

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

May 19, 2014

The Board of Adjustment Meeting of the City of Rehoboth Beach was called to order at 7:04 p.m. by Acting Chair Clifton Hilderley on Monday, May 19, 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 April 28, 2014 were not available for approval.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0214-02. A REQUEST FOR VARIANCE in regard to Section 270-26 of the Municipal Code of Rehoboth Beach to allow the house to be built to the 16 foot aggregate side yard setback. The property is located in the R-1 Zoning District at 1001 South Boardwalk on Lot Nos. 24, 25, 26, 27 & 28, Block No. 33. The Variance is being requested by Jim & Donna Gramm, owners 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 case.

Building Inspector Terri Sullivan gave her report with exhibits. The property owner is requesting a variance to the new side yard setback requirements adopted by the Mayor and Commissioners on January 17, 2014. In March of 2013, Ms. Allison Rufe, the designer for the new proposed home, contacted Ms. Sullivan with questions regarding frontage and setbacks for the property. At that time, Ms. Sullivan had addressed her questions. In January 2014, Mr. Tim O'Hare submitted an application for construction, but did not have approval from the Department of Natural Resources and Environmental Control which is required for construction in the ocean block. Since the application did not have all the required documentation, it was not accepted by the Building & Licensing Department. On February 18, 2014, Building & Licensing received the application for both the demolition and new construction from Mr. Tim O'Hare. At that time, all documentation was present. The demolition permit was issued on February 19, 2014 with the stipulation that demolition could not commence until March 22, 2014. Approximately two weeks after submission of the application, plan review began; and it was realized that the proposed home was closer to the side yard property lines than the new code would allow. The contractor was notified of this issue. The Mayor and Commissioners adopted a resolution relating to side yard setbacks on January 17, 2014. The resolution stated that any City of Rehoboth property owner who demonstrated conclusively that prior to November 15, 2013, such property owner invested \$5,000.00 or more in pursuit of the construction of a structure that would comply with the then existing Section 270-26 relating to side yard setbacks, shall be entitled to proceed through the City's approved process under the side yard setback requirements in effect as of November 14, 2013. Any person desiring approval of the exception must request such approval through the City's Building & Licensing Department by January 31, 2014. Once the deadline of January 31, 2014 passed, Ms. Sullivan no longer had authority to

approve any plans that did not meet the current zoning code. There was no dispute with the 32 foot aggregate side yard requirement.

Mr. Tim Willard, Esq. of the law firm Fuqua, Yori and Willard P.A., represented the Mr. & Mrs. Jim Harris, owners of the property. Mr. Jim Harris was in attendance at the meeting. Also in attendance was Mr. Paul Kiss - Architect, Ms. Allison Rufe – Designer and Mr. Tim O’Hare - Builder. Attorney Willard summarized the application. The Applicant asked for a 16 foot variance for the northerly side along St. Lawrence Street. Since this is a 100 foot frontage lot on the Boardwalk, the new statute says the aggregate is 32 feet with six feet on the one side. With the encroachment on the other side, approximately less than 16 feet would be needed. In this case, the public interest would be that which is recited in the ordinance when it was passed on January 17, 2014. By extra setbacks for larger lots, the Commissioners wanted to protect the health and welfare and encourage light, air and openness for streetscapes. There is a special condition on this lot to the extent that the side yard is actually on the streetscape. A building was designed which does not fully utilize the rear setback so there is a narrower profile on the side yard. Designing the house to the current code would result in more mass on the streetscape. The exception situation in this case is the timing and notices. This process began in early 2013. As of October or November 2013, Mr. Gramm had spent approximately \$35,000.00 on this project. The Applicant did not know about the two week look back from January 17, 2014 to January 31, 2014. The final application was submitted in February 2014 after the new setbacks had been passed. On March 12, 2014, the Applicant was notified that a variance would need to be filed. The only affected adjacent property owner is the one to the south of this property.

Mr. Paul Kiss provided testimony and background of what he did in dealing with the City and what the plan does and would look like if the house would be built to the new code. Mr. Kiss provided handouts which showed graphically layouts of both the house proposed under the past setback requirements and the house proposed under the new setback requirements. The house would need to be redesigned to meet the needs of the Gramm family in order to get the same internal square footage. To do that would create a net addition of massing on St. Lawrence Street and would only reduce the massing facing the beach. The impact on the neighbor to the south would be far greater with the redesigned house without the variance.

Mr. Tim O’Hare provided testimony and background of what he did in dealing with the City.

Mr. Jim Gramm, owner of the property, provided testimony and summarized that he did not know the code had changed until February 2014 when Mr. Steve Kordek, Assistant Building Inspector had told him the plans did not comply. He thought that building the house to the original plans would impact less. The redesigned house would be larger in mass. Currently, Mr. Gramm has paid \$61,000.00 to the architect for this project.

There was no correspondence and no public comment.

Mr. Robert Wilson made a motion, seconded by Ms. Myrna Kelley, to grant the variance as requested. (Wilson – for. They have presented a very good case that the problem was really due to a lack of communication which he did not know whose fault it was. It is something that has to be fixed in the future basically. Hilderley – for. This is a very unusual case. Everyone should realize that this is a first one of these types of cases. It is a special consideration that it is on a corner. Public-wise and visually it makes all the difference in the world for the reasoning for enlarging the side setbacks. It was a very well presented and very thoroughly presented case. Obviously, it was very convincing too. Kelley – for. It is clear that it was a culmination of circumstances that caused this, and it is obvious that it was not their intent to violate any code. This is truly a hardship. Popham – for. They made a strong case, and the design as it is now is better than what it would be if they had to redesign it.) Motion carried unanimously.

There being no further business, Ms. Kelley made a motion, seconded by Mr. Popham to adjourn the meeting at 7:50 p.m.

Respectfully submitted,

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
JUNE 23, 2014**

(Clifton Hilderley, Acting Chair)