

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

December 16, 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, December 16, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Mr. Clifton Hilderley
Mr. Robert Wilson
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 December 16, 2013 Board of Adjustment Meetings were distributed prior to the meeting.

Ms. Myrna Kelley made a motion, seconded by Mr. Doug Popham, to approve the minutes of November 25, 2013 meeting. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0913-11. An APPEAL OF THE DECISION OF THE BUILDING INSPECTOR in regard to Section 270-4 of the Municipal Code of Rehoboth Beach that lots have been merged per the definition of "lot" and Section 270-74(a) that the separately titled lots are merged and require partitioning and in the event the Appeal is granted, a REQUEST FOR VARIANCE in regard to Section 270-22 to allow both lots a minimum of 4,999 square feet. The property is located in the C-1 Zoning District on Lot Nos. 80 & 82 at 232 Rehoboth Avenue. The Appeal or Variance is being requested by Eugene M. Lawson, Jr., Esq. of The Lawson Firm LLC on behalf of Catherine W. Magdaleno of Lot 82 Rehoboth Avenue LLC, 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 an appeal of the decision of the Building Inspector that the lots have been merged by structure. The deed dated December 27, 1984 states that all those two certain lots, pieces or parcels of land situate, lying and being in the City, shown and designated as Lot Nos. 80 a& 82 Rehoboth Avenue. According to the plot of the Rehoboth Beach Camp Meeting Association of the Methodist Episcopal Church, the same appears of record in the office of the Recorder of Deeds in Deed Book No. 84, page 602. The said lots have a combined frontage of 100 feet on the southerly side of Rehoboth Avenue and a depth of 100 feet. Attorney Lawson showed in his evidence where his firm divided those lots into two parcels by recording a new deed in 2011. Ms. Catherine Magdaleno came before the Board of Adjustment in 2008, with different council, to request variances to Section 270-22 – Minimum Lot Dimensions, Section 270-23 – Lot Area per Dwelling or Dwelling Unit, Section 270-24 – Building Setback Lines and Section 270-35 – Minimum Parking Spaces. Per the survey dated September 3, 2008, the two-story frame and masonry building is 3.1 feet from the line dividing Lot No. 80 from Lot No. 82. For residential property, the minimum setback is six feet with an aggregate total of 16 feet. There are two apartments on the property which require 5,000 square feet each. The four parking spaces for the two dwelling units are on Lot No. 80. In addition, the natural area for Lot No. 82 is only 16 percent. When the variance requests were denied in 2008, Ms. Sullivan spoke with Ms. Magdaleno regarding the options available. If the

entire property was considered commercial, there would be no setback, parking, natural area or lot area per dwelling requirements. The only issue left would be that the sidewalk crosses the property line which could be addressed at the time of partitioning. In 2010, Ms. Magdaleno removed the cooking facilities, and her tenant moved out so that she could partition the property without the need for a variance. An inspection was conducted, and the rental licenses were removed. No further action was taken to subdivide the property at that time. In 2011, Ms. Magdaleno requested a rental license which meant that she was again using the property as residential. She currently has a rental license for one apartment. On the dwelling portion which would be subdivided from the house, the house would violate the setback. Parking for the structure is located on the other lot. The sidewalk was removed between 2008 and today. Ms. Sullivan did not know when the house was built. The property is zoned C-1, Tier 1 - residential (R-1) use in a commercial district.

Mr. Gene Lawson, Esq. of The Lawson Firm LLC, representative of Ms. Catherine W. Magdaleno, owner of the property, provided testimony in support of the Appeal/Variance. Ms. Magdaleno's recollection was that the house was built in approximately 1903. The lots are separately titled and have been for 1.5 years. The other property is owned by Lot 82 Rehoboth Avenue LLC. The major issue is whether the lots were merged and by what basis they were merged. The Building Inspector's determination letter recounted criteria for determining whether something is merged, but it did not recount any basis for the fact that the merger existed. There is no legal basis for how merger exists. There are zoning issues which may/may not be compliant with it that have to do with one or other of the lots but they are separate and apart from whether the lots have been merged and whether they are separate lots. In 2008, the encroachment of the deck from the apartment house over the lot line and the sidewalk over the lot line, have been dealt with. Currently, there are no structures that cross over the property line. The fence stops on either side of the property line. With regard to the photograph of the two garage doors, there is one parking space behind each door. There is parking in the garage for one residential unit. The lots were originally deeded to the Williams, Ms. Magdaleno's parents, in 1944 and were deeded separately with two separate owners. The 1984 deed referenced a combined 100 feet, but the lots were not merged. The Meeting Ground Plat references that all of the lots in the vicinity of this lot are 50 feet x 100 feet. The County had no trouble when the lots were conveyed to providing a second tax map number. In September 2012, Attorney Lawson received a letter from City Manager Greg Ferrese, stating that he did not believe he had authority to issue two tax map numbers. There are no facts that would lead to believe a merger took place. With regard to the survey dated May 13, 2013, the square footage is 4,999 for each lot. There is no evidence of any intention or action on behalf of the owner that merged these lots. The tax bills are not controlling at all. The plat in the Recorder of Deeds office dictates whether there are two properties or one. The County plat shows two 50 feet x 100 feet lots, and no one has ever merged them. If the Board of Adjustment determines there is not a merger, then the variance would be requested for the 4,999 square feet to be considered buildable lots.

Ms. Catherine Magdaleno provided testimony, acknowledging that the front structure which has the two apartments was built in 1903. Attorney Lawson acknowledged that the Code requires two parking spaces for each apartment if there are two apartments being used there. Being a commercial building, there are spaces in the building. At one point in time, there were two apartments. There is one rental license and one rental unit that exists. The Code said that for each dwelling, there must be 5,000 square feet if there were two units.

Ms. Sullivan acknowledged that two licenses had been issued. In 2008, there was an apartment in the dwelling as well as one in the garage. Two parking spaces were located on Lot No. 80, and two were located on Lot No. 82.

Ms. Magdaleno noted that the garage apartment was cut off from the main house. It was raised up and put to the back of the lot which was approved by the City. Her father got the license to start renting. Ms. Magdaleno had applied for a license with the City for the other apartment in the house. The apartment was permitted by the City. A toilet was not installed until after the sewer moratorium was over.

There was no correspondence and no public comment.

Ms. Kelley made a motion, seconded by Mr. Popham, to grant the appeal. (Hilderley - for. It is complicated. All the facts have not come forth. The building was built in 1903, and the owners did this without knowing what they were doing. Wilson - for. There has been no evidence to support that the opposite is true. Evans - for. He agreed with his colleagues that merger never took place in the Board's mind at least. Kelley - for. She felt she had to separate out what the Board's duties are and try to make everything else fixed by the City Popham - for. He felt they have always been two lots which are defined by all the land surveys going back to the 1800s.) Motion carried unanimously.

City Solicitor Mandalas noted that the intent of the original plot was clear that it was supposed to be a 50

foot x 100 foot lot. He did not think the City would argue that this is not a buildable lot. The variance was not needed.

Chairman Evans called for a recess in the meeting at 8:01 p.m. The meeting was reconvened at 8:06 p.m.

Case No. 0813-06. Continuance of a Public Hearing on 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 southeasterly side yard setback to be located in the northwesterly side yard setback of the property. The property is located in the R-1 Zoning District on Lot No. 32½, Block Pennsylvania Avenue at 100 First Street. The Variance is being requested by William H. Alexander of Alexander Family Limited Partnership, owner of the property.

Mr. Raymond Harp of George Sherman Corporation, represented Mr. William H. Alexander, owner of the property. Mr. Alexander was not present at the meeting. Mr. Harp presented an email written on his cell phone verifying that Mr. Alexander wanted Mr. Harp to represent him at this meeting.

Ms. Sullivan read her report with exhibits. The property owner is requesting appeal of the decision of the Building Inspector that the new unit could not be replaced in the same location as the old unit or in the alternative a variance to the existing east side yard setbacks so that he may replace his HVAC unit. The house was built 2.1 feet from the easterly property line, and the HVAC unit encroaches .1 feet onto the neighboring lot. The new location for the HVAC unit will be behind the chimney and before the bump-out of the house. This new location would be approximately 5'-2" from the side property line. The owner is request a variance to allow the HVAC unit to be replaced on the west side of the property in an area between the chimney and the wall of the house. The unit would encroach into the side yard setback by approximately 10 inches. The house currently sits four feet from the side property line, and the new unit would not encroach beyond the existing house. The appeal had been decided upon at a prior meeting. The proposed placement of the new unit is the least intrusive placement on the property. All sides of the property violate the setbacks, and it is a pre-existing non-conforming use.

Mr. Raymond Harp of George Sherman Corporation provided testimony in support of the variance. There is no other reasonable place to put the unit.

There was no correspondence and no public comment.

Mr. Popham made a motion, seconded by Mr. Bob Wilson, to grant the variance to locate the unit on the west side of the house with the 10 inch setback encroachment. (Hilderley - for. The Board has, for several instances, struggled with these HVAC problems. This seems to be the most logical solution to the applicant's problem. Wilson – for, for the same reasons. Evans –for. He heard no complaints from neighbors which is usually what throws it out when the HVAC unit is moved to their side. Kelley - for. It is obviously the best available solution. Popham - for . Hardship was met.) Motion carried unanimously.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans adjourned the meeting at 8:22 p.m.

Respectfully submitted,

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
MARCH 24, 2014**

(Clifton Hilderley, Acting Chair)