

Version: December 9, 2019

Author: G. Mandalas

Topic: Administrative setback variances

Presentation Date: September 20, 2019 regular meeting, October 7, 2019 workshop meeting,
November 15 regular meeting (public hearing), December 9 workshop
meeting, December 20 regular meeting

EXHIBIT A

**AN ORDINANCE TO AMEND CHAPTER 270, ZONING,
OF THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH,
DELAWARE, 2001,**

**BY INSERTING A NEW SECTION 270-28
RELATING TO THE ADMINISTRATIVE GRANT OF DIMENSIONAL VARIANCES
OF UP TO ONE FOOT FOR BUILDING SETBACKS, SIDE YARD REQUIREMENTS,
AND REAR YARD REQUIREMENTS FOR EXISTING STRUCTURES IN A
RESIDENTIAL ZONING DISTRICT**

WHEREAS, the Mayor and Commissioners desire to revise the zoning regulations to authorize the Building Inspector to permit a structural encroachment of up to one foot into the building setback, side yard, and rear yard for existing structures in a residential zoning district through the issuance of an administrative variance; and

WHEREAS, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes”; and

WHEREAS, Title 22, Chapter 3, Section 327(a)(3) of the Delaware Code provides “that notwithstanding any provision of law to the contrary, the legislative body of any city or incorporated town may, by ordinance, vest a designated town official or department with authority to administratively grant a dimensional variance for existing conditions that do not exceed 1 foot of the required dimension restrictions without the application being considered by the board of adjustment, subject to the standards, procedures and conditions set forth in the ordinance granting such authority”; and

WHEREAS, the grant of limited administrative authority to approve minor dimensional variances not to exceed 1 foot would promote the efficient administration of building permit requests and reduce the caseload before of the Board of Adjustment; and

WHEREAS, Article X, Amendment Procedure, Sections 270-86 and 270-88 of the Municipal Code of the City of Rehoboth Beach provides the following procedure to be followed by the City Commissioners before exercising the aforesaid authority:

1. Hold a public hearing at which hearing parties in interest and citizens shall have an opportunity to be heard;

Version: December 9, 2019

Author: G. Mandalas

Topic: Administrative setback variances

Presentation Date: September 20, 2019 regular meeting, October 7, 2019 workshop meeting, November 15 regular meeting (public hearing), December 9 workshop meeting, December 20 regular meeting

42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81

2. Provide at least fifteen (15) days' notice of such hearing by publishing notice of the time and place of such hearing in an official newspaper of the City of Rehoboth Beach or a newspaper of general circulation in the City; and

WHEREAS, a public hearing was conducted on November 15, 2019.

WHEREAS, at least fifteen (15) days' notice of such hearing was provided by publishing notice of the time and place of such hearing in an official paper or a paper of general circulation in the City.

BE IT ORDAINED by the Commissioners of the City of Rehoboth Beach, in session met, a quorum pertaining at all times thereto, in the manner following to-wit:

Section 1. Chapter 270, Article III (Height, Density and Area Requirements) of the Municipal Code of the City of Rehoboth Beach, Delaware, 2001, as amended be and the same is hereby further amended by adding a new Section 270-28, as follows:

270-28 Administrative Variances.

Notwithstanding the provisions of Article VIII of this Chapter, the Building Inspector may administratively grant a building setback variance, side yard variance, or rear yard variance that does not exceed 1 foot of the building setback, side yard, ~~or~~ and rear yard requirements. Any variance that would result in the placement of a structure at a location that is more than 12 inches from the building setback, side yard setback, or rear yard setback, shall not be approved administratively. Any building setback variance, side yard setback variance, or rear yard setback variance that would create or increase a separate nonconformity shall not be approved administratively.

- A. Applicability: Administrative variances may only be granted for existing structures located in the Special Single-Family Residence District (R-1(S)), the Single-Family Residence District (R-1), or the General Residence District (R-2).
- B. Applications for an administrative variance shall include a survey signed and sealed by a surveyor licensed in the State of Delaware, a brief written statement of the administrative variance requested, and a \$100 application fee.
- C. The Building Inspector shall provide written notice by a certified mailing of the administrative variance application to adjacent property owners and accept written comments for 30 working days from the date of mailing. If any adjacent property owner objects to the administrative variance, the Building Inspector shall

Version: December 9, 2019

Author: G. Mandalas

Topic: Administrative setback variances

Presentation Date: September 20, 2019 regular meeting, October 7, 2019 workshop meeting, November 15 regular meeting (public hearing), December 9 workshop meeting, December 20 regular meeting

82 refer the application to the Board of Adjustment, and the administrative variance
83 application fee shall be credited to the Board of Adjustment application fee.
84

85 D. Within 30 working days after the administrative variance application is submitted
86 and accepted, the Building Inspector may approve or deny the administrative
87 variance through a written decision. The decision of the Building Inspector shall
88 be governed by the “exceptional practical difficulty” standard applicable to the
89 Board of Adjustment for area variance determinations.
90

91 **Section 2.** If any provision of this Ordinance shall be deemed or held to be invalid or
92 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect
93 any other provision of this Ordinance which may be given effect without such invalid or
94 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to
95 be severable.
96

97 **Section 3.** This Ordinance shall take effect immediately upon its adoption by a
98 majority vote of the Commissioners of the City of Rehoboth Beach.
99

100 Adopted by the Commissioners
101 Of the City of Rehoboth Beach
102 _____, 2019
103

104
105 _____
106 Secretary of the Commissioners of
107 the City of Rehoboth Beach
108
109

110 **SYNOPSIS:** This Ordinance allows the Building Inspector to approve dimensional variances
111 for structures located in a residential zoning district that do not exceed one foot from the building
112 setback, side yard, ~~or~~ and rear yard requirements.