

DELAWARE BOARD OF ADJUSTMENTS
December 12, 2017

The scheduled meeting for the Delaware Board of Adjustments was held on December 12, 2017 at Town Hall. Those in attendance were Mayor Michael Houlihan, Director of Public Works Jerome Reid, Town Solicitor James Waehler, Community Development Coordinator William Hardin, Planning and Zoning Commission Member Eric Catellier and Clerk of Council Cindy Fisher. Guests: Donald Ellis, Keith and Robert Rose.

Called To Order

Mayor Houlihan called the meeting to order. He informed everyone that this is a scheduled Public Hearing and the Board of Adjustments is comprised of himself, Delmar's Public Works Director Jerome Reid and the Town's Solicitor James Waehler. The minutes are being taken by the Clerk of Council Cindy Fisher, the Community Development Coordinator William Hardin is present as well as Planning and Zoning Member Eric Catellier. This Public Hearing has been published in the Daily Times and the property has been posted with this Public Hearing notice.

Mayor Houlihan read the Public Hearing notice as it appeared in the Daily Times. He asked for anyone who would be giving testimony this evening to stand and be sworn in by the Town's Solicitor.

Planning and Zoning Member Catellier reported that this was first presented at their October, 2017 meeting as an adjustment to Mr. Ellis' property line. But it turned out to be a lot more complicated than that. The agenda item was recommended to move forward to the Delaware Board of Adjustments. The paperwork presented for the Planning and Zoning Commission was inadequate. Mr. Ellis needed to present a current signed and sealed site plan showing the property line that was going to be abandoned as well as the new property line and the structures that were already on the property. It was requested that all structures be shown on the site plan and that all setbacks are shown.

Mr. Ellis stood and identified himself as the owner of 105 E. Jewell Street, Delmar, DE. He said that per Planning and Zoning he went back to the surveyor and got the survey that was requested from him. He apologized that he did not bring it to the meeting this evening. The one that the Delaware Board of Adjustments had in their packet was dated 2001.

Town Solicitor Waehler informed Mr. Ellis that he is the petitioner for this variance and he, if the variance is granted, will be getting 3 ft. from the neighbors' property. Mr. Ellis said that at one time he did own both properties. Now, all he wants is to straighten out his property line and be able to park his cars in his own driveway instead of parking one of his cars on the street.

Mr. Ellis said that he is acting on the information that he was given at Town Hall on how to fill out the paperwork.

Mayor Houlihan said that the neighboring property would be the property out of compliance legally. Town Solicitor Waehler said that was the first thing that caught his attention was that the application should have been filled out by the neighbors. Mr. Ellis is not going through any hardship which is a criteria for a variance. He will actually be gaining property if this variance was granted. The neighbor would be the one losing 3 ft. of property.

Town Solicitor Waehler said that maybe the application could be amended to show the neighbors as the petitioners and the ones who need to show a hardship.

Community Development Coordinator Hardin apologized to the Board for the misunderstanding on who the petitioners were supposed to be. He did understand that the 103 Jewell Street property was the one that would not meet the required setbacks.

Town Solicitor Waehler stated that the wrong party was advised to supply the petition. His recommendation is to modify the petition and substitute the neighbors as the petitioners.

One of the property owners, Keith Rose, testified that he and his father, Robert Rose own 103 E. Jewell Street, Delmar, DE. He stated that he realizes that he will need a variance of 2.6 ft. on one end and 3.24 ft. on the other end. He is willing to be substituted in the application along with his father for this variance request. His father agreed.

Town Solicitor Waehler also stated that the advertisement is not clear. This request will need to be re-advertised with the amended application with the correct petitioners' names along with the specific variance request.

CDC Hardin said that he would yield to Town Solicitor Waehler's legal expertise. But he did ask if the name is substantial enough to make a legal difference in the advertisement, or that the use of the property would be enough? There is a side setback that will be out of compliance, does the name matter?

Town Solicitor Waehler said that holding a public hearing is based on the legal advertisement. Mr. Ellis filled out the petition to move his property line by 3 ft. The Board is not here to consider that. The Board is here to consider reducing the required side setback. That will be difficult based on what has been advertised as it applies to the wrong person. The Town might not have directed Mr. Ellis in the right direction. He feels that the Town should not charge for a new filing fee or the legal advertising.

Mr. Waehler said that the 103 E. Jewell Street property will have an unnecessary hardship when they want to sell it. The survey is going to show that it won't meet the minimum setback requirements. It won't be a problem if the Board grants the variance.

Mayor Houlihan stated that he agreed with Town Solicitor Waehler in that the legal notice should be redone and submitted to show the correct petitioners names. It is just for the protection of both properties and the Town.

Planning and Zoning Member Eric Catellier stated that the signed and sealed survey that needs to be submitted should be noted that it is being prepared for Mr. and Mr. Rose. The 103 E. Jewell Street property should be the subject property in the site plan. Both properties should be on the site plan with all buildings currently on the property showing. This will be for the record of the property and the deed.

CDC Hardin said that he will give both Mr. Rose's a copy of the front page of the Planning and Zoning request form and highlight the requirements which are applicable to them.

Town Solicitor Waehler made a motion to continue this hearing with the reason being that the application present needs to be amended to reflect the owners of 103 E. Jewell Street as the applicants and the public hearing notice needs to be amended to clearly state that the variance is from the required 10 ft. side setback to 6.8 ft. side setback. The applicants need to present a certified sealed and signed site plan as per the Planning and Zoning requirements. With this amended application, the Town waives any further fees for the amended filing and for advertising. Mayor Houlihan seconds the motion which passes with 3 ayes and 0 absent. The next meeting will be held on January 16, 2018 at 7:30 p.m.

Mayor Houlihan apologized for the setback to both the Roses and to Mr. Ellis. But like all things legal, we have to make sure all the T's are crossed and all the I's are dotted, especially when it comes to surveys.

Approval of Minutes

Public Works Director Reid made a motion to approve the October 24, 2017 minutes as circulated. Mayor Houlihan seconded the motion which passed with 2 ayes, 0 absent and Town Attorney Waehler abstaining.

Adjournment

Town Solicitor Waehler made a motion to recess until the meeting in January, 2018. Mayor Houlihan seconded the motion which passed with 3 ayes and 0 absent.

Submitted by:

Cindy Fisher
Clerk of Council