applicable dimensional requirements.

Mr. Mike Hoffman, Esq. of the law firm Baird Mandalas Brockstedt LLC was in attendance at the meeting on behalf of Mr. Glenn Mandalas, City Solicitor. Based on the City's understanding of what the intent of the aggregate is, the starting point to measure the extension and whether the extension complies with the Code, is the existing line. The City's position is that the interpretation when applied to how to measure the aggregate setback would be ambiguous. Attorney Craig Karsnitz and Chairman Evans disagreed.

Public Comment:

1. Ms. Lynn Wilson, 28 Virginia Avenue had to no objection to the variance.
2. Mr. Bruce Geyer, 48 East Briar Lane, Milford, Delaware – in support of the variance.
3. Mr. Eugene Lawson, Jr., 402 Rehoboth Avenue – in support of the variance.

Ms. Myrna Kelley made a motion, seconded by Mr. Doug Popham, to grant the variance. (Hilderley – against. The explanation given by the City is very clear. He referred to the Board of Adjustment's decisions in the past where it has held such extensions of a legal non-conforming structure to a high regard. The argument for hardship was not an argument at all. It was nothing but words above what looked good, would not be fair, etc. The two coupled together just made Mr. Hilderley feel that the Code is very clear, the City is right and it is not warranted. Kelley – against. She proposed a motion in favor to get it on the table. In reading the materials before, Ms. Kelley thought she would listen tonight and hear what was said. Ms. Kelley agreed with Mr. Hilderley. Ms. Kelley did not hear a hardship; it is cosmetic and she applauded the Applicant and representative for their efforts; but until there is a different law, this is the way she voted. Popham – for. There is some question about what the legal setback requirements are. Evans – for.) Motion failed. Variance request was declined.

Case No. 0813-08. A REQUEST FOR VARIANCES in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to allow the encroachment into the side yard setbacks of .1 feet for the easterly side and 2.8 feet for the westerly side of the existing house and 2.6 feet for the westerly side of the existing cottage; Section 270-25 of the Municipal Code of Rehoboth Beach to allow 10 feet for the existing patio in the rear yard setback and the encroachment of 1.5 feet for the southerly side of the existing cottage; Section 270-29(B) of the Municipal Code of Rehoboth Beach which required off-street parking when there is an increase in the size of the structure and Section 270-35(D)(1) of the Municipal Code of Rehoboth Beach which requires two parking spaces for all residential units including accessory structures used as dwellings or dwelling units. The property is located in the R-1 Zoning District on Lot Nos. 9 & 10, Block 25, at 122 Norfolk Street. The Variances are being requested by Jane R. Patchell, Esq. of the law firm Tunnell & Raysor, P.A. on behalf of Robert C. Randa and Patton W. Conner, owners of the property.

Ms. Sullivan read her report with exhibits. The owners are requesting variance to Section 270-26(A), minimum side yard setback and aggregate total of both sides for the existing dwelling, Section 270-35(D)(1) for the required parking spaces per dwelling, Section 270-44(B) for the cottage side and rear yard setbacks and Section 270-25(A) for the existing patio which encroaches on the rear yard setback. The variance requests are for a .1 foot encroachment on the easterly side and a 2.9 foot on the westerly side in order to meet the current six foot minimum and 16 foot aggregate. The variance request for the cottage is for 2.6 feet for the westerly

side and 1.5 feet for the rear. The patio off of the cottage requires a variance of 10 feet. The patio did not appear on a 1998 survey, and there is no permit in the City file for this structure. All other items appear to have been permitted. A variance to the parking requirement is being requested. In order for any expansion of the property to take place, the lot must come into conformity with the parking requirements. Currently, there are two parking spaces on the property. Section 270-35(D)(1) requires two parking spaces per dwelling unit. Since there are two dwelling units on the property, the requirement is for four parking spaces. Since the house sits 23.3 feet from the front property line and there is not nine feet down either side, it would be impossible to get four (4) 9 feet x 18 feet parking spaces on the property without having more than 20 feet of curb-cut. Currently, there are two off-street parking spaces. The property owners are requesting a variance because they are looking to expand the main house. The property was purchased by the owners with a license to rent the cottage and only two off-street parking spaces in the front of the property.

Ms. Jane Patchell of Tunnell Raysor represented the owners of the property and provided testimony in support of the variances. The Applicants are considering remodeling and expanding the property. A survey completed by Douglas Annand, PLS, revealed that the dwelling house violated the minimum six foot side yard setback requirement and the 16 foot aggregate side yard setback required pursuant to Section 270-26(A) by .1 feet and 2.9 feet. The cottage violates the minimum four foot side and rear setbacks required under Section 270-44(B) by 2.6 feet on the westerly side of the cottage and 1.5 feet to the rear of the cottage. The brick patio was installed in 2000, and the Applicant was not aware that he needed a permit to do that. If necessary, the pavers can easily be removed from the ground. They are not permanently affixed. The site has only two off-street parking spaces which were built on the site after the Applicants purchased the property. Two off-street parking spaces are required per dwelling. The cottage has been registered with the City as an accessory building used as a dwelling unit. The property has rental licenses for the house and the cottage which are valid through 2014. Currently, there are no finalized plans for the remodeling of the property. A copy of the 1998 survey provided by the Building Inspector reveals that the side yard setback violations for the main dwelling and the cottage and the rear setback violation for the cottage existed prior to the Applicants' ownership of the property. The conditions were not created by the Applicants; they have no negative effect on surrounding properties and they are not contrary to public interest as evidenced by the fact that the conditions have existed for many years. The configuration of the site and the placement and size of the dwelling make it impossible for four parking spaces measuring nine feet x 18 feet to be placed onsite with the maximum curb-cut width of 20 feet.

Mr. Robert Randa, owner of the property, provided testimony in support of the variances. The fences at the back and the westerly side of the property are the neighbors' fences.

There was no correspondence and no public comment.

Mr. Hilderley made a motion, seconded by Ms. Kelley, to grant the variances requested so long as the brick patio that has been described to the Board of Adjustment remains a brick patio, simply bricks laid on top of the ground. (Hilderley – for. This is a series of variances requested. The cottage and the main structure were build several years ago. It would be unsequential hardship to try to get four parking spaces in there, but that is the way the place was built. Even taking down a tree and adding four spaces on the other side would not solve any problem if it could be done. There is no reason not to grant the variances. Kelley – for, for the same reasons indicated by Mr. Hilderley. She has concerns about the parking, but that is not really the Board of Adjustment's purview except to vary it. Popham – for. The question of hardship has been established. It would be hard to do anything with the property without a variance. Evans – against. He would have like the motion to say without the patio.) Motion carried.

Case no. 0913-09. A REQUEST FOR VARIANCE in regard to Section 270-24 of the Municipal Code of Rehoboth Beach for a 13.5 feet encroachment of an existing porch in the southerly front yard setback to allow the screened porch to be enclosed with glass. The property is located in the R-1 Zoning District on Lot No. 29 at 29 Pennsylvania Avenue. The Variance is being requested by Eugene H. Bayard, Esq. of the law firm Morris James LLP on behalf of Mark & Suzanne Matan of 29 Penn LLC, owners of the property.

Ms. Sullivan read her report with exhibits. The owners are requesting a variance to the existing side and front yard setbacks to allow an existing screened porch to be enclosed with glass. The existing screened porch is 1.5 feet from the front property line. The current setback requirement is 15 feet for a building and 10 feet for an open front porch per Section 270-24. The existing footprint of the porch will not be changed in any way. It would be an improvement of the space that is within the setback.

Mr. Gene Bayard, Esq. of the law firm Morris James LLP represented the applicants and provided testimony in support of the variance. The 2005 survey submitted by Wingate & Eschenbach shows rear, side

and front yard setback problems. The importance of the 2005 survey is the signature of the Assistant Building Inspector, Stephen Kordek, where he wrote legal non-conforming on it. This was to enable the Applicant to buy title insurance without a survey accepted. The property is legally pre-existing and non-conforming. The Applicant proposes to enclose the existing porch which encroaches 13.5 feet into the front yard setback to make a four-season room. The work will not alter the essential character of the neighborhood. This is a practical difficulty and unnecessary hardship created by a 103 year old house and a recent zoning ordinance. Letter of support from 10 property owners.

Mr. Mark Matan, owner of the property, provided testimony in support of the variance. The glass windows will cover the existing screening, and the footprint of the porch will not change in any way. Some structural upgrades will be done underneath the porch where necessary. The panes of glass will be sliders.

Correspondence

1. Letter dated October 2013 from Penn Emerson of 28 Pennsylvania Avenue, Gin & William Fitzgerald of 35 Columbia Avenue, Susan Romans of Oak Avenue, Judy Bennett of 26 Pennsylvania Avenue, Therese Matan of 1 Henlopen Avenue, J.P. & Lacey Matan of 28 Columbia Avenue, The Blakes of 122 Henlopen Avenue, Tony Devoll of Henlopen Avenue, Bryce Lingo of Rehoboth Beach and Jarret McDewel of 39 Oak Avenue – in support of the variance.

There was no public comment.

Mr. Hilderley made a motion, seconded by Mr. Popham, to grant the variance request. (Hilderley – for. The request is realistic in this modern day and age when things rust out, new products come along and people like to and need to find advantages in improving their property. This is a very good example of why a variance should be requested to take advantage of new technology and new products. Kelley – for. There is no increase in the footprint, and it is a very good improvement. Popham – for, for the reasons previously stated. Evans – for, for the reasons previously stated by Mr. Hilderley.) Motion carried unanimously.

OTHER BUSINESS

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

A tentative date for the Board of Adjustment Meeting will be May 19, 2014 at 7:00 p.m.

The next Board of Adjustment Meeting will be held on November 25, 2013 at 7:00 p.m.

There being no further business, Chairman Evans adjourned the meeting at 8:11 p.m.

Respectfully submitted,

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
NOVEMBER 25, 2013**

(Thomas A. Evans, Chairman)