

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

March 22, 2010

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 22, 2010 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. Paul Flexer
Mr. Clifton Hilderley

Also Present: Mr. Craig Karsnitz, Esq.

A quorum was present.

CORRESPONDENCE

Decision, dated March 8, 2010, from Superior Court of the State of Delaware regarding Silver Nine, L.L.C. vs. Board of Adjustment of the City of Rehoboth Beach. Board of Adjustment Solicitor Craig Karsnitz noted that this was an appeal of the decision of the Building Inspector as to what the homeowner could or could not do with a bulkhead, and more specifically where it could be placed. The decision was received from Judge E. Scott Bradley affirming everything that the Building Inspector had done and what the Board of Adjustment had done in response to that.

APPROVAL OF MINUTES

Minutes of the December 14, 2009 Board of Adjustment meeting were distributed prior to the meeting.

Mr. Clifton Hilderley made a motion, seconded by Ms. Myrna Kelley, to approve the minutes of the December 14, 2009 meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0210-01. REQUEST FOR A VARIANCE in regard to Section 270-21(A) of the Municipal Code of Rehoboth Beach, to allow the replacement of two existing non-conforming buildings with one storage building of 500 square feet which would allow the maximum area for an accessory structure to exceed 10%. The property is located in the R-2 Zoning District on Lot 7 at 7 Brooklyn Avenue. The Variance is being requested by Vincent G. Robertson, Esq. of Griffin & Hackett, P.A. on behalf of Fasnacht Realty Co., owner of the property. Chairman Evans read the reasons for granting a Variance from Section 270-74 of the Zoning Code and noted the Public Hearing procedures for both cases.

Building Inspector Terri Sullivan gave her report with exhibits. (Copy attached.)

Mr. Vincent G. Robertson, Esq. represented Fasnacht Realty Co., owner of the property. Mr. Al Fasnacht and Mr. Bill Henschke, both members of the Fasnacht family, were in attendance at the meeting. Testimony was provided by Attorney Robertson to allow the Variance. Mr. Henschke verified the correctness of the testimony.

Appellant Exhibit submitted at meeting:

1. Thirteen photographs of the 7 Brooklyn Avenue property and surrounding properties.

Correspondence:

1. Letter dated March 11, 2010 from Michael Wenzel, 10 Brooklyn Avenue – in support of.

There was no public comment.

Mr. Hilderley made a motion, seconded by Mr. Doug Popham, to grant the Variance requested in accordance with the evidence received and the plat showing the location, and with the understanding received about the 12 foot height. (Popham – for, because having walked around the two sheds, he wondered how business could be done out of them anyway. Kelley – for, because it is an overall improvement with what is trying to be done; and because of the uniqueness of the neighborhood and the location, she thought it was fine to give relief on the square footage. Evans – for, for the same reason because it is a practical difficulty; and this relief is warranted. Flexer – for, because it will improve the area; and there is no objection from the neighbors. Hilderley – for, because 3% over the allowable square footage is minimal; and not to grant the Variance for the reasons and the evidence received, would not be conscionable.) Motion carried unanimously.

Case No. 0210-02. REQUEST FOR AN APPEAL OF THE DECISION OF THE BUILDING INSPECTOR in regard to Section 270-35 of the Municipal Code of Rehoboth Beach, requiring that the residential dwelling units have two off-street parking spaces. The property is located in the C-3 Zoning District on Lot 21 at 21 Baltimore Avenue. The Appeal of the Decision of the Building Inspector is being requested by John Sergovic of Sergovic & Carmean, P.A. on behalf of Mohammad (Richie) Shihadeh, owner of the property.

Building Inspector Terri Sullivan gave her report with exhibits. (Copy attached.)

Mr. John Sergovic, Esq. of Sergovic & Carmean represented Mr. Mohammad (Richie) Shihadeh, owner of the property. Testimony was provided by Attorney Sergovic to allow the Appeal of the Decision of the Building Inspector. Additional testimony was provided by Mr. Mohammad (Richie) Shihadeh.

Appellant Exhibit submitted at meeting:

1. Legal Memorandum dated March 19, 2010, from John A. Sergovic, Jr., Esq. to Rehoboth Beach Board of Adjustment and Email dated August 18, 2008, from Susan Frederick, AIA of GMB to Pauline Porter.
2. Copies of outside layout and patio at the Camel's Hump Restaurant from ABCC, dated June 5, 2008.
3. Final copy of the key and floor plan of the Camel's Hump Restaurant, not dated, which was submitted to the City.

Witness testimony was provided by Ms. Sabrina Derrickson Hill, a former employee whose address is unknown, Ms. Pauline Porter, a realtor with Remax whose address is unknown, and Mr. Terry Plowman, co-owner of Front Page Restaurant at 52 Baltimore Avenue.

Affidavit of prior patron or employee indicating there was a patio dining area:

1. Affidavit dated February 25, 2010, from Lynne A. Burgess, address unknown.

Affidavits of prior patrons and employees indicating there was a patio dining area on the driveway:

1. Affidavit dated February 25, 2010, from Marie Miller, address unknown.
2. Affidavit dated February 25, 2010, from Patricia Ann Miller Keghayes, address unknown.
3. Affidavit dated February 25, 2010, from Zouheir Kanjo, address unknown.
4. Affidavit dated February 25, 2010, from Fadi Aswad, address unknown.
5. Affidavit dated February 25, 2010, from Hassan Batikha, address unknown.
6. Affidavit dated February 26, 2010, from R. Terry Plowman, address unknown.
7. Affidavit dated March 4, 2010, from Kathryn Sheats, address unknown.

Correspondence:

1. Letter dated March 8, 2010, from John Shedletsky, 22 Maryland Avenue – in opposition to.

Public Comment:

1. Ms. Julia Monaghan, address unknown and employee of Camel's Hump Restaurant from 1996-2005 – in support of.
2. Ms. Beth Heid, address unknown and employee of Camel's Hump Restaurant from 1989-2001 – in support of.
3. Mr. Samir Ghaern, Rehoboth – in support of.
4. Ms. Michele Cabbage, Executive Director for the Rehoboth Theater of the Arts – in support of.
5. Ms. Norma Lee Burton Derrickson – in support of.

Mr. Hilderley made a motion, seconded by Mr. Paul Flexer, to overturn the Decision of the Building Inspector in favor of the Applicant.

Mr. Hildeley made the motion as if the same motion was made and the same variance was granted for relief in 2002 when the statute changed to clarify the requirement that an apartment such as on this property required off-street parking.

(Popham – for, for the reasons stated. Kelley – for, because we startled ourselves with the ambiguity of the communication and documentation. She felt that in these hard times, we want to do our best to encourage people with the hardship shown. Evans – for. Flexer – for, based on what Mr. Hilderley has stated; and the public is in favor of this restaurant. Hilderley – for, because the evidence is very complicated and very clear; but it absolutely leads to the conclusion that the intent of the owner was firm, clear and consistent through the years to use that as a dining patio. There seemed to be no question and no challenging of the owner or the parking problem at that time. As one of the witnesses pointed out, there were no changes made to the building. The intent to use that as a patio was not abandoned. The permits are still in force.) Motion carried unanimously.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans declared the meeting adjourned at 9:00 p.m.

Respectfully submitted,

(Ann M. Womack, Recording Secretary)

**MINUTES APPROVED ON
APRIL 26, 2010**

(Thomas A. Evans, Chairman)