

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

July 25, 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 Monday, July 25, 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 June 27, 2011 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 June 27, 2011 meeting as written. Motion carried unanimously.

NEW BUSINESS

Case No. 0411-03. AN APPEAL OF THE DECISION OF THE BUILDING INSPECTOR that off-street parking is required for The Café, a real estate café located at 70 Rehoboth Avenue Mezzanine 101 or in the alternative A REQUEST FOR A VARIANCE in regard to Section 270-35 of the Municipal Code of Rehoboth Beach requiring off-street parking for the office. The property is located in the C-1 Zoning District on Lots 24, 26 & 28 Rehoboth Avenue and Lots 23, 25 & 27 Wilmington Avenue. The Appeal of the Decision of the Building Inspector or Variance is being requested by Seth L. Thompson, Esq. of the law firm Hudson, Jones, Jaywork & Fisher LLC on behalf of Joe Maggio and Bill Shields of TWOFORONE, LLC, owners of the restaurant. 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 was in attendance at the meeting and provided additional testimony.

Mr. Seth Thompson, Esq. of the law firm Hudson, Jones, Jaywork & Fisher LLC, who represented Mr. Joe Maggio and Mr. Bill Shields of TWOFORONE, LLC, provided testimony in regard to the Appeal of the Decision of the Building Inspector. Mr. Bill Shields provided testimony in regard to the Appeal. Mr. Joe Maggio also provided testimony in regard to the Appeal.

A recess was called at 7:57 p.m. The meeting reconvened at 8:03 p.m.

There was no correspondence or public comment.

Mr. Clifton Hilderley made a motion, seconded by Mr. Popham, to reject the Appeal of the Decision of the Building Inspector as requested.

Mr. Hilderley referred to Section 270-35(D)(4). The Appellant has not given any substantial evidence and nothing persuasive that it is not anything other than what might fit into this section of the Code. A real estate office would fit in that definition more easily than it would in any of the other definitions given there. Everyone along Rehoboth Avenue and in the City has to subscribe to and pay attention to Section 270-35(D) regarding the number of parking spaces. This is an item which is an absolute requirement of the

City. This is not something within the Board of Adjustment's jurisdiction, purview or opportunity to change the decision of the Commissioners when they decide things like this. Mr. Hilderley believed the Building Inspector did a good job of putting the report together, and he agreed with everything she said. The Building Inspector interpreted the Code properly, and she described the situation very accurately.

(Popham – for. The Code is clear about it, and the Building Inspector interpreted the Code right. Kelley – for, because the Code stands on its own. Evans – for, for the same reasons stated by his colleagues. It was correctly interpreted. Cooper – against. This is an area that Section 270-35(B)(4) did not anticipate. The propensity of this business is a restaurant; therefore, it should fall under the category of restaurant as opposed to an office. Hilderley – for, the reasons stated.) Motion carried.

Attorney Thompson provided testimony supporting the Variance request in regard to Section 270-35 of the Municipal Code of Rehoboth Beach requiring off-street parking for the office. Mr. Bill Shields provided testimony in regard to the Variance request.

Ms. Sullivan provided testimony in regard to the Variance request.

There was no correspondence.

Public Comment

1. Kim Hayden, realtor with Maggio Shields Real Estate – in support of.

Ms. Kelley made a motion, seconded by Mr. Cooper, to grant the Variance as request.

Mr. Hilderley could not figure out what the hardship is. The hardship is that business is lousy. The hardship has nothing to do with the need for a Variance. An office is an office. If it looks like an office, is used like an office and even when it has a fancy name it is still an office according to the Code. No Variance should be granted.

Mr. Cooper thought that the Applicants did everything within their power to make sure that it is in fact a legal licensing of that property, and they have done everything that they can do to comply even after the Building & Licensing Department changed its mind about the legality of what they were doing. It is a very serious hardship given the fact that the Applicants have tried to be compliant with the law, and they would not have even entered into this had they not been granted a license from the Building & Licensing Department in the first place. That is more than grounds for hardship. Now that they have invested the money, are there and have employees, it is a serious hardship, in essence dissolve this company, by not granting the Variance.

(Popham – for. Every effort has been made and put forth on the Applicants' part to meet the requirements of the City even though the City may have overlooked some. It does not appear that it really is going to be a parking lot. Kelley – for, because of the difficulty of applying the Code as it is currently written to this situation with a building that was erected the way it was without proper parking allocations and with a tenant who was granted a license. Evans – against. He saw no good argument for hardship on the part of the Applicants. Cooper – for, for the reasons he previously stated. Hilderley – against. The petitioner was caught at the last moment without knowing in advance that he had to have the parking spaces..) Motion carried.

OTHER BUSINESS

Discussion of Rules of Procedure. (Copy of proposed changes attached.) Proposed changes to the Rules of Procedure included:

- 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.

Ms. Kelley made a motion, seconded by Mr. Cooper, to accept the amended rules as presented. Motion carried unanimously.

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

Respectfully submitted,

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
SEPTEMBER 26, 2011**

(Thomas A. Evans, Chairman)