

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

June 27, 2011

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 Thursday, May 12, 2011 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 May 12, 2011 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 the May 12, 2011 meeting as written. Motion carried unanimously.

NEW BUSINESS

Request for a Rehearing of **Case No. 1110-11** by Darius Mansoor of Stingray Rock, LLC. Chairman Evans stated the rules of procedure for the rehearing. Rule 16.1 of the Rules of the Board of Adjustment allows a motion for a rehearing to 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.

Mr. John Paradee, Esq. of the law firm Prickett, Jones & Elliott, P.A., represented Mr. Darius Mansoor of Stingray Rock LLC, provided testimony for the request for a rehearing. In this particular case, Stingray Rock LLC contended that the Board of Adjustment should rehear its appeal and application for a variance on the grounds of (1) excusable neglect and (2) mistake. At the time of the Board's May 12, 2011 hearing on the application, Attorney Paradee was unavailable, and Mr. Mansoor proceeded on his own to be heard. In regard to the second grounds, Attorney Paradee noted that the standard for an area variance as opposed to a use variance is not undue hardship; it is exceptional practical difficulty. At the May 12, 2011 hearing, Mr. Mansoor was asked to explain what his undue hardship was. This would be the legal standard for a use variance. Attorney Paradee explained the differences between use and area variances. The standard to which Mr. Mansoor was held on May 12, 2011 was not the correct standard; and had the Board been apprised that the standard was exceptional practical difficulty, he could have demonstrated exceptional practical difficulty. The language of Rule 16.1 is identical to Rule 60(B) of the civil rules of the Superior Court of the State of Delaware relating to a motion for relief from judgment. Case law which has interpreted that standard says the rule should be liberally construed in any case involving substantive rights and should be resolved in favor of granting the motion. The other point that the case law makes is that it is important whether or not any particular party is going to be prejudiced. Attorney Paradee noted that there is no prejudice in this particular case before the Board.

Chairman Evans noted that both himself and Solicitor Craig Karsnitz had remembered Chairman Evans asking the question about hardship and Attorney Karsnitz commented about exceptional practical difficulty.

Solicitor Karsnitz said that if the Board allows this case to be reheard, there would be prejudice which would allow any applicant to be reheard if he presents himself without an attorney.

City Solicitor Glenn Mandalas noted that the City does not take a position on this case.

Mr. Clifton Hilderley made a motion, seconded by Mr. Popham, to not accept the request for rehearing before the Board of Adjustment.

Mr. Hilderley did not see the rationale. The applicant made the decision to come before the Board without legal representation, so he was responsible for the results of coming before the Board without legal representation. Decisions were made by the applicant. The applicant has recourse by appealing to Superior Court or refiling an application in two years.

Mr. Cooper agreed with the Board's counsel that a precedent issue is overriding. A potential floodgate would be opened by making an exception.

Chairman Evans said that the Board tried to accommodate the applicant who did not have representation and lead him to ask for a continuance. It was clear that the applicant would have benefitted from representation. The applicant represented himself to the best of his ability, and did so with the intent to let the dice roll out.

(Popham – for. The Board of Adjustment heard it all on May 12, 2011; and to rehear it would be a second bite of the apple. Kelley – for, with concerns over precedent setting. Evans – for, for the grounds that there was not adequate argument to grant the rehearing. It did not meet the standard for rehearing. Cooper – for. It would set a bad precedent in the future. Hilderley – for. The applicant made a decision. He now cannot come back and reverse the decision he made. There is no basis for it.) Motion carried unanimously.

Case No. 1110-11. A REHEARING ON AN APPEAL OF THE DECISION OF THE BUILDING INSPECTOR AND A REQUEST FOR A VARIANCE in regard to Section 270-28 of the Municipal Code of Rehoboth Beach to allow the area in a given building devoted to restaurant purposes where alcoholic liquor is consumed on the premises to exceed 5,000 square feet of floor space. The property is located in the C-3 Zoning District on Lots 55, 57, 59 & 61 at 59 Lake Avenue. The Variance is being requested by Darius Mansoori of Stingray Rock LLC, owner of the restaurant.

Case No. 1110-11 was not reheard by the Board of Adjustment.

OTHER BUSINESS

Discussion of Rules of Procedure. Proposed changes to the Rules of Procedure include:

- 1.1 Suggested order of business.
- 1.6 The order of procedure for hearings.
- 2.2 An exception clause as to when Regular meetings shall convene.
- 3.3 Preparation of list of names and addresses of property owners.
- 4.1 Availability of agenda.
- 4.2 Contact for placing items on agenda.
- 5.1 Notification of attendance of members of the Board.
- 14.4 Deadlines for applications or appeals to received.
- 14.7 Delete this section because decisions are no longer written.
- 18.1 Signatures of members of the Board and amendment date.

Other suggestions were discussed:

1. Rules of procedure should be placed on the City website.
2. Swearing in witnesses that give testimony which the Board bases a decision on. After discussion, it was determined that the Board of Adjustment was not in a position to move forward on this matter.
3. Section 2.3 regarding special meetings and postings. The Chairman shall call a special meeting within 10 days of receipt of a written request from any two members of the Board. Solicitor Karsnitz will look into this item.

This item will be placed on the agenda for the July 25, 2011 Board of Adjustment Meeting.

There being no further business, Chairman Evans declared the meeting adjourned at 7:54 p.m.

Respectfully submitted,

**MINUTES APPROVED ON
JULY 25, 2011**

(Ann M. Womack, City Secretary)

(Thomas A. Evans, Chairman)