

**CITY OF NEWARK  
DELAWARE  
BOARD OF ADJUSTMENT  
MINUTES**

**September 3, 2009**

**09-BA-11  
203 New London Road**

**09-BA-12  
850 Library Avenue**

**09-BA-13  
123 Casho Mill Road**

**09-BA-14  
601 Ogletown Road**

Those present at 7:30 p.m.:

Presiding: Clayton Foster

Members Present: Jeffrey Bergstrom  
Linda Shopland

Absent: Michael Harmer  
Kevin Hudson

Staff Members: Roger Akin, City Solicitor  
Roy Lopata, Planning & Development Director

**1. APPROVAL OF MINUTES FROM MEETING HELD JUNE 18, 2009**

The following changes were noted. Page two, paragraph four, second bulleted item, change to read, "If the restriction were not removed, the removal would not seriously affect neighboring properties and uses." Page three first paragraph to include in the record the memorandum from Mr. Akin to Mr. Lopata. Page eight, second bulleted item, change to read, "The proposed addition would not adversely affect the neighbors."

The minutes were approved as amended.

Mr. Lopata announced there was a change in administration and the Building Department's functions are assigned to the Planning Department.

**2. THE APPEAL OF H. GIBBONS YOUNG FOR THE PROPERTY AT 203 NEW LONDON ROAD, FOR THE FOLLOWING VARIANCES:**

**A) CH. 32 SECT. 32-11 (a) (1) (h) – REQUIRES A MINIMUM OF ONE ACRE.  
PROPOSED PLAN SHOWS .56 ACRE.**

- B) CH. 32 SECT. 32-11 (c) (5) (a) REQUIRES EACH PART OF A BUILDING, EXCLUDING CORNICES, UNCOVERED STEPS, AND PORCHES, TO BE SETBACK A MINIMUM OF THIRTY (30) FEET FROM ALL PERIMETER STREETS. PROPOSED PLAN SHOWS A SETBACK OF ONLY 20.5 FEET FROM NEW LONDON ROAD.**
- C) CH. 32 SECT. 32-11 (c) (7) (b) REQUIRES A MINIMUM SIDE YARD OF TWENTY FEET FOR APARTMENT BUILDINGS IN THIS ZONING DISTRICT. PROPOSED PLAN SHOWS A SIDE YARD OF 12.3 FEET.**
- D) CH. 32 SECT. 32-11 (a) (1) (j) – REQUIRES ALL UNCOVERED PARKING SPACES TO BE LOCATED AT LEAST TEN FEET FROM ALL ABUTTING PERIMETER STREETS AND PROPERTY LINES. PLAN SHOWS A SIX FOOT SETBACK.**
- E) CH. 32 SECT. 32-11 (a) (1) (f) – REQUIRES A MINIMUM OF 25 FEET BETWEEN BUILDINGS. PLAN SHOWS 10.2 FEET.**

Ms. Schiano read the above appeal, stated it was advertised in the *Newark Post*, and direct notices were mailed. It was noted that three emails had been received in opposition and will be included in the record.

Mr. Lopata added the Board should consider a fifth variance that wasn't included in the denial letter. It is listed above as Item E.

Mr. Mark Sisk, attorney for the applicant stated his client's property was an odd shaped triangle lot, which was the reason for all but one of variances. Mr. Sisk further stated his client went to Council for rezoning of the property. The request was denied with a vote of 3-4 on September 8, 2008.

Mr. Akin inquired how the current proposed project is materially different than the proposed project that was brought before Council for rezoning. Mr. Sisk stated it was not materially different. Mr. Akin recapped Council's decision briefly detailing the Council's concerns if the property were rezoned and the project permitted. Issues such as increased density, increased traffic and safety issues were mentioned by various Council members.

H. Gibbons Young, 3 Firethorne Court, was sworn in. Mr. Young stated he believed due to the recent substantial increase in units in the neighboring CampusSide, his project should be considered.

The Chair opened the discussion to the public. Ms. Jean White, 103 Radcliffe Drive, was sworn in. Ms. White stated she was opposed to granting the five variances.

Ms. White believed the plan before the board tonight was identical to the plan submitted to Council. There being no further comments, the discussion was returned to the table.

**MOTION BY MR. BERGSTROM, SECONDED BY MR. FOSTER: TO DECLINE THE FIRST VARIANCE REQUESTED, CH. 32 SECT. 32-11 (a) (1) (h) – REQUIRES A MINIMUM OF ONE ACRE. PROPOSED PLAN SHOWS .56 ACRE.**

**MOTION FAILED: 3-0**

Mr. Lopata stated it was not necessary to vote on the other variances as the declination of the first variance made further voting unnecessary.

**3. THE APPEAL OF AMERICAN SIGN & GRAPHICS FOR THE PROPERTY AT 850 LIBRARY AVENUE, FOR THE FOLLOWING VARIANCE:**

- A) SEC. 32-60 (a)(2) RESTRICTS AN AREA OF 60 FEET FOR AN ILLUMINATED GROUND SIGN. THE PROPOSED AREA OCCUPIES AN AREA OF 79 FEET. A MINIMUM DISTANCE OF 100 FEET FROM A RESIDENTIAL DISTRICT IS REQUIRED; PLAN SHOWS APPROXIMATELY 96 FEET.**

Ms. Schiano read the above appeal, stated that it was advertised in the *Newark Post*, and direct notices were mailed. It was noted that an email had been received in favor and will be entered into the record.

Mr. Michael Hewitt, 1409 Eastlawn Avenue, Wilmington, DE was sworn in.

Mr. Hewitt addressed the required setback. After review of the plan and visiting the site, he stated they could only achieve 75 feet because the property is long and narrow with considerable linear feet. The depth of the property does not allow the required 100 feet. In addition, the residential district in question is a school (Newark High School). It was also noted that Newark High School has a digital sign. Mr. Hewitt further stated the Newark High School sign is 12 feet in height and their proposed sign is 11 feet in height which is comparable.

In regard to the second variance request, the required square footage is 60 square feet. The sign contains a 60 foot section for the tenants. The top of the sign will include the address. The additional square footage would incorporate this address that Mr. Hewitt believed is necessary for visibility.

The Chair opened the discussion to the public. Ms. Jean White, 301 Radcliffe Drive (already under oath) stated in her opinion that the variance for distance should be granted. In regard to the variance for size, Mrs. White believed the same thing could be

accomplished if the sign were made slightly smaller. She believed the proposed top section indicating the address was important. There being no further comments, the discussion was returned to the table.

Ms. Shopland addressed the Kwik Check factors:

- the nature of zone would remain the same. The character of the immediate vicinity of the subject property. Neighboring Newark High School has a similar sign.
- if the restriction were removed, the removal would seriously affect neighboring property and uses. Ms. Shopland indicated it would not be a significant impact.
- If the restriction were not removed, the restriction would create an unnecessary hardship and/or exceptional practical difficulty for the owner in relation to his efforts to make normal improvements in the character and permitted use. Ms. Shopland stated in her opinion it would pose a hardship for the owner if they were unable to install the requested sign by making it difficult for visitors/customers to properly locate the building.

**MOTION BY MS. SHOPLAND, SECONDED BY MR. BERGSTROM: TO GRANT THE VARIANCE TO PERMIT THE SIGN PLACEMENT 75 FEET FROM A RESIDENTIAL DISTRICT.**

**MOTION PASSED: 2-1**

Aye: Bergstrom, Shopland

Nay: Foster

**MOTION BY MS. SHOPLAND, SECONDED BY MR. BERGSTROM: TO GRANT THE VARIANCE TO PERMIT THE SIGN SIZE NOT TO EXCEED 79 SQUARE FEET IN SIZE.**

**MOTION PASSED UNANIMOUSLY**

**4. THE APPEAL OF MARK MANNO FOR THE PROPERTY AT 123 CASHO MILL ROAD, FOR THE FOLLOWING VARIANCE:**

- A) CH. 32, SEC. 56.6 – LIMITS THE HEIGHT OF SUCH FENCES TO A MAXIMUM OF THREE (3) FEET. PLAN SHOWS A SIX FOOT HEIGHT.**

Ms. Schiano read the above appeal, stated that it was advertised in the *Newark Post*, and direct notices were mailed. An email was received and offered the opinion that the Board should consider that granting this variance a precedence may be set.

Mr. Mark Manno, 123 Casho Mill Road was sworn in. He explained he wanted to install a six foot high on his property along Casho Mill Road. His main objective for installing a fence is for noise abatement as the road noise is very significant. He further stated according to the City his proposed fence would be in his front yard. In reality, it is not. He stated on Casho Mill Road, the overwhelming majority of fences are six foot fences. He further stated his proposed fence would be contiguous with all the other fences along Casho Mill Road. Additionally, Mr. Manno noted that there is no property along Casho Mill Road or Timberline Drive that looked directly at his property.

Mr. Lopata stated in his opinion it was classic hardship case. The applicant is requesting to extend his fence. Mr. Manno's house faces Casho Mill Road. The nearby houses have back yards that face Casho Mill Road. Mr. Lopata continued by stating this is a practical difficulty, if not a hardship.

The Chair opened the discussion to the public. Mr. Edward Cohen, 121 Casho Mill Road, was sworn in. Mr. Cohen stated he was in favor of granting the variance. Mr. Cohen stated his property and Mr. Manno's property are one of few properties that face Casho Mill Road. There being no further comments, the discussion was returned to the table.

Mr. Bergstrom addressed the Kwik Check factors:

- the nature of zone (residential) would remain the same. The character of the immediate vicinity of the subject property was entirely residential.
- If the relevant restriction were removed, such removal would seriously affect the neighboring properties and uses. It was Mr. Bergstrom's opinion the additional section of fence would not even be noticeable as it would be an extension of what is already present.
- If the restriction were not removed, it would create an unnecessary hardship or exceptional practical difficulty for the owner in relation to making normal improvements in the character or use of the property. Mr. Bergstrom stated Mr. Manno was attempting to diminish the noise levels to allow him to enjoy his property.

**MOTION BY MR. BERGSTROM, SECONDED BY MR. FOSTER: THAT THE VARIANCE TO ALLOW A SIX FOOT HIGH FENCE AS SHOWN ON THE APPLICANTS EXHIBIT WITH THE STIPULATION THAT THE SAID FENCE BE INSTALLED WITHIN SIX MONTHS.**

**MOTION PASSED UNANIMOUSLY.**

5. **THE APPEAL OF FUSCO ENTERPRISES FOR THE PROPERTY AT 601 OGLETOWN ROAD, FOR THE FOLLOWING VARIANCE:**

**A) CH. 32, SEC. 32-45(a) – A MINIMUM OF 109 PARKING SPACES IS REQUIRED FOR A PROPOSED CONVENIENCE STORE WITH GAS PUMPS. PLAN SHOWS 89 PARKING SPACES.**

Ms. Schiano read the above appeal, stated that it was advertised in the *Newark Post*, and direct notices were mailed. An email was received in favor of the variance.

Thomas Mammarella, attorney for the applicant was present to discuss the facts of the case.

Mr. Mammarella stated the property in question is the former Bennigans at 601 Ogletown Road. Fusco Enterprises is proposing to develop the property as a Wawa convenience store consisting of 5,600 square feet, of which 2,300 square feet to be devoted to retail space and gas pumps to include 12 fueling stations.

The proposed variance is a single variance from the required 109 parking spaces to 89 parking spaces. The reason for the variance is due to the parking requirements being particularly high for this combination of uses. The Zoning Code required 1 space for 200 square feet of floor area for the store. The store is expected to have 10 employees per shift. For this retail portion of 2,300 square feet, 12 spaces are required and 10 spaces for the 10 employees, totaling 22 parking spaces. For the gas sales use, the Code requires 1 space for 1,000 square feet of lot area. The lot area is 2 acres, which equates to 86-87,000 square feet. As a result of the lot size, 87 parking spaces are required for the gas pumps alone. There are currently 89 parking spaces on the proposed Wawa site alone, in addition there are additional parking spaces that share space with the neighboring Kentucky Fried Chicken, which they have not counted. Mr. Mammarella stated 109 parking spaces will not fit on the property.

Mr. Colm DeAscanis, CDA Engineering Inc., 6 Larch Avenue, Wilmington, DE, was sworn in. Mr. DeAscanis reiterated what Mr. Mammarella had stated. In addition, Mr. DeAscanis stated there would be more parking provided at the proposed Wawa than most Wawa stores throughout the state and is an efficient and adequate parking lot.

Mr. Gregory Harvey, engineer employed by Wawa Inc., was sworn in. Mr. Harvey stated the proposed footprint will be slightly smaller than the existing footprint. Mr. Lopata concurred and stated that the Code has not yet caught up with convenience store that also has gas pumps. Code requires, essentially that

there be a double count for parking spaces. Mr. Lopata stated there will be more than adequate parking spaces.

The Chair opened the discussion to the public. There being no comments, the discussion was returned to the table.

Mr. Bergstrom addressed the Kwik Check factors:

- The nature of the zone was appropriate for this use and would not be affected. The character of the immediate vicinity of the subject property would remain the same.
- If the restriction were not removed, the removal would seriously affect neighboring properties. He believed it would no effect on neighboring use.
- If not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to make normal improvements in the character of the permitted use of the property. Mr. Bergstrom believed the testimony that it would.

**MOTION BY MR. BERGSTROM, SECONDED BY MS. SHOPLAND: TO APPROVE THE VARIANCE AS REQUESTED.**

**MOTION PASSED UNANIMOUSLY.**

**6. Meeting adjourned at 9:37 p.m.**

Tara A. Schiano  
Secretary