

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

October 25, 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, October 25, 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. 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 September 27, 2010 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 September 27, 2010 meeting as written. (Popham – aye, Kelley – abstain, Evans – aye, Cooper – aye, Hilderley – aye.) Motion carried.

OLD BUSINESS

There was none.

NEW BUSINESS

Case No. 0910-10. A REQUEST FOR A VARIANCE in regard to Section 270-21(B)(2) of the Municipal Code of Rehoboth Beach to allow the vertical measurement from the basement floor of a building currently under construction to the first-floor floor joists to exceed eight (8) feet and to allow the bottom of the first-floor floor joists to exceed the maximum required three (3) feet as measured from a point where the centerline of the building intersects with the centerline of the street on which the building will front. The property is located in the R-1 Zoning District on Lot 1B of Block 32 at 1105 South Boardwalk. The Variance is being requested by Vincent G. Robertson, Esq. of the law firm Griffin & Hackett, P.A. on behalf of Joseph P. Reed of Boardwalk Ventures, L.L.C., owner 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, Assistant Building Inspector Stephen Kordek and City Solicitor Glenn Mandalas were in attendance at the meeting. Building Inspector Sullivan gave her report with exhibits. (Copy attached.) Assistant Building Inspector Kordek provided additional testimony.

Mr. Vincent G. Robertson, Esq. of the law firm Griffin & Hackett, P.A. provided testimony to allow the Variance on behalf of Mr. Joseph P. Reed of Boardwalk Ventures, L.L.C., owner of the property. Mr. Joseph P. Reed was in attendance at the meeting and provided additional testimony. Mr. Matthew Toback of Lewes Holding Group was also in attendance and provided additional testimony.

Appellant Exhibits:

1. Photograph taken from a bench on the Boardwalk of both houses with the left house being completed.
2. Photograph of the garage in question which is visible from the rear of the property.
3. Profile View Topographic & Location Survey dated September 10, 2010.

4. Profile View Topographic & Location Survey dated September 22, 2010 of adjacent property.
5. Photograph of the interior of the garage in question looking out to the rear of the property.
6. Photograph of the front of the house taken from the beach side of the Boardwalk.
7. Photograph of the property between the two houses.
8. Photograph indicating how the house is designed.
9. Photograph of the adjacent house with no exposed basement seen from the Boardwalk.
10. Photograph of the adjacent finished house.
11. Photograph of the floor joists and packing.
12. Photograph of the engineered joists.
13. Photograph showing the character of the neighborhood.
14. Photograph showing the character of the neighborhood.
15. Cost estimate to hire Expert House Movers dated October 25, 2010 from R.T. Absher Jr. General Contracting Inc., Greenwood, DE

Chairman Evans called for a recess in the proceedings 8:35 p.m. The meeting reconvened at 8:43 p.m.

Correspondence:

1. Letter dated October 14, 2010 and received October 14, 2010 from Ms. Eugenie Hindall, 705 South Boardwalk – in support of.

Public Comment:

1. Ms. Mildred Reed, address unknown, noted that the appellant is not asking for an increase to the Floor Area Ratio (FAR).
2. Mr. Mike Strange, 6 Stockley Street – in opposition to.

Mr. Clifton Hilderley made a motion to grant the Variance as requested from Section 270-21 so that the applicant will be permitted to exclude up to the 1,000 square feet. Motion failed to gain a second.

Ms. Myrna Kelley made a motion, seconded by Mr. Popham to not grant the Variance.

Ms. Kelley made her motion based upon many of the facts brought forward including her viewpoint that the eight foot discussion on the basement is relevant because of the fake dressing. The Board of Adjustment cannot continue a mistake that was made. This is a case in and of itself. Ms. Kelley stated that personally she was very upset at the continuous reference to the neighboring property. She did not see that this did not have any relevance to this case. For someone to say that they were going to do a footing and/or foundation exactly like the neighbor's house without looking at what plans stated does not matter what happened at the neighbor's house. That may have occurred because it was the same builder who made the assumption. This is a completely separate situation, and the Board should not grant the Variance..

Mr. Hilderley said this is a very extreme case. The Board of Adjustment is here to consider and give due process; and it is to consider the findings of facts that have been presented and only those findings of facts presented by those who offer testimony. It is the responsibility of the Board of Adjustment to grant variances according to the principles that the Chairman has read at the beginning of the hearing. It is not for the Board of Adjustment members to apply their own biases and feelings or to testify; and then to vote on their own testimony. The members are to reach findings of fact and conclusions of law. This is a very extreme, typical case where the variance should be considered. The City has been involved step by step, and there have been no shenanigans. It is very apparent to the builder, owner, City, inspectors, City counsel and everybody involved of what was going on. It is the Board of Adjustment's duty and job to grant the Variance because of the reasons read by the Chairman.

Mr. Cooper said that granting a variance because of the mistakes the builder made does not seem like a good precedent. The Building Inspector is not responsible to the builder. They are there to assist when they can, and they are supposed to enforce the law. That is what was being done albeit late for catching the builder's mistakes. It is not the Building Inspector's mistake. He had a hard time with giving a Variance based on a mistake.

Mr. Popham said that if the Code was being followed, there would not be a hearing this evening. There was real fault all along by everybody, but the Board of Adjustment should not give a Variance because of previous mistakes.

(Popham – for, for the reasons previously stated. Kelley – for, because the Code was not followed; and what

happened with the previous house is unfortunate and is irrelevant in this case. Evans – for, for the reasons stated by his colleagues. Cooper – for. Trying to base a variance on a mistake is not a viable reason. Hilderley – against, because the hardship is severe and extreme. It is the Board of Adjustment’s obligation to grant the Variance. There were mistakes, and that is just about involved in every factual situation that has come before the Board to grant a Variance. It is very unusual that someone has not made a mistake in the past that requires the Board to consider a Variance. While it is an extreme case, the Code has been disregarded, and this is what variances are for.) Motion carried.

Chairman Evans called for Board Member orientation.

Attorney Craig Karsnitz provided a brief orientation regarding the powers and procedures of the Board of Adjustment.

OTHER BUSINESS

There was none.

There being no further business, Chairman Evans declared the meeting adjourned at 9:25 p.m.

Respectfully submitted,

(Ann M. Womack, Recording Secretary)

**MINUTES APPROVED ON
DECEMBER 13, 2010**

(Thomas A. Evans, Chairman)