

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

March 19, 2012

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, March 19, 2012 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

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

Also Present: Mr. Craig Karsnitz, Esq., Board of Adjustment Solicitor

A quorum was present.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the January 30, 2012 Board of Adjustment meeting were distributed prior to the meeting.

Mr. Frank Cooper made a motion, seconded by Mr. Clifton Hilderley, to approve the minutes of the January 30, 2012 meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0112-01. A REQUEST FOR VARIANCE in regard to Section 270-4 of the Municipal Code Rehoboth Beach from the definition of front to allow Country Club Drive to be the front and REQUEST FOR VARIANCE in regard to Section 270-26 to allow a 1.5 foot variance from the 6.0 foot side yard setback requirement for a pre-existing structure and to allow the existing garage to remain in its current location OR in the alternative a REQUEST FOR VARIANCE in regard to Section 270-25 to allow a 5.5 foot variance from the required 10.0 foot rear yard setback for a pre-existing structure and to allow the existing garage to remain in its current location in the front yard. The property is located in the R-1 Zoning District on Lot 2, Block 8 at 232 Country Club Drive. The Variance(s) is being requested by Daniel P. Myers II, Esq. of the law firm Hudson, Jones, Jaywork & Fisher LLC on behalf of Neal B. Zimmerman, Beverly C. Zimmerman and Sharyn T. Santel, owners 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 gave her report with exhibits. (Copy attached.) The Applicant is requesting a Variance from the Section 270-4 definition of front to enable it to consider the Country Club Drive side of the dwelling as the front. If the Sandalwood Street side of the property is considered the front, then the existing garage would rest in the front yard. The Applicant further requests a 1.5 foot Variance from the Section 270-26 six foot side yard setback requirement, or in the alternative a 5.5 foot Variance from the Section 270-25 ten foot rear yard setback requirement. The Applicant also requests a Variance from Section 270-44 to allow the existing garage to remain in its current location. The Applicant does not have any projects pending at this time.

Mr. Daniel P. Myers II, Esq. of the law firm Hudson, Jones, Jaywork & Fisher LLC represented the Applicants and provided testimony in regard to the Variance requests. The Applicants are requesting to either allow Country Club Drive to be the front with a 1.5 foot side yard setback variance from the side yard setback or to hold Sandalwood as the front with a 5.5 foot rear setback variance; and in either case a variance to allow the framed garage to remain in its current location.

- Exhibit A – Copy of Building Permit and Application for Permit dated April 11, 1972. On page 3, the southern boundary line is shown as a straight line as opposed to the survey attached to the Application. A mistake was made when placing the house.
- Exhibit B – Aerial photograph from Google earth of 232 Country Club Drive.
- Exhibit C – Letter from Roderick Hastie, a contiguous neighbor on Country Club Drive – in support of.
- Exhibit D – Copy of Building Permit dated July 10, 1975 to enclose an existing side porch with awning windows. The size of the porch was 8 feet x 16 feet.
- Exhibit E – Copy of Survey referred to by the Building Inspector, showing the back line of the bump-out at 16 feet.

Ms. Sharyn Santel provided additional testimony in support of the Variance.

Correspondence:

1. Letter from Clarke Griffith, 322 Sandalwood Street – in support of.
2. Letter from Mark Saunders, 255 Country Club Drive – in support of.

There was no public comment.

Mr. Hilderley made a motion, seconded by Ms. Myrna Kelley, to grant the Variance to allow the residence to be called Country Club Drive and be the front yard, to grant the 1.5 foot Variance for the bump-out and to grant the Variance to allow the garage to stay where it is. (Hilderley – for. The structure collectively has been there 40 years at least. It would be a shame and a terrible hardship not to grant these motions. Cooper – for. He saw little impact on the community since there is nothing attached to this as actionable other than in law as far as what is technically the front of the property. Evans – for, for the reasons stated by Mr. Hilderley. Kelley – for, for the reasons which have been previously stated. It meets the spirit of what the Board is supposed to be doing here. Popham – for. It has no bearing on the neighborhood, and it will clear up a lot of confusion.) Motion carried unanimously.

Case No. 1111-08. A Motion for Re-argument of the Decision of the Board of Adjustment of the City of Rehoboth Beach reached at its meeting on January 30, 2012. The Decision of the Board was in connection with an Appeal of the Decision of the Building Inspector in regard to Section 270-82 of the Municipal Code of Rehoboth Beach to issue a building permit for residential construction. The property is located in the R-1 Zoning District on Lot 6, Silver Lake Shores at 6 Silver Lane. The Motion for Re-argument was filed by Eugene M. Lawson, Jr., Esq. of The Lawson Firm LLC on behalf of Silver Nine, LLC, Martha Lou Cochran, Save Our Lakes Alliance 3 and Rehoboth Beach Homeowners Association Inc. The property is owned by the Joseph & Veda Levy Trust.

Board of Adjustment Solicitor Craig Karsnitz clarified the nature of the hearing. Rule No. 16 of the Board's Rule of Procedure governs a request for rehearing. "A motion for a rehearing shall be made not later than 10 days after the filing of a decision in the office of the Board of Adjustment. The Board of Adjustment may rehear a matter for the following reasons: (1) Mistake, inadvertent surprise or excusable neglect. (2) Newly discovered evidence which by due diligence could not have been discovered at the time of the original hearing. (3) Fraud, misrepresentation or other misconduct of an adverse party. The Application was filed on February 9, 2012 by Mr. Eugene Lawson, Esq. It is the Board's opportunity and obligation to determine whether any of the grounds set forth in Rule 16.1 are met and whether the Board wants to rehear the matter which was heard originally on January 30, 2012.

Mr. Cooper made a motion, seconded by Ms. Kelley, to grant the motion for rehearing to reconsider the cause.

Chairman Evans had difficulty applying the standard in that this does not in any way address the three issues that allows the Board to grant a rehearing. He could not find anything that fits any of the three arguments. There is no newly discovered evidence, and there has been no case put forward in the document for any mistake or inadvertent surprise or excusable neglect. There is no accusation of fraud, misrepresentation or other misconduct as it pertains to the January 30, 2012 hearing.

Ms. Kelley had difficulty understanding where a mistake in the procedure was made. There was no fraud in this case. Nothing is incomplete or misleading which was alleged in the report. Any reasonable person would have asked if there is a time limit and what should be done. There was no true effort to find out what the time constraints were and what the procedure and rules are.

Mr. Cooper commented that "mistake" is not defined or directed at any party. The mistake is the Board of Adjustment's mistake, not the Appellant's mistake. The Board ruled in error, and therefore a

mistake was made by the Board of Adjustment. The standard by which the Board made its decision was in error. The gravity and complexity of the case should be considered. The Board should make up for the error and hear the case on its merits.

Mr. Hilderley noted that the Board of Adjustment is a quasi-judicial body. Part of its duty is the findings of fact and conclusions of law. It is not a mistake that the Board did what it did. It is an opinion of the beholder who wants the Board to rule the other way. The arguments are totally void of fact. There were no facts stated about mistake, newly discovered evidence or fraud.

(Hilderley – against. No compelling arguments were made. No facts were given. The Board of Adjustment does not respond to lectures, opinions and briefs presented to it. Cooper – for. The Board of Adjustment erred in its previous decision; and therefore should reverse it. Evans – against, for the same reasons as stated by his colleagues particularly Mr. Hilderley and Mr. Popham. No case was made that was compelling for him. Kelley – against, for the reasons she previously stated. Even as late as September 2011 had she been one of the supposedly aggrieved parties, she would have pursued finding out what would be involved with submitting a Board of Adjustment appeal. Popham – against. Of the three items listed in Rule 16.1, there was nothing presented for items 2 and 3. No mistake was made.) Motion to grant failed.

OTHER BUSINESS

Consideration of date for Board of Adjustment Meeting to be held in May 2012.

The consensus of the Board was for the next Regular Meeting to be held on May 21, 2012 at 7:00 p.m.

There being no further business, Chairman Evans declared the meeting adjourned at 8:00 p.m.

Respectfully submitted,

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
APRIL 23, 2012**

(Clifton Hilderley, Acting Chairman)