

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

November 26, 2012

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, November 26, 2012 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 in attendance: Mr. Craig Karsnitz, Esq., Board of Adjustment Solicitor

A quorum was present.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the September 24, 2012 Board of Adjustment meeting were distributed prior to the meeting.

Mr. Frank Cooper made a motion, seconded by Ms. Myrna Kelley, to approve the minutes of September 24, 2012 meeting as written. Motion carried unanimously.

OLD BUSINESS

There was none.

NEW BUSINESS

Consideration and possible vote on a request pursuant to Section 270-77 of the Municipal Code of Rehoboth Beach from Avenue Associates LLC and White Clay Holdings LLC, owners of the property located at 110 Rehoboth Avenue on Lot Nos. 32 & 34.

Correspondence:

1. Letter dated November 6, 2013 and received November 7, 2013 from Alex Moore of Avenue Inn, requesting an extension for the variance that was granted on June 25, 2012 for the construction of a Porte Cochere at the Avenue Inn. The variance will expire on December 25, 2012 if a building permit has not been received by that time.

Ms. Kelley made a motion, seconded by Mr. Cooper, to approve the extension requested from the December 25, 2012 expiration to the March 25, 2013 expiration. (Hilderley – for. It is reasonable. Time limits are needed, and sometimes all times limits do not fit all situations in doing business. For those exceptions, the Board of Adjustment should grant the request. Cooper – for. The submission has pointed out the complexity of the task that is being undertaken, and additional time should be granted. Evans – for. He would be surprised that anyone would be able to do it in six months on a commercial property. Kelley – for. It should be granted because efforts have obviously been made in making forward movement in the process. This is just as a safeguard in case the time runs out. Popham – for. Coordinating all the other approvals and the plans took more than six months.) Motion carried unanimously. A three-month extension was granted.

Chairman Evans read the reasons for variance from Section 270-74 and provided the procedures for the public hearings.

Case No. 1012-07. A REQUEST FOR VARIANCES in regard to Sections 270-24 and 270-26(A) of the Municipal Code of Rehoboth Beach to expand the side porch which would encroach into the Hickman Street side yard setback, to allow the shower & HVAC to remain on the south side yard setback and to allow the proposed new basement steps to encroach on the south side yard setback. The property is located in the R-1 Zoning District at

12 Country Club Drive on Lot No. 1, Block No. 5. The Variances are being requested by Vincent G. Robertson, Esq. of the law firm Griffin & Hackett P.A. on behalf of William and Louise M. Markland, 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 for this case.

Building Inspector Terri Sullivan gave her report with exhibits and provided testimony in support of the variance requests. The Applicants are seeking permission to allow a front porch to be built on the Hickman Street side of the property which would be 7.95' from the property line, and the new steps would be 5.95' from the property line. The existing HVAC units and shower are approximately 4.0' from the opposite property line. The Applicants are requesting a variance to allow them to remain as they exist. In addition, the Applicants wish to add a set of basement stairs 4.0' from the side property line so that they may renovate the basement and have proper egress.

Vincent G. Robertson, Esq. of the law firm Griffin & Hackett P.A. represented Mr. William Markland and Mrs. Louise M. Markland, owners of the property, and provided testimony in support of the variance requests. Attorney Robertson gave his presentation and preferred that three separation motions would be made for the variances. The HVAC and shower are not going to be moved, and obtaining a variance would eliminate title issues. The house sits on a corner lot at Country Club Drive and Hickman Street. Structurally and designwise, the front of the house is on the Hickman Street side of the property; but under the Zoning Code, the legal front of the house is the short side which is on Country Club Drive. The Applicants would like to improve the façade of the house and make it more in keeping with the goals of the City to be pedestrian friendly and more inviting with a porch. This will not have any effect on the neighbors. The hardship is the way the Zoning Code treats corner lots. The Applicants could put in a porch, but they would have to cut down the 28 inch Magnolia tree on the Country Club Drive side. The City would not favor cutting down this tree. Off-street parking on Country Club Drive and the loss of the use of the garage would also be lost if the porch would be built on that side. There is no adverse impact to anyone to build the porch on the Hickman Street side of the property. This is a personal preference on one level, but the City's Comprehensive Development Plan has stated that this is how the City wants residential properties to appear. The basement currently exists on the property, so no additional living space will be added. In order to renovate the basement, the Code requires an additional means of access to the basement. This would strictly be an emergency access to meet Code. The hardship for the basement would be that the Applicants would not be able to do anything with it, short of having an exterior means of access. It is a safety as well, renovation or not.

Mr. William Markland, owner of the property, provided testimony in support of the variance requests. The front porch that has been designed would be the smallest size to achieve their goals on the house. The proposed porch would fit the size in keeping with the sizes of other homes in the neighborhood. The basement does not lend itself to any living activities because of the lack of an additional access. There is no ability to relocate the HVAC and shower. The variance for the HVAC and shower would only be a corrective measure.

Mr. Fred Ward of DF Quillen & Sons provided testimony in support of the variance requests. He has worked on the design of the porch. With regard to the basement, any living space needs an egress. The renovation would be within the existing floor space, and the external access would only be for emergencies.

Ms. Kelley asked for clarification on FAR if all of the variances were granted. Ms. Sullivan noted that she has not seen a full set of plans for the porch to know how the FAR is affected. She would not grant a permit if it is over the FAR, so another variance would need to be sought.

Correspondence:

1. Letter dated October 24, 2012 from Mr. Daniel Flohr, 15 Country Club Drive, has no objections to the planned renovations.
2. Letter dated October 24, 2012 from Mr. Roger Martin and Mr. M. Kirk Pickerel, 13 Country Club Drive, have no objections to the planned renovations.
3. Letter dated October 24, 2012 from Mr. and Mrs. Richard Miller, 10 Country Club Drive, have no objections to the planned renovations.

Public Comment:

1. Mr. Richard Miller, 10 Country Club Drive – in support of.
2. Ms. Cecilia Ludwig represented Mrs. Taylor, 300 Hickman Street – in support of.
3. Ms. Barbara Nowokowski of D.F. Quillen – in support of.

Mr. Clifton Hilderley made a motion, seconded by Mr. Cooper to grant the variance for the entrance/egress

to the basement.

Mr. Hilderley noted that the variance is necessary so the Applicants can put in the outside entrance for the purpose of using their property as it might be used. It would be withholding the use of their property if the Board of Adjustment did not grant the variance, and would be detrimental to them not to be able to have access required by the Code.

Mr. Cooper said that even if the Applicants would not be doing renovations to the basement, egress would be a good idea.

(Hilderley – for. Hardship has been shown, and the need has been shown. Cooper – for, for the same reasons as Mr. Hilderley. Evans – for. Hardship has been demonstrated. Kelley – for, for previously stated reasons. Popham – for, for previously stated reasons.) Motion carried unanimously.

Mr. Hilderley made a motion, seconded by Mr. Doug Popham to grant the variance for the HVAC units and shower to leave them in place as the request has been made. (Hilderley – for. This is a no-brainer. It would be a definite hardship to not grant the request. Cooper – for. These were put in when the house before such time was an issue. They are legally non-conforming now and should be legalized. Evans – for, for the same reasons. The Board of Adjustment does not know how and when they got there. The Board does not know if they have been illegal since day one, but they are there. The Applicants have demonstrated that there would be a hardship to put them any place else. Kelley – for, for the same reasons. Popham – for, for the same reasons.) Motion carried unanimously.

Mr. Hilderley made a motion to reject the request for a variance to build a porch or stoop on the front of the house where the Applicants have requested. Motion failed to gain a second.

Mr. Cooper made a motion, seconded by Ms. Kelley, to grant the variance request to put the addition of a porch on the front of the house as requested.

Chairman Evans said that in the tree ordinance section of the Code, it gives the Applicants the hardship that they were lacking with regard to cutting down the Magnolia tree if they would be allowed to have a porch. It is a preference to have a porch, and it is a requirement to keep the tree.

Mr. Hilderley said that the Applicants do not have to build a porch. It is a personal preference of design and appearance. A request for a variance to enhance is not grounds for a variance based on a hardship.

Mr. Cooper said that porches are a positive thing for the City. A smaller setback has been granted for the purpose of a front porch. It has been demonstrated in the Code and in the CDP that there is a desire for front porches. The desire is one of preference for the builder, owner and the City. The Applicants would be complying with the overall desire of the City to enhance the aesthetics of the City with front porches. The hardship would be that this is not the only place to put the porch. The Magnolia tree would have to be removed in order to put it someplace else.

Chairman Evans said that if the porch would be located elsewhere, it would be a side porch. It would not help the appearance or elevation nearly as much. This variance request for 2' across 31.1'. Saying that the City's desire to have front porches overrules what the Board of Adjustment might do in granting a variance not by the hardship issue, would not fair very well even with the Commissioners who drafted it. This is a matter of degree in whether or not this is too much or too little. He would never say that this is something the Board of Adjustment should do just because it sort of matches up with what the Commissioners had said in their legislation they wanted. He would not make a positive decision using that personally as grounds for granting the variance. He was struggling with the fact that this is a personal preference.

Ms. Kelley said that she would feel more comfortable with taking a position if she had the specifics on FAR. The coverage needs to be known before this decision is made.

(Hilderley – against. Whether or not he would personally like to see a porch of any description there would be beside the point. He has to follow the Code. There is nothing in the Code where he could ever come up with justifying granting the motion. Cooper – against, for the reasons that Chairman Evans has said that this is precedent setting. Evans – against. Mr. Hilderley has made his point very clear. Mr. Evans's real concern is not the reason for granting this variance. The Board of Adjustment needs other hardship reasons related to this specific location and need, and it is not there. This is simply a personal preference. Kelley – against, for the reasons with her concern over the FAR in the overall coverage of the pieces, land and in the

Length of the amount of area that the variance would be. She agreed with Mr. Hilderley's assessment that there is no reason to vote for it. It is a matter of personal preference. Popham – against. Even though he lives on that street and would like to see the porch, a couple of feet is out of the question.) Motion failed unanimously. No variance was granted.

Case No. 1012-08. A REQUEST FOR VARIANCES in regard to Section 270-20(A) of the Municipal Code of Rehoboth Beach to exceed the height of the proposed roof deck by 2'-7" and the height of the proposed roof plate by 11". The property is located in the R-2 Zoning District at 108B Philadelphia Street on Lot Nos. 31 & 32, Block No. 30. The Variances are being requested by Patty McDaniel of Boardwalk Builders on behalf of Vinod Dar and Barbara Chretien Dar, owners of the property.

Building Inspector Terri Sullivan gave her report with exhibits and provided testimony in support of the variances. The Applicants are proposing an addition to the main house. Since the existing house is located on a hill, the grade of the existing property is 4.54" +/- (at the closest point to the property line) above the centerline of the street. In order to align the floors of the addition with the floors of the existing house, the roof pitch of the addition begins at a wall plate height of 24'-11" above the centerline of the street. The Applicants would like to add a second floor deck to the addition which would put the deck surface at 16'-7" above the centerline of the road. A set of stairs to the third story does not meet current Code requirements. The Applicants would like to add a code compliant set of stairs, but in order to do so, need to increase the third floor by 90 square feet which would be below the allowable height for the roof but above the wall plate height.

Patty McDaniel of Boardwalk Builders represented Mr. Vinod Dar and Mrs. Barbara Chretien Dar, owners of the property and provided testimony in support of the variances. The lot is unusual, and there is an elevation difference between the grade immediately around the house and the grade at the street which creates a condition where to build a two-story house, the plate height would have to be reduced and have a smaller second story or step the addition down such that the floor is not aligned with the floor of the main house. This would create a hardship for the elderly parents who reside with the Dars during portions of the year. With the stairs addition, building a bigger addition to reduce the plate line would result in a larger mass on the back of the building and would result in changing the roof pitch. There is a partial retaining wall in the front yard, and the driveway is fairly steep; but the remainder of the property is fairly flat. In most of the City, the grade of the sidewalk is very close to the grade of the middle of the street, and the proposed addition would conform if measuring from the sidewalk.

There was no correspondence and no public comment.

Mr. Cooper made a motion, seconded by Mr. Popham, to grant the variance as requested. (Hilderley – for. The Code is irrational and not inclusive of all possible considerations that a builder might have. Cooper – for. The reason the Board of Adjustment is here is to grant variances based upon hardship. This is a peculiar lot; and therefore by definition, present a hardship to build what would otherwise be a home that could be built legally on any lot throughout the City. Evans – for, for the reasons stated by his colleagues. This is an unusual hardship created by geography. Kelley – for, for the reasons stated by Mr. Cooper. Popham – for. The Code does not allow for elevation changes.) Motion carried unanimously.

OTHER BUSINESS

There was none.

There being no further business, Chair Evans adjourned the meeting at 8:15 p.m.

Respectfully submitted,

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
APRIL 22, 2013**

(Thomas A. Evans, Chairman)