

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

September 27, 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, September 27, 2010 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Present: Mr. Doug Popham
Mr. Thomas Evans
Mr. Frank Cooper
Mr. Clifton Hilderley

Also Present: Mr. Craig Karsnitz, Esq., Board of Adjustment Solicitor

Absent: Ms. Myrna Kelley

A quorum was present.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the August 23, 2010 Board of Adjustment meeting were distributed prior to the meeting.

Mr. Doug Popham made a motion, seconded by Mr. Clifton Hilderley, to approve the minutes of the August 23, 2010 meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

The Board member orientation was deferred to the October 25, 2010 meeting.

Case No. 0710-08. A REQUEST FOR A VARIANCE and APPEAL OF THE DECISION OF THE BUILDING INSPECTOR in regard to Section 270-28 of the Municipal Code of Rehoboth Beach for an existing restaurant located in the C-1 Zoning District to exceed the required 5,000 square feet limitation. The property is located at 70 Rehoboth Avenue, Mezzanine 101 on Lots 24, 26 & 28 Rehoboth Avenue and Lots 23, 25 & 27 Wilmington Avenue. The Variance and Appeal are being requested by James Becker, Esq. of the law firm Hudson, Jones, Jaywork & Fisher L.L.C. on behalf of Mr. Joe Maggio and Mr. Bill Shields, 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.

Mr. Seth Thompson, Esq. of the law firm Hudson, Jones, Jaywork & Fisher L.L.C. provided testimony to allow the Variance and Appeal on behalf of Mr. Joe Maggio and Mr. Bill Shields, owners of the property. Mr. Joe Maggio provided testimony as to the concept of this restaurant. Mr. Bill Shields also provided testimony to allow the Variance and Appeal. Mr. James Becker, Esq. of the law firm Hudson, Jones, Jaywork & Fisher L.L.C. was also in attendance.

Building Inspector Terri Sullivan gave her report with exhibits. (Copy attached.)

There was no correspondence.

Public Comment:

1. Mr. Rick Eisenman, 418 Rehoboth Avenue – in support of.

Mr. Hilderley made a motion to grant the request for a Variance limited to beer and wine because Section 270-28 says alcoholic liquor, and alcoholic liquor by definition is limited to distilled beverages. Motion failed

to gain a second.

Mr. Frank Cooper made a motion, seconded by Mr. Popham, to grant the Variance to allow the restaurant to serve alcoholic beverages.

Attorney Karsnitz noted that this motion is not to grant a Variance from the patio ordinance.

Mr. Evans said that the court has supported that this is one building. Mr. Hilderley said that one tax bill has been issued for the entire property and that substantiates it as one building. The arguments made that are part of the history of the previous case, have to be considered to some extent as precedent for the Board's decision.

Mr. Cooper said that obviously under strict legal terms, this is one building and has been permitted as one building. Functionally, it is anything but one building. It is no different than a row of townhouses which are separate in deed and lot. The hardship is that this was created as an urban mall; and it is a situation where, by the fact that it was permitted as one building, it limits what can be done with the spaces even though they are entirely separate spaces and were always designed to be separate spaces. The spirit of the law is to keep very large establishments from developing, and this is not contrary to that at all. This is currently a hardship in the sense that what the appellants have physically in a building is an individual space, but because of the way it was built and permitted it is technically considered one building which is not what the law intended it to be.

Mr. Popham said that the building consists of two levels and a mezzanine, and he was sure that 90% of the people would think it is two different buildings because of the way it is constructed. It would be hard to operate any restaurant without a liquor license.

(Popham – for, because it is hard to operate a restaurant without a liquor license. Evans – abstained, for that reasons that he cannot vote for it; but he did not want to vote against it. Cooper – for, because this is a case in which the constructs of the building are very unusual as an urban mall. This is in fact a rather small restaurant in a separate space. It presents a hardship for anyone operating in that space. Hilderley – against, because under the strict construction of the Code, the Board of Adjustment has argued this time and time again and made the same arguments in the past as Mr. Cooper has, which does not hold water. The language of the Code is the language of the Code.) Motion carried.

Case No. 0810-09. A REQUEST FOR A VARIANCE in regard to Sections 270-4, 270-25, 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 west side yard to replace an existing unit. The property is located in the R-1 Zoning District on Lots 59 & 60 of Block 26 at 117 Norfolk Street. The Variance is being requested by Ralph William & Rhoda D. Nary, owners of the property.

Building Inspector Terri Sullivan gave her report with exhibits. (Copy attached.)

Mr. Ralph William Nary, owner of the property, provided testimony to allow the Variance. Mrs. Rhoda Nary was also in attendance.

There was no correspondence and no public comment.

Mr. Hilderley made a motion, seconded by Mr. Popham, to grant the Variance request to put in the new unit.

Mr. Hilderley said that to not grant a variance allowed to go in there alongside of the house would be so extreme, ridiculous and foolish. He did not see that there is much opportunity to consider something other than that and get a little unit like that.

Mr. Cooper thought that the alternative is not be in the public interest. Putting the unit in the front of the home would distract from the streetscape, and he did not see where any neighbor would be benefited by moving to any other place. In the back of the house is a neighbor's porch. All the alternatives are worse. While this is not good, the alternatives are worse.

Mr. Popham said that this is the best alternative.

(Popham – for, because there is no other place to reasonably expect to put the unit. Evans – for, for the same reasons as stated by his colleagues. The hardship is clear, and there is no objection from the neighbors. Cooper – for, because the alternatives are worse. Hilderley – for, because this alternative to reject it would be extreme. The hardship involved here is obvious and apparent.) Motion carried unanimously.

OTHER BUSINESS

Chairman Evans called for the consideration of the date for the Board of Adjustment Meeting to be held in December 2010.

There was consensus with the Board of Adjustment that December's meeting will be held on December 13, 2010 at 7:00 p.m.

There being no further business, Chairman Evans declared the meeting adjourned at 8:02 p.m.

Respectfully submitted,

(Ann M. Womack, Recording Secretary)

**MINUTES APPROVED ON
OCTOBER 25, 2010**

(Thomas A. Evans, Chairman)