

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

June 25, 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, June 25, 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 in attendance: Mr. Craig Karsnitz, Esq., Board of Adjustment Solicitor

Mr. Steve Smith, Esq. of the law firm Baird Mandalas LLC was in attendance at the meeting due to the absence of City Solicitor Glenn Mandalas.

A quorum was present.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the April 23, 2012 Board of Adjustment meeting were distributed prior to the meeting.

Mr. Frank Cooper made a motion, seconded by Mr. Doug Popham, to approve the minutes of April 23, 2012 meeting as written. (Popham – aye, Kelley – aye, Evans – abstained, Cooper – aye, Hilderley – aye.) Motion carried.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0512-04. A REQUEST FOR VARIANCE in regard to Section 270-66 of the Municipal Code of Rehoboth Beach to allow the Rehoboth Beach Volunteer Fire Company Inc. to replace an existing Sign Message Board with a LED Sign Board. The property is located in the C-1 Zoning District at 219 Rehoboth Avenue on Lot Nos. 65, 67, 69 & 71 Rehoboth Avenue. The Variance is being requested by Daniel Mitchell on behalf of Rehoboth Beach Volunteer Fire Company Inc., owner of the property. For both cases, 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. The existing sign can continue to exist as an existing non-conforming sign. Once the sign is removed, a new changeable copy sign would not be permitted to be installed without a variance. The Fire Company president has stated that the sign would be used for fundraising and public service information. The only concern would be if the sign would be placed on blinking mode which could be a distraction for traffic. It is not the Fire Company's plan to have scrolling messages. The message would be stationary which could be changed without having to go on the roof. The City's regulations are that no blinking signs are allowed.

Mr. Daniel Mitchell, Sign Committee Chairman of Rehoboth Beach Volunteer Fire Company Inc. provided testimony in support of the Variance. The president, secretary and treasurer of the Fire Company were also in attendance at the meeting. The sign is deteriorated and needs to be replaced. The existing sign is a safety concern because personnel have to climb on top of the foyer to change the information. Installing the new sign would allow it to be changed randomly. The sign would be used for fundraising, public safety messages and weather service alerts. When there is inclement weather, blinking lights may possibly be used to alert the public. A computer inside the building would control the messages on the sign.

There was no correspondence and no public comment.

Mr. Clifton Hilderley made a motion, seconded by Mr. Cooper to grant the Variance requested for the new sign for the Fire Company building. (Hilderley – for. This is a great public service, and it is admirable that the Fire Company is doing this. Cooper – for, for the same reasons. Evans – for, for the same reason as his colleagues. Kelley – for. Assuming that the guidelines discussed would be followed. Popham – for, for the same reasons.) Motion carried unanimously.

Case No. 0512-05. An APPEAL OF THE DECISION OF THE BUILDING INSPECTOR in regard to Section 270-35 of the Municipal Code of Rehoboth Beach that a hotel or its units are dwellings OR in the alternative a REQUEST FOR VARIANCE in regard to Section 270-35 to relocate ten parking spaces to a separate lot from the hotel to allow necessary revisions and improvements to occur at the hotel AND a REQUEST FOR VARIANCE in regard to Section 270-21 to allow the construction of a Porte Cochere or covered driveway over the Wilmington Avenue entrance. The property is located in the C-1 Zoning District at 110 Rehoboth Avenue on Lot Nos. 32 & 34 Rehoboth Avenue and Lot Nos. 31 & 33 Wilmington Avenue. The Appeal and/or Variance(s) are being requested by Vincent G. Robertson, Esq. of the law firm Griffin & Hackett P.A. on behalf of Avenue Associates LLC and White Clay Holdings LLC, owners of the property.

Ms. Sullivan gave her report with exhibits. With regard to the appeal of the decision of the Building Inspector regarding the parking requirements for the hotel, the applicant wishes to move ten (10) parking spaces to a separate lot so that they may renovate and expand the lobby area of the hotel. The Building & Licensing Department has always interpreted a hotel room to be a dwelling and as such the parking is required on the same lot as the hotel unless a variance is granted. The proposed plan shows a parking space on the east side of the property that would require backing directly into the public road. She has not found this parking space to be safe for pedestrian traffic. As it is shown on the plan, this parking space does not meet the current Code. The Appellant's attorney has stated that this issue would be addressed. With regard to the second variance request from Section 270-21 to allow the construction of a porte cochere over the Wilmington Avenue entrance, the allowed Floor Area Ratio (FAR) is 39,720 square feet. The existing hotel's FAR is 3.3 and with the proposed addition of the porte cochere, the FAR would 3.17.

Mr. Vincent Robertson, Esq. of the law firm Griffin & Hackett P.A. represented Avenue Associates LLC and White Clay Holdings LLC, owners of the property, and he provided testimony in support of the Appeal request. He noted that the parking space in question was deleted from the plans which were presented at the meeting. Attorney Robertson distributed a booklet with exhibits to the Board of Adjustment. The booklet contained the following exhibits:

1. Opinion letter, dated June 25, 2012, from Attorney Robertson to Board of Adjustment explaining the basis for the parking appeal.
2. Twelve (12) photographs of site and surrounding properties owned by the Appellant.
3. Hotel design drawings.
4. Site plan for parking at 39 Wilmington Avenue.
5. Parking lease agreement.
6. Comprehensive Development Plan (CDP) Executive Summary.
7. Letter dated June 21, 2012 from Annmarie Westerfield, Executive Director of Rehoboth Beach Main Street to Board of Adjustment.
8. Proposed findings of fact for parking variance.
9. Proposed findings of act for porte cochere variance.

Chairman Evans called for a recess at 7:30 p.m. in order for the Board of Adjustment to review the documents submitted at the meeting by Attorney Robertson. The meeting resumed at 7:35 p.m.

There was no public comment.

Correspondence:

1. Letter dated June 21, 2012 from Annmarie Westerfield, Executive Director of Rehoboth Beach Main Street – in support of.
2. Letter dated June 18, 2012 from John G. Kleitz, Jr., General Manager of Brighton Suites Hotel – in support of.

Mr. Hilderley made a motion, seconded by Mr. Cooper, to grant the Appeal and determine that the Hotel not be considered a dwelling.

Mr. Hilderley said that the definition of dwelling is very restrictive and confusing. A hotel is a lot more than a dwelling where a person lives. A dwelling as defined in the Code is very restrictive when compared with what a hotel is.

Mr. Cooper thought this would be better handled as a variance. He was uncomfortable with handling this as an appeal.

Mr. Evans agreed. What has been presented this evening and not giving time to read and think about this information, did not put him in a good frame of mind to vote in favor of the motion.

Attorney Smith believed that the ambiguity is somewhat overstated. The definition of dwelling is well-stated and beyond the obvious. The discussion of dwelling unit maybe that there are no units in a hotel. The definitions of hotel, motel or inn covers what the parking requirements are and that requires one space per rental unit and two for the residents. He did not see any ambiguity to complain of; and for that reason, the appeal should be denied without any opinion as to whether a variance should be granted.

Mr. Hilderley said that a dwelling and a hotel are the same or they are not the same.

(Hilderley – for. There are two differences. Hotel is one thing and a dwelling is another thing. Cooper – against, for the points he made earlier. This could lead to further ambiguity and would be better addressed as a variance. Evans – against. Kelley – against. She was aware of the initial, broad definition of dwelling, and she could not find herself granting an appeal given that verbage. Popham – for. There is a definite difference between a hotel and a dwelling.) Motion failed.

Attorney Robertson provided testimony in favor of the Variance requests for parking and the porte cochere. The discussion on ambiguity regarding the parking calculation is the basis for a hardship or exceptional practical difficulty. The CDP has the force of law, and it mandates a revitalization of Wilmington Avenue. Parking will not be increased. It will be shifted around. This plan will improve the appearance, and the safety and traffic flow on Wilmington Avenue. It will eliminate the bottleneck of cars, guests, bikes, etc. in the interior space as well as the rear when backing up on Wilmington Avenue. This project would be a major step towards revitalization of Wilmington Avenue. The porte cochere creates a defined entrance for the hotel property.

Mr. Ken Simpler, Jr., fourth generation owner of the property and Mr. Jack Mumford of Becker Morgan Group provided testimonies in favor of the Variance requests for parking and the porte cochere.

Attorney Robertson highlighted the proposed findings of fact for the parking variance: 1. Relocate ten (10) parking spaces from inside the Avenue Inn building to 39 Wilmington Avenue. 2. Recognizes the current parking practices of the Avenue Inn which directs parking to other lots owned by the Applicants along Wilmington Avenue. 3. Removal of parking spaces from within the hotel building eliminates an unworkable situation; The lobby entrance with cars, luggage, guests and their children are confined to one cramped interior space. 4. Allow the establishment of one clearly defined entrance to the hotel, eliminating confusion and traffic bottlenecks on Wilmington and Rehoboth Avenues. 5. Relocates parking to existing parking lots, therefore there is no adverse impact upon neighboring properties. 6. Necessary to comply with the directives of the CDP to improve properties and streetscape along Wilmington Avenue. 7. Literal interpretation of the Code will create an unnecessary hardship or exceptional practical difficulty in that it will not allow the improvements to the Avenue Inn to address existing and ongoing safety concerns, traffic concerns, design and function improvements and the City's directive to revitalize, redevelop and improve Wilmington Avenue properties. 8. Minimum relief necessary to maximize goals of improving the current circumstances and complying with the CDP. 9. Rehoboth Beach Main Street has supported the variance application and the redevelopment plans for the Wilmington Avenue façade of the Avenue Inn. 10. Because the variance is minimal and recognizes the current and ongoing parking uses on other lots, and because it complies with the directives of the CDP, substantial justice is done and the variance does not impair the intent and purpose of the City Zoning Code. The highlights of the proposed findings of fact for the porte cochere are: 1. Allow 700 square feet or additional covered area in the form of a porte cochere or covered entrance to the Avenue Inn. This would result in an increase of .04 in the FAR, from 3.13 to 3.17. 2. Allow the establishment of one clearly defined entrance to the hotel, eliminating confusion and traffic bottlenecks on Wilmington and Rehoboth Avenues. 3. No. adverse impact on neighboring properties, property values or the Wilmington Avenue area. Instead, this will affect the properties in a positive way based upon the planned improvements to the hotel façade. 4. Necessary to comply with the directives of the City's CDP to improve the properties and streetscape along Wilmington Avenue. 5. A literal interpretation of the Code will create an unnecessary hardship or exceptional practical difficulty in that it will not allow the improvements to the Avenue Inn to address existing and ongoing safety concerns, traffic

concerns, design and function improvements and the City's directive to revitalize, redevelop and improve Wilmington Avenue properties. 6. Minimum relief necessary to maximize the goals of improving the current circumstances and complying with the CDP. 7. Rehoboth Beach Main Street has supported the variance application and the redevelopment plans for the Wilmington Avenue façade of the Avenue Inn. 8. Because the variance is minimal and recognizes the current and ongoing parking uses on other lots, and because it complies with the directives of the CDP, substantial justice is done and the variance does not impair the intent and purpose of the City Zoning Code.

Ms. Sullivan said that the 3.17 FAR would be the approved amount.

Public Comment:

1. Tim Hardwick, 35 & 37 Wilmington Avenue – in support of.

Ms. Myrna Kelley made a motion, seconded by Mr. Popham, to approve the requested Variance to move ten (10) parking spaces and approve the requested Variance to include the FAR of 3.17.

Mr. Cooper said that there is assurance the City has the wherewithal to enforce the parking spaces. This is a great for pedestrian safety. This will put cars in a more visible area, creates better traffic flow and is also cooperative with the CDP.

(Hilderley – for. He wanted to associate himself with counsel's finding of fact except for some embellishments that were very accurate. Cooper – for. It improves pedestrian safety and furthers the CDP. Evans – for, for the same reasons as his colleagues. It is a great improvement and this is the way to do it. Kelley – for, for the minimum impact it has on FAR and the fact that it is a great improvement for Wilmington Avenue. Popham – for. Originally, he was concerned about the relocating of parking, and that has been addressed. Pedestrian traffic along Wilmington Avenue on the north side of the street has been improved.) Motion carried unanimously.

OTHER BUSINES

There was none.

There being no further business, Chairman Evans declared the meeting adjourned at 8:35 p.m.

Respectfully submitted,

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
SEPTEMBER 24, 2012**

(Thomas A. Evans, Chairman)