

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

April 26, 2010

The Board of Adjustment Meeting of the City of Rehoboth Beach, was called to order at 7:10 p.m. by Chairman Thomas Evans on Monday, April 26, 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. Clifton Hilderley

Also Present: Mr. Craig Karsnitz, Esq.

A quorum was present.

Mr. Paul Flexer tendered his resignation after the last meeting.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the March 22, 2010 Board of Adjustment meeting were distributed prior to the meeting.

Ms. Myrna Kelley made a motion, seconded by Mr. Clifton Hilderley, to approve the minutes of the March 22, 2010 meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0310-03. REQUEST FOR A VARIANCE in regard to Sections 270-4 and 270-25(A) of the Municipal Code of Rehoboth Beach, to allow the installation of a dry lay flagstone patio in the rear yard to three (3) feet from the rear property line. The property is located in the R-1 Zoning District on Lot 122 and a portion of Lot 124 at 122 Henlopen Avenue. The Variance is being requested by Samuel Blake, owner 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.

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

Mr. Samuel Blake, owner of the property, provided testimony to allow the Variance.

No correspondence was received.

Public Comment:

1. Ms. Jeanne Harper, 120 Henlopen Avenue, asked if the three foot berm is enough to absorb the water runoff. Chairman Evans said that engineering studies would need to be done.
2. Walter Brittingham, 123 Henlopen Avenue, said that if the variance is approved, it should have conditions to handle the drainage from the roof.

Mr. Hilderley made a motion to grant the request for a Variance. Motion failed to gain a second.

Ms. Kelley made a motion, seconded by Mr. Doug Popham to deny the request for a Variance.

Chairman Evans said that what the Applicant has stated on his own behalf for the hardship, does not rise high to what the Board of Adjustment has accepted for that same issue in the past. It was not a compelling argument.

Mr. Popham said that the opportunity was there to bring the house forward to create back yard space.

Ms. Kelley felt duty bound as a member of the Board of Adjustment to exercise her interpretation of how the Code should be enforced. It is unfortunate that this could not have been thought of and part of the original house plans so that the applicant would have known earlier that this was not going to be looked upon favorably, and maybe made some adjustments earlier on so that this would not be a case like this.

Mr. Hilderley said that the Board of Adjustment is not an architectural design committee, and it does not tell people how to design their houses in order to place them on their lots. The Board's job is to find facts and apply the law to those facts. The issue before the Board is whether or not the wording of the Code applies to what the Applicant has requested. The Building Inspector interpreted the Code to mean some dirt and lumps applied to the top of a surface of land, is a structure. Mr. Hilderley cannot think that this is a structure when every one of these items in the Code is something that has to be designed, built, manufactured, etc. There is a radical difference to what the Applicant wants to do.

(Popham – aye, for the reasons stated. Kelley – aye based upon her previous statement and the fact that she did not feel sufficient hardship has been shown in this case. Evans – aye, because the Applicant has not made a case for hardship that he believes rises to the occasion of overturning the motion. Hilderley – opposed because there is no logical reason, fact or law to deny the Applicant's request.) Motion carried.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans declared the meeting adjourned at 7:52 p.m.

Respectfully submitted,

(Ann M. Womack, Recording Secretary)

**MINUTES APPROVED ON
JUNE 28, 2010**

(Thomas A. Evans, Chairman)