

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

**June 28, 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, June 28, 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.

**CORRESPONDENCE**

There was none.

**APPROVAL OF MINUTES**

Minutes of the April 26, 2010 Board of Adjustment meeting were distributed prior to the meeting.

Ms. Myrna Kelley made a motion, seconded by Mr. Doug Popham, to approve the minutes of the April 26, 2010 meeting as written. Motion carried unanimously.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

**Board Member Orientation** will be deferred to a future meeting.

**Case No. 0510-04.** A REQUEST FOR A VARIANCE in regard to Sections 270-4, 270-26 and 270-42(A) of the Municipal Code of Rehoboth Beach, to allow the placement of an upgraded HVAC condensing unit in the east side yard to replace an existing unit. The property is located in the R-1 Zoning District on Lots 59 & 60 at 217 New Castle Street. The Variance is being requested by Jane W. & Gary A. Myers, owners 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. Gary Myers, owner of the property provided testimony to allow the Variance and presented photographs to support his testimony.

Correspondence:

1. Email dated April 12, 2010 and received May 13, 2010 from Ms. Lois Woods, Trustee and Mr. Charles Woods, 215 New Castle Street – in support of.
2. Letter dated April 19, 2010 and received May 13, 2010 from Mr. O.D. and Mrs. Joy B. Basinski, 218 Hickman Street – in support of.
3. Letter dated April 22, 2010 and received May 13, 2010 from Ms. Laura Ritter, 219 New Castle Street – in support of.
4. Letter dated April 26, 2010 and received May 13, 2010 from Ms. Adrienne Woods, P.O.A. for Ms. Elsie Bryan, 216 Hickman Street – in support of.

Public Comment:

1. Ms. Laura Ritter, 219 New Castle Street – in support of.

Mr. Clifton Hilderley made a motion, seconded by Ms. Kelley, to grant the Variance that has been requested.

Mr. Hilderley said that the original unit was put in 20 years ago. There are dozens of these units all over the City. The Board of Adjustment has this case before it where the appellants have attempted or asked it to give a Variance for putting this equipment in a restricted setback. This is not new construction, but something that has been in existence for a long time and has not been obtrusive. The Board has seen the letters which have been submitted. The hardship would be astounding with the additional and continuing expense annually, if the Board denies this. The appellant is only replacing a 24 inch by 24 inch box with something a little larger. The Board should be reasonable about this and grant the Variance.

(Popham – aye, because it is only fair that the appellant would be putting back a more efficient unit; none of the neighbors are objecting; there is additional cost and operating expenses for the older unit; and the new unit will be quieter than the one being replaced. Kelley – aye, because she could not agree more with everything said. Evans – aye, for the same reasons stated by Mr. Hilderley. Hilderley – aye, because the hardship has been established beyond a question, and it is within the Board of Adjustment’s jurisdiction and charge to grant a Variance to citizens of Rehoboth Beach when they prove their hardship which has been done here.) Motion carried unanimously.

**Case No. 0510-05.** A REQUEST FOR A VARIANCE in regard to Sections 270-22(D) of the Municipal Code of Rehoboth Beach, to allow new lots to be created in a major subdivision where every newly created side lot line of each new or changed lot, which abuts the side of another lot, does not exactly coincide with the side lot line of the adjoining lot, such that adjacent rear lot lines are continuous. The property at 43 Canal Street is located in the R-2 Zoning District and is comprised of the following lots on Canal Street: Lots 43,44, 45, 46, 47 & 48, and the following lots on Sixth Street: Lots 26, 27, 28, 29 & 30. The property at 512 Rehoboth Avenue is located in the C-1 Zoning District and is comprised of Lot 42A. The Variance is being requested by Paul Lovett, Jim Lovett and Donna Benge of Oak Grove Motor Court, Inc., owners 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.)

City Solicitor Glenn Mandalas provided the rationale and intent for Section 270-22(D) of the Municipal Code.

Mr. David Mellen, Vice Chair of the Planning Commission provided testimony regarding the rationale and intent of Section 270-22(D) with regard to a partitioning which occurred at Hickman/Laurel Streets. Part of which the Planning Commission would move forward on this request for a major subdivision of the Oak Grove property, would be to set certain conditions such as giving Building & Licensing the ability to review construction techniques before actual construction takes place to minimize the impact on the trees.

Mr. Paul Lovett, co-owner of the property provided testimony and a power point presentation to allow the Variance.

Correspondence:

1. Letter dated June 21, 2010 from Chair Preston Littleton of the Planning Commission, provided the Board of Adjustment with a brief explanation of issues related to the Variance request concerning the Oak Grove property and is supportive of the Variance request.
2. Letter dated June 22, 2010 and received June 25, 2010 from Mr. Jim Prettyman, 20 Sixth Street – in opposition to.

Public Comment:

1. Ms. Cindy Lovett, 510 Rehoboth Avenue, provided testimony to allow the Variance.
2. Mr. Richard Kerchhoff, 34 Sixth Street, did not speak in opposition to the request, but he was not in support of it.. He requested that the Board defer action on this request because there is more to this situation that the Board needs to familiarize itself with before an informed decision can be made.

Mr. Hilderley made a motion, seconded by Mr. Popham, to grant the request for a Variance from 270-22(D) so that the applicant may proceed to subdivide the land as proposed and presented to the Board of Adjustment as to be consistent with the policy of tree mitigation and damage.

Mr. Hilderley noted that in Section 253 of the Code, the Board of Adjustmenrt is given authority to take on the tree issues which are brought up here in the City. He did not understand that this alleviates the

Board from finding hardship. It gives the Board additional authority on subject matters. The issue of the Laurel property line was to stop an individual homeowner from partitioning to change his property line. The Oak Grove proposal is a major subdivision proposal. The Planning Commission has authority and responsibility for that subject matter in the City, and it is up to the Planning Commission to make decisions with whether or not the application and the proposals are appropriate and acceptable to it. The issue before the Board of Adjustment is limited to one basic section of the Code.

Ms. Kelley favored granting the Variance. Given the constraints to have preservation of trees and given the outline of the property itself which is irregular in nature to be able to come up with something that tries to compromise and accomplish all of the above, she felt that this looks like a decent agreeable plan; and the side lot line issue is irrelevant in this particular situation.

Mr. Popham favored granting the Variance because the Board was to rule on a variance from lot lines. The trees became secondary.

(Popham – aye, for previously stated reasons. Kelley – aye, for previously stated reasons. Evans – aye, for the reasons stated by his colleagues. He hoped the Planning Commission and the Building Inspector do their jobs to save as many trees as possible over the next period of building. Hilderley – aye, because the Board of Adjustment has a necessary authority and obligation, both under normal circumstances and tree preservation. The hardship aspect has been taken care of by the presentation and testimony heard. The extended effort with the Planning Commission of agonizing over the different plans, and the holding up of ancient drawings with everything in a straight line is worth acceptance of the work that has been done by the Planning Commission and the applicant through the years and certainly represents overcoming of hardships.) Motion carried unanimously.

#### **OTHER BUSINESS**

There was none.

There being no further business, Chairman Evans declared the meeting adjourned at 8:36 p.m.

**Respectfully submitted,**

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(Ann M. Womack, Recording Secretary)

**MINUTES APPROVED ON  
JULY 26, 2010**

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(Thomas A. Evans, Chairman)