

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

**August 23, 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, August 23, 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., Board of Adjustment Solicitor

Absent: Mr. Frank Cooper, newly appointed at the Mayor and Commissioners Regular Meeting held on August 20, 2010.

A quorum was present.

**CORRESPONDENCE**

There was none.

**APPROVAL OF MINUTES**

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

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

Mr. Craig Karsnitz, Esq., Board Solicitor introduced his son Mr. Ross Karsnitz who recently sat for the Delaware Bar. One of the requirements for the Delaware Bar is to watch an administrative agency.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

**Case No. 0710-07.** A REQUEST FOR A VARIANCE in regard to Sections 270-28, 270-35 and 270-36 of the Municipal Code of Rehoboth Beach, to allow a tunnel/corridor in the basement level to connect the two buildings located on the southern portion of Lots 26 & 28 Baltimore Avenue at 8 North First Street and Lot 25 at 71 Rehoboth Avenue. The properties are located in the C-1 Zoning District. The Variance is being requested by Ed Ide, P.E. of i3a Consulting Engineers on behalf of Mr. & Mrs. Nicholas Caggiano, owners of a 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. Ed Ide of i3a Consulting Engineers provided testimony to allow the Variance on behalf of Mr. & Mrs. Nicholas Caggiano, owners of the property. Mr. Ide distributed reduced colored copies of the floor layouts and site plan dated July 18, 2010 which are identical to the large scaled drawings that had been previously distributed to the Board. Mr. Nicholas Caggiano, Jr. also provided testimony to allow the Variance.

There was no correspondence and no public comment.

Mr. Clifton Hilderley made a motion, seconded by Mr. Popham, in regard to Section 270-28 to grant the Variance to increase the square footage allowed for the two separate buildings.

Attorney Karsnitz clarified the motion. The Board of Adjustment has determined that there are two separate buildings and the appellants only need a Variance on the square footage. Mr. Hilderley has moved to approve that Variance.

Mr. Popham said that the appellants have two liquor licenses so it is being classified as two restaurants under the Alcoholic Beverage Control Commission (ABCC) as opposed to one restaurant.

Mr. Evans said that this application is different from the last time when the two buildings were fully merged. The Board of Adjustment granted that Variance which was much more egregious. This solves the same problem it did before and does not create a merger in the full sense of it. The ABCC is alright with this, and it does not make the restaurant a speakeasy. Product can be moved at ground level so it does not make it any different to move product below ground level. It is easier for staff.

Mr. Hilderley said that the Board of Adjustment has considered the 5,000 square foot limitation many times, and it knows the background and history, and that the Commissioners want to avoid mega-restaurants and mega-dance halls. The 5,000 square foot limitation is listed in the Code. The Board of Adjustment has granted Variances for the 5,000 square feet, particularly when entrepreneurs/applicants wanted to use an existing structure that was slightly larger. This is a perfect example of not being a single mega-restaurant. The restaurant is located on two different streets. The Board of Adjustment has heard discussions by the applicant on how they operate inside the restaurant with different staff. There are two main entrances, and patrons are not moving between the two buildings. Not much was presented about hardship, but the Board of Adjustment should not ignore public health and safety as that consideration being a hardship. The interest of avoiding hardship is taking care of the employees/staff. Mr. Hilderley saw this as Sections 270-27 & 28 not applying.

(Popham – for, due to the fact that it appears to be two separate buildings and a safety factor. Kelley – for, because of the clarity of the fact that the public cannot go from one structure to the other, and the intent is to promote public safety in all ways. Evans – for, for the same reasons as his colleagues. Hilderley – for, because this is out of the realm of Section 270-28 applying to this particular set of facts, including what the Board of Adjustment has heard in testimony and what is apparent and obvious of the way it is operated.) Motion carried unanimously.

#### **OTHER BUSINESS**

There was none.

There being no further business, Chairman Evans declared the meeting adjourned at 7:40 p.m.

**Respectfully submitted,**

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**(Ann M. Womack, Recording Secretary)**

**MINUTES APPROVED ON  
SEPTEMBER 27, 2010**

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**(Thomas A. Evans, Chairman)**