

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

April 23, 2012

The Board of Adjustment Meeting of the City of Rehoboth Beach, was called to order at 7:01 p.m. by Acting Chairman Clifton Hilderley on Monday, April 23, 2012 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Ms. Myrna Kelley
Mr. Frank Cooper
Mr. Clifton Hilderley

Absent: Mr. Doug Popham
Mr. Thomas Evans

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

A quorum was present.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the March 19, 2012 Board of Adjustment meeting were distributed prior to the meeting.

Mr. Frank Cooper made a motion, seconded by Ms. Myrna Kelley, to approve the minutes of March 19, 2012 meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0312-02. A REQUEST FOR VARIANCES in regard to Section 270-25, 270-26 and 270-46.2 of the Municipal Code Rehoboth Beach to install a new portion of retaining wall at the property line. The property is located in the R-1 Zoning District on Lot Nos. 30 & 31, Block 27 at 102 New Castle Street. The Variances are being requested by Richard and Katherine Minutella, owners of the property.

Building Inspector Terri Sullivan gave her report with exhibits. (Copy attached.) The property has a retaining wall on both sides. The easterly retaining wall steps in 4.3 feet from the property line. Prior to the demolition of the home, there were two (2) three inch dogwood trees in the space between the property line and the retaining wall. A tree permit was issued to remove the two trees. On December 16, 2011, an ordinance was passed adopting Section 270-46.2. The Applicant is requesting a Variance from Section 270-46.2 so that they may build the retaining wall at the property line. The wall which existed at the time the demolition permit was issued has since been removed. The elevation and exact location of the wall is not noted on the attached surveys. In addition to the Variance from Section 270-46.2, they will need Variances of 10 feet from Section 270-26 – Side Yards and 10 feet from Section 270-25 – Rear Yards.

City Solicitor Glenn Mandalas was in attendance at the meeting and provided additional testimony.

Mr. Richard Minutella, owner of the property, provided testimony in support of the Variance requests. The reasons for the variance requests are due to safety and erosion. Adjacent property owners have not expressed any dissatisfaction or any concerns with correcting the issues of the retaining wall going to the back of the property.

There was no correspondence and no public comment.

Mr. Cooper made a motion, seconded by Ms. Kelley, to grant the Variances as requested.

Mr. Cooper said that the new law is clear as to what is acceptable, and that would be the replacement

of an existing wall. The existing wall does not make much sense. This is the kind of decision that the Board of Adjustment is designed to make, to look at things and see if they make sense or not, whether this in the spirit or the letter of the law. His concern is for the neighbors, and this is a benefit to both adjoining neighbors. This is a good reason for a Variance.

Ms. Kelley understood what the intent is and what was trying to be avoided with regard to the codification of replacing retaining walls. There are quite a few properties with retaining walls in the older part of the City, and it can be very dangerously taken advantage of if there are no restraints in place. She had gone to the property today and saw the various issues with the drainage ponds and water puddling. The Variances should be granted for the logical health and safety reasons that are presented by the changes in elevation. The percentage of the overall lot probably affected by the L-area is small compared to what it could have been if a much greater area was asked for. She was inclined to grant the Variances with the thought in mind that because of the proportion and drainage the Applicant has made a good point in this issue.

Mr. Hilderley said that the change in the ordinance in December 2011 recognizes that there is a likelihood that the requirement for rebuilding retaining walls will come up from time to time. It does read specifically on replacing retaining walls in place and rebuilding the existing ones so there is a clear recognition of the need at some point to replace retaining walls. It would be a very practical difficulty to do anything other than moving the retaining the wall as requested by the Applicant. Mr. Hilderley saw no harm and only logic involved in getting rid of the pit. It makes sense to add the extra 19 feet across the south side because the Applicant explained the contour of the land and the drainage problem. If there was a need for a retaining wall in the first place, there certainly is a need for a retaining wall now. It makes sense to do what the Applicant has requested and move the retaining wall and add the extra 19 feet.

(Cooper – for, as a benefit to adjoining neighbors. Hilderley – for. It would be very impractical and a hardship not to grant the Variances that have been requested. Kelley – for, for the previously stated reasons of health, safety and drainage.) Motion carried unanimously.

Mr. Hilderley acknowledged that the Board's intent is that the height of the retaining wall will be in kind to what is currently there now.

Case No. 0312-03. An APPEAL OF THE DECISION OF THE BUILDING INSPECTOR in regard to Section applicable dimensional requirements of the zoning district OR in the alternative a REQUEST FOR VARIANCE in regard to Section 270-26 to allow a 5' x 5' section of a new porch to encroach into the 16 foot aggregate requirement by 4.8 feet. The property is located in the R-1 Zoning District on Lot No. 112 Henlopen Avenue and Lot No. 87 Columbia Avenue. The address of the property is 112 Henlopen Avenue. The Appeal of the Decision of the Building Inspector or Variance is being requested by James A. Fuqua, Jr. Esq. of the law firm Fuqua, Yori and Willard, P.A. on behalf of Joseph and Diane Andrews, owners of the property.

Building Inspector Terri Sullivan gave her report with exhibits. (Copy attached.) On December 14, 2011, a permit was issued for a 1,751 square foot addition to an existing two-story detached single-family dwelling. The addition was added to the rear of the existing home with some changes to the second floor dormers and renovations. Most of the addition was to the rear of the existing home and met the required 6 foot side yard setback with an aggregate total of 16 feet. The screened porch which is set at 6'-2" from the property line, should have been required to be set at 11 feet from the property line since a 5 foot section of the existing house is 5 feet from the property line opposite the screened porch. A permit was issued to allow the owners to build an addition. There was an error in the calculation which permitted a 5' x 5' area of the proposed addition to encroach into the 16 foot aggregate side yard setback requirements. Three options were made available to the property owners to correct this issue: 1. Remove the 5' x 5' section from the new screened porch. 2. Remove a 5' x 5' section from the existing space opposite the new screened porch. 3. Apply to the Board of Adjustment for a variance. City Solicitor Glenn Mandalas provided additional testimony.

Mr. James A. Fuqua, Jr. Esq. of the law firm Fuqua, Yori and Willard, P.A. represented Joseph & Diane Andrews, owners and provided testimony in support of the Variance requests. In regard to the Appeal, the language of Section 270-50(B) permits a legal non-conforming structure devoted to a conforming use to be extended provided the extension conforms to the applicable setback requirements. The language is plain and must be applied in accordance with its terms. In this matter, the required side yard setback is 6 feet with an aggregate side yard setback of 16 feet. The extension as constructed meets the requirements of 6 feet minimum side yard setback and the 16 feet aggregate side yard setback, and conforms to the requirements of Section 270-50(B). If the decision of the Building Official is reversed, no variance is needed and the extension conforms to the side yard setback Zoning Code requirement. A Variance of 4.8 feet should be approved from

the required 16 foot aggregate feet in width. The area of the variance is minimal being 5 feet in depth and 4.8 feet in width. The portion of the home in front of the variance area has an existing legal non-conforming side yard setback of 1.2 feet. The area to the rear of the variance area has a legal side yard setback of 6.2 feet. To require the owner to remove a 4.8 feet x 5 feet section of the porch to create an 11 foot side yard setback would be inconsistent with the architectural design, would limit or destroy the reasonable use of the porch, would serve no benefit and would result in expense and exceptional practical difficulties to the owners. The application presents an exceptional situation where the improvements were constructed in accordance with the building plans and building permit approved by the City. Approving the Variance is consistent with the spirit of the ordinance and results in fairness and justice.

- Exhibit A – Survey of pre-existing home.
- Exhibit B – Architectural plan for addition.
- Exhibit C – Plan Review Narrative dated November 28, 2011
- Exhibit D – Building Permit dated December 1, 2011 and issued December 14, 2011
- Exhibit E – Notice of setback violation letter dated February 29, 2012
- Exhibit F – Site plan showing variance area.
- Exhibit G – Section 270-50(B) of Rehoboth Beach Zoning Ordinance
- Exhibit H – Letter to Building Inspector from Attorney Fuqua dated March 16, 2012
- Exhibit I – Photograph of area in question

Mr. Randy Burton, Burton Builders, Mrs. Diane Andrews and Mr. Joseph Andrews were in attendance at the meeting and provided additional testimony.

Public Comment:

1. Mr. Walter Brittingham, 123 Henlopen Avenue – in support of.

Correspondence:

1. Letter dated April 6, 2012 from Robert & Jeanie Harper, 120 Henlopen Avenue – in opposition to.
2. Letter dated April 12, 2012 from Lynne Bowman, 110 Henlopen Avenue – in opposition to.

Ms. Kelley made a motion, seconded by Mr. Cooper, to grant the Appeal of the Decision of the Building Inspector as requested.

Ms. Kelley said that it is obvious a mistake was made which is a term the Board has been hearing a lot of lately. There certainly is hardship shown here. Those two standards have been met.

Mr. Cooper thought that while an addition must be in compliance, there are certainly situations where the Board can overrule the Building Inspector where she would not be able to keep people from adding much larger additions which violate the setbacks when added to an existing property. While the addition itself may have been in compliance, the portion which overlaps the existing building creates a non-compliant situation which sets a precedent that makes the setbacks virtually meaningless. If anybody is allowed to add an addition to a non-complying building and not comply with the 16 foot aggregate, then there is no rule. The Building Inspector is absolutely correct in her interpretation of the law.

Mr. Hilderley defended the Building Inspector. Mistakes happen inadvertently or for whatever reason. This is beside the point and is not at issue here at all. It is not something the Board should be taking into consideration. It is the finding of the facts of the situation and applying the building code to the facts that the Board has determined and the ones which have been presented to it, not ones that are not presented to it. Mr. Hilderley agreed with Attorney Fuqua in his interpretation of the Code. He cannot in good conscience interpret it any other way. It is absolutely clear that the intent was that it is to be limited to the extension as presented as to what wants to be added and what wants to be extended. That is the yellow portion of the drawing regardless of the fact that it is a non-conforming structure. The addition, the extension conforms with the requirements of the Code. Mr. Hilderley could not interpret it any other way in his mind.

(Cooper – against. The Building Inspector correctly interpreted the situation. It sets a precedent that will make it very hard for the Building Inspector to keep other additions from grossly violating the 16 aggregate setback. Hilderley – for. He saw any problem with the setback as being minimal. It is very minor. He agreed with the argument that the Code is clear that the extension, if it conforms to the dimensional requirements of the Code, is a case for allowing a variance and can be done. Kelley – for. There is disagreement on the error situation; however, she felt that the whole issue of the wording of the Code is such that the appeal should be allowed to stand as requested.) Motion carried. Board of Adjustment Solicitor Craig Karsnitz said that the motion needed

to have three votes to carry action by the Board.

Mr. Cooper made a motion seconded to Ms. Kelley to grant the Variance of the required 16 foot aggregate setback. (Cooper – for. He is inclined to listen to impact of neighbors as he professes what is in the laws which are often about protecting other people, the neighbors from wishes inflicting on their rights as property owners. Neither of the letters really addressed specifics very well. This does not seem to make a good case that their rights have been violated. He saw hardship here. The owners were granted a building permit in good faith, and built on that. Mr. Cooper visited the property. Obviously, a very good job was done in trying to create a property that matches with the other house. There is not any slightest bit of abusiveness in this design. There is not any trying to take advantage of anything. He did not see any malice or abuse at all or anything that would make a case for the neighbors who complained. He would vote for the Variance of the 16 foot aggregate setback and to allow the plan as originally submitted to be built. Kelley – for. The Board should address this in the way that it is moving now. She did not know that two people could not pass this or she would have stated the motion differently. The Board should grant the Variance. Hilderley – for. Initially he thought they requested the difference is minimal. This has nothing to do with any mistakes made by the Building Inspector. The case was made that there is a hardship. It is an exceptional case. The variance of the 16 foot aggregate is *de minimis*. The Board should grant the Variance.) Motion carried unanimously.

OTHER BUSINESS

There was none.

There being no further business, Acting Chair Hilderley declared the meeting adjourned at 8:29 p.m.

Respectfully submitted,

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
JUNE 25, 2012**

(Clifton Hilderley, Acting Chairman)