BOARD OF ADJUSTMENT MEETING
CITY OF REHOBOTH BEACH

March 24, 2014

The Board of Adjustment Meeting of the City of Rehoboth Beach was called to order at 7:01 p.m. by Acting Chair Clifton Hilderley on Monday, March 24, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Mr. Clifton Hilderley
Mr. Robert Wilson
Ms. Myrna Kelley
Mr. Doug Popham

Absent: Mr. Thomas Evans

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.

Acting Chair Hilderley considered the minutes moved as distributed. There was no opposition from members of the Board.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 1013-12. 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 even the Appeal is granted, a REQUEST FOR VARIANCE in regard to Section 270-22 to allow Lot No. 46 a minimum of 4,973 square feet with 49.75 feet of street frontage. The property is located in the R-2 Zoning District on Lot Nos. 46 & 48 at 46 Maryland Avenue. The Appeal and Variance is being requested by David C. Hutt, Esq. of the law firm Morris James Wilson Halbrook & Bayard LLP on behalf of Laura Davis, Trustee of the Harris Living Trust and owner of the property. Acting Chair Hilderley 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.

Building Inspector Terri Sullivan gave her report with exhibits. The property owner is requesting an appeal of the decision of the Building Inspector that the lots have been merged by structure. The owner wishes to demolish the existing structures and build two new buildings, one on Lot No. 46 and one on Lot No. 48. With regard to the permits submitted with the report, the Harris' and the City have always treated the lots as a single lot of 100 feet x 100 feet.

City Solicitor Glenn Mandalas acknowledged that is the City's position that if there are two lots which are plotted and are standard lots, and they are used together as one lot, then those two lots are, for the City's purposes, forever merged for all circumstances. This has been traditionally the position of the City. Currently, there is discussion at the Commissioners' and Planning Commission's levels as to whether that should be the practice going forward. He provided the definition of lot in the City Code. Nothing shall prevent two lots from merging. The building officials in the City have taken the position that, for zoning purposes and not title purposes, properties merge if they are used as a single property. Through the years, the City has adopted the common law version of merger. Generally, jurisdictions that use common law merger, do this because when

two substandard lots come into common ownership, then it makes sense under a zoning code to move things toward standardization and becoming conforming. Discussion ensued as to merger.

Mr. David C. Hutt, Esq., of the law firm Morris James Wilson Halbrook & Bayard LLP, represented the Harris Living Trust which currently owns Lot Nos. 46 & 48 on Maryland Avenue. Ms. Laura Davis and Mr. Dan Harris were in attendance at the meeting. This is an appeal of the building official and ultimately a variance request. Attorney Hutt provided a brief history of the property. Common ownership where both lots are in the same entity name did not arise until the most recent deeds were recorded two years ago. In 1979, the structure which crosses the property line was constructed. Until recently, the properties were separately deeded and in separate ownership. These properties have been separately assessed by Sussex County and by the City of Rehoboth Beach. There has only been one assessment by the City. The family currently uses the property themselves for part of the year and also leases it for part of the year. The Applicant had no idea until August 2013 when they approached the City with their plans and were trying to determine what the demolition process would be like, and learned that the City took the position that these lots had merged for zoning purposes. This appeal arises out of the building official's decision. The basis of this is that the building official enforces the Code, and the City has acknowledged that merger is not expressly in the Code. The building official has gone beyond the scope of enforcing the Code and is doing what the City is referring to a historical interpretation rather than an enforcement of the Code. The City acknowledged that where the word merger arises in the Code is in the definition of lot. There is no codified merger within the City of Rehoboth Beach. The City's definition indicates that as long as the lots are utilized as one parcel through the placement of the structure, the merger occurs. There is no indication that there is permanency to that. Permanency is not mentioned in the Code. The doctrine of merger in the law of treatises and in cases is being treated to prevent the creation of substandard lots. The plot was recorded in 1874 creating 5,000 square foot lots, and 140 years later those same lots are still the correct size, conforming lots in the City. No cases are analogous to this situation tonight which is that two originally plotted lots which still conform to the zoning code to date and are being treated as being irrevocably merged based on a structure which the proposal is to demolish. The lots would be treated as if they had been merged despite the fact that they have been assessed separately. In this matter, there is the existence of the fact that the lot is .55 of a foot short on its frontage along Maryland Avenue, and this creates a pie or triangle. The rear of the lot is 50 feet wide. Mr. Adams of Adams & Kemp surveyed the entire block. There are 32 lots on each block. Along Baltimore Avenue, there is 50 feet for each lot for a total of 800 feet from one City monument to another. At the midpoint between Baltimore and Maryland Avenues, there is 800 feet. Along Maryland Avenue, the distance between the two City monuments is 799.45 feet, leaving .55 of a foot short. Lot No. 46 bears the shortage of .55 feet. The error arose when the block was originally set by the surveyor.

Mr. Dan Harris noted that a previous housing inspector in 1980's refused to merge the properties. Mr. Harris' mother was told by the housing inspector that he would allow the six feet into the other property, but the lots had to remain as two separate properties.

There was no correspondence.

Public Comment:

1. Mr. Eugene Lawson, 12 Hickman Street – in support of. The Board is not being asked to partition the property, but to recognize the pre-existing boundaries one the demolition of the structure has taken place.

Ms. Myrna Kelley made a motion, seconded by Mr. Doug Popham, to grant the request for an appeal.

City Solicitor Mandalas clarified that this would be a declaration of unmerger because the lots would be put back the way they were originally plotted. It would not be a declaration that merger never occurred. No variance would be required, and both lots would be buildable lots.

(Wilson – for. The lots were combined in some way, whether they were merged legally he was not sure. Basically, there is nothing there that would disrupt him from concluding that they cannot be uncombined. Hilderley – against. Merger is a merger. Either it happened or it did not happen. All the Board is deciding on whether or not the building inspector's initial decision that there was a merger took place. It is no more complicated than that. Kelley – for. The lot is back where it was supposed to be, and the entire block is occupied in that manner. Popham – for. By removing the structure, takes it back to the lots that were laid out 140 years ago.) Motion carried.

Case No. 1013-13. A REQUEST FOR VARIANCE in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to allow a 0.5 foot variance from the six (6.0) foot side yard setback requirement on the westerly

side of the property. The property is located in the R-1 Zoning District on Lot No. 13, Block No. 5 at 315 Stockley Street. The Variance is being requested by Douglas D. Marshall, Esq. of the law firm Hudson Jones Jaywork & Fisher LLC on behalf of James D. Clubbs, owner of the property.

Building Inspector Sullivan gave her report with exhibits. The property owner is requesting a variance for a side yard which is 5.5 feet from the property line. The owners are requesting a variance of .5 feet for an existing house. The house was built in 1973 and was built 5.5 feet from the side property line. No survey was required at the time the house was constructed.

Mr. Doug Marshall, Esq. of Hudson Jones Jaywork & Fisher LLC represented the seller who filed for the Application and the buyer of the property. He presented the facts of the case. Mr. James Clubbs was the seller of the property. Mr. John S. Welch is the buyer of the property and current owner. The property was sold to Mr. Welch in October 2013. The property has frontage on Stockley Street and is a pie-shaped lot. The house was built in 1973, and the encroachment into the side yard was created at that time. The current owner has not created the violation.

Mr. Lucius Webb provided testimony. He is a licensed realtor in Rehoboth. Mr. Webb represented the buyer. The variance was caused by the builder in 1973 because of the narrowness of the lot as it runs closer to the rear lot line. The enforcement of the six foot side yard setback requirement would create an unnecessary hardship or exceptional practical difficulty to the Applicant or owner of the property because of the cost of removing or remodeling the property as well as the loss of use of that portion of the house. Requiring to bring that side of the house into compliance would cause hardship. Granting the variance would not be contrary to public interest, devalue the surrounding property or create a public safety concern. It would not violate the spirit of the zoning code. It would not substantially impair the intent of the zoning ordinance because the variance request is minimal. Grant the variance would provide substantial justice to the Applicant, owner and the City.

Correspondence:

1. Email dated March 24, 2014 from Frances M. Kelleher, 318 Stockley Street, voiced concern that the granting of the variance could allow the current or a future homeowner to build a second floor addition to the home that would extend beyond the six foot side yard setback. She would not want the Board of Adjustment to allow a variance that could make it possible in the future for a second floor addition to be built on the current home that would extend beyond the six foot side yard setback or that could allow the current or a future homeowner to tear down the current single story home and then build a new house along a 5.5 foot side yard setback.

There was no public comment.

Mr. Popham made a motion, seconded by Mr. Robert Wilson, to grant the variance. (Wilson – for. This would cause an undue hardship if it were not granted. Hilderley – for. Counsel did a very good job in explaining the requirements for granting a variance. It is de minimis and should be granted. Kelley – for, for the previously stated reasons. Reassurance of the fact that the second story building would require further analysis by the building inspector. Popham – for. It was beyond the doings of the other parties going back to 1973.) Motion carried unanimously.

There being no further business, Acting Chair Hilderley adjourned the meeting at 8:28 p.m.

Respectfully submitted,

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(Ann M. Womack, CMC, City Secretary)

MINUTES APPROVED ON
APRIL 28, 2014

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(Clifton Hilderley, Acting Chair)