

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

January 21, 2010

**10-BA-01
134 Sunset Road**

**10-BA-02
129-131 South Chapel Street**

**10-BA-03
1206 Old Cooches Bridge Road**

**10-BA-04
73 & 79 E. Cleveland Avenue**

Those present at 7:00 p.m.:

Presiding: Clayton Foster

Members Present: Jeffrey Bergstrom
Gene Graham
Kevin Hudson
Mike Harmer

Staff Members: Bruce Herron, Deputy City Solicitor
Roy Lopata, Planning & Development Director

1. APPROVAL OF MINUTES FROM MEETINGS HELD DECEMBER 17, 2009

There being no additions or corrections, the minutes were approved as received.

2. THE REQUEST OF ANN MORRISON, FOR THE PROPERTY AT 134 SUNSET ROAD FOR THE FOLLOWING VARIANCE:

**A) CH. 32 SEC.32-9 (B)(10)(i) – MINIMUM ONE-HALF ACRE LOT
REQUIRED FOR A BED AND BREAKFAST IN AN RS DISTRICT. PLAN
SHOWS .46 OF AN ACRE.**

Ms. Schiano read the above appeal, stated that it was advertised in the *Newark Post* and direct notices were mailed. Four letters in support, twelve in opposition and one voicing concern were received regarding the variance. They were entered into the record.

Ms. Ann Morrison, 134 Sunset Road, was sworn in.

Ms. Morrison stated she wished to convert her property at 134 Sunset Road to a bed and breakfast. She stated her property is .46 of acre, the required size is .50. Mr. Foster inquired how many guests would she have at one time. Ms. Morrison stated the City Code permits five bedrooms; her intent is to have four bedrooms. Mr. Foster inquired if there was adequate off-street parking. Ms. Morrison stated it is adequate. In addition, she further stated her driveway is oversized. Mr. Foster inquired what her target market would be. Ms. Morrison stated various University guests, i.e. visiting faculty, students, and prospective parents. She further stated she was not interested in posting a sign which would result in drive-by customers. Ms. Morrison added the average expected stay at a Bed & Breakfast was two nights.

Mr. Harmer inquired if there are any businesses such as Bed & Breakfast establishments in the vicinity of the Ms. Morrison's property. She stated there were not. Mr. Foster asked Mr. Herron if granting this variance would start precedence. Mr. Herron confirmed each case would be judged on its own merit. Mr. Hudson inquired if there is a maximum legal stay for Bed & Breakfast hotels by City Code. Mr. Lopata responded the maximum length of stay is fifteen consecutive days. Mr. Graham asked if Ms. Morrison's property met the parking requirements. Mr. Lopata stated everything from a zoning standpoint met the requirements. Mr. Lopata further stated Ms. Morrison would need to appear before Council for a Special Use Permit. That would not occur until she received a variance from the Board of Adjustment. She would also need additional internal Building Code requirements to comply with the Building Code for this use.

Mr. Harmer noted all correspondence whether hard copy or electronic mail had been forwarded to the Board and entered into the record. Mr. Hudson inquired if any of the Building Code requirements would affect the exterior of the building. Mr. Lopata stated potentially accessibility requirements.

Mr. Steven Toy, 102 Townsend Road, was sworn in. Mr. Toy was Ms. Morrison's immediate neighbor and he wished to state he had no objections to the granting of variance. Mr. Toy stated he was aware of neighbors that permit visiting faculty and/or students to stay for extended periods of time and receive payment for these services. He hoped that Ms. Morrison would receive equal rights in this instance.

Mr. Dennis Klinzing, 44 Winslow Road, was sworn in. He wanted to voice his opposition to the variance. He believed the variance was not insignificant and the Code should be honored.

Mr. Ron Wegner, 20 Winslow Road, was sworn in. He wanted to voice his objections to the variance. He believed the integrity of the neighborhood would be sacrificed if such a variance were granted.

Mr. David Ermann, 278 Beverly Road, was sworn in. He asked Ms. Morrison if she had approached her neighbors to purchase the additional acreage needed. She stated Mr. Toy had offered to sell her the acreage, but she declined. He further inquired if the additional parking could be accommodated by the existing property. Mr. Lopata stated there is enough land to accommodate the additional parking.

Mr. Harmer addressed the Kwik Check factors:

- the nature of the zone (residential) is not suited for a Bed & Breakfast.
- If the relevant restriction were removed, such removal would seriously affect the neighboring properties and uses. It could affect the neighboring properties with increased traffic, etc.
- If the restriction were not removed, it would create unnecessary hardship or exceptional difficulty. Mr. Harmer believed it would not create an unnecessary hardship.

With the Kwik Check factors in mind, Mr. Harmer voted against granting the variance.

Mr. Graham stated he would vote to grant the variance because in his opinion in the long run he believed the property would be held to a higher standard.

Mr. Hudson voted against granting the variance with the Kwik Check factors in mind.

Mr. Bergstrom concurred and stated would vote against granting the variance with the Kwik Check factors in consideration, with emphasis specifically on the fact that there was no hardship proven.

Mr. Foster voted against granting the variance concurring with Mr. Bergstrom specifically on the fact there was no hardship proven.

MOTION BY MR. BERGSTROM, SECONDED BY MR. HUDSON: TO DECLINE THE VARIANCE.

MOTION DENIED 4-1

Aye: Graham

3. THE APPEAL OF PAUL SCHLOSSER, FOR THE PROPERTY AT 129-131 SOUTH CHAPEL STREET, FOR THE FOLLOWING VARIANCES:

- A) CH. 32-11 (C)(5) – RM ZONING FOR ONE FAMILY DETACHED/SEMI DETACHED STRUCTURES REQUIRES A MINIMUM FRONT YARD SETBACK OF 15 FEET. PLAN SHOWS THE EXISTING LEGAL NON-CONFORMING SETBACK OF 11.4’ THE PROPOSED STAIRWAY ADDITION SETBACK IS ONLY 7.4’. SEC. 32-45 (a) - A ONE-FAMILY DWELLING MUST MAINTAIN TWO OFF-STREET PARKING SPACES. PROPOSED ENDLESS POOL INSTALLATION WOULD ELIMINATE ONE OF THE EXISTING TWO OFF-STREET PARKING SPACES.
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Ms. Schiano read the above appeal, stated it was advertised in the *Newark Post*, and direct notices were mailed.

Mr. Paul Schlosser, 431 Polly Drummond Hill Road, was sworn in.

Mr. Paul Schlosser stated the property that he sought the variance for is a rental property that he has owned for fifteen years. During the course of routine repairs Mr. Schlosser indicated he wanted to improve the current staircases. Due to the steepness of one of the staircases, he sought to eliminate it for safety issues. Upon elimination of the staircase in question, he proposed to install the stairwell on the outside of the structure. In addition, he would like to install a sprinkler system and re-install the front porch. Mr. Schlosser submitted drawings from his architect on his proposals.

Mr. Harmer inquired if the property had an existing sprinkler system. Mr. Schlosser indicated it currently did not.

Mr. Foster asked the reason for the reconstruction of the porch. Mr. Schlosser responded it was for cosmetic purposes only.

Ms. Jean White, 103 Radcliffe Drive, was sworn in. Ms. White asked for clarification on how many unrelated occupants can be legally housed in this building. Mr. Schlosser stated he had a permit for eight totals, with a total of six bedrooms and sufficient parking for six occupants. He routinely only has six tenants.

Mr. Bergstrom addressed the Kwik Check factors:

- The nature of the zone (residential) would remain the same.

- The character of the immediate vicinity will remain the same.
- If the relevant restriction were removed, such removal would seriously affect the neighboring properties and uses. It would not be the case.
- If the restriction were not removed, it would create unnecessary hardship or exceptional difficulty. Mr. Bergstrom believed the improvements would greatly improve the safety of the property as well as an overall improvement.

MOTION BY MR. HARMER, SECONDED BY MR. HUDSON: THAT THE VARIANCE BE GRANTED AS STATED.

MOTION PASSED UNANIMOUSLY.

4. THE APPEAL OF RICHARD AND KIMBERLY RAMSEY, FOR THE PROPERTY AT 1206 OLD COOCHES BRIDGE ROAD, FOR THE FOLLOWING VARIANCES:

- A) CH. 32 SEC. 32-60 (c)(5)(c) – PROPOSED GARAGE ENCROACHES INTO FRONT YARD SETBACK BY 6 FEET. THE FRONT YARD SETBACK IS 25 FEET. PLAN SHOWS 19 FEET.**
 - B) CH. 32 SEC. 32-9 (c)(7)(c) – PROPOSED GARAGE ENCROACHES INTO SIDE YARD BY 3 FEET. THE SIDE YARD SETBACK IS A MINIMUM OF 10 FEET. PLAN SHOWS 7 FEET.**
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Ms. Schiano read the above appeal, stated that it was advertised in the *Newark Post*, and direct notices were mailed.

Ms. Gail Boblek, 1206 Old Cooches Bridge Road, was sworn in.

Mr. Foster asked Ms. Boblek to address her hardship. Ms. Boblek stated the existing garage is not adequate for storage of her car. In addition, she has to back the car into the garage and is unable to exit from the driver side. She is also unable to open the trunk with the car inside the garage.

Mr. Lopata stated the lot is a usually shaped lot with an unusual location and that in essence is the hardship or “practical difficulty.”

Mr. John B. O’Connell, 323 Jessica Drive, Middletown, DE was sworn in. Mr. O’Connell stated he was the project engineer and he further stated that due to expansion in Rt. 896 it altered the front yard setback.

There were no comments forthcoming from the public.

Mr. Harmer addressed the Kwik Check factors:

- The nature of the zone (residential) would remain the same.
- The character of the immediate vicinity will remain the same.
- If the relevant restriction were removed, such removal would seriously affect the neighboring properties and uses. It would not be the case.
- If the restriction were not removed, it would create unnecessary hardship or exceptional difficulty. Mr. Harmer believed it would create a hardship for Mrs. Ramsey in that she would be unable to utilize the benefits of an operable garage. It is a property improvement.

MOTION BY MR. HUDSON, SECONDED BY MR GRAHAM: THAT THIS VARIANCE BE GRANTED AS STATED.

5. THE APPEAL OF HAROLD B. PRETTYMAN, FOR THE PROPERTY AT 73 & 79 EAST CLEVELAND AVENUE FOR THE FOLLOWING VARIANCES:

- A) CH. 32 SEC. 32-11 (a)(1)(h) – REQUIRES A MINIMUM LOT AREA OF ONE ACRE FOR GARDEN APARTMENTS. PROPOSED LOT IS 0.572 ACRES.**
- B) CH. 32 SEC. 32-11(a)(1)(i) – REQUIRES A MINIMUM OPEN AREA OF 40%. PLANS SHOWS 34.8%.**
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Ms. Schiano read the above appeal, stated that it was advertised in the *Newark Post*, and direct notices were mailed.

Mr. Harold B. Prettyman, 585 Upper Pike Creek Road, was sworn in.

Mr. Prettyman stated in reference to his project that RM zoning is one of the highest residential density zoning in the City, yet it requires one acre of ground where it is permitted to build up to 16 apartments.

He further stated he is requesting the following area variances because the regulation imposed an exceptional practical difficulty on these properties. The “exceptional practical difficulty” is that RM zoning of these two parcels and surrounding parcels with their relatively small size make it nearly impossible to upgrade and develop the lots for their permitted use of garden apartments without purchasing and combining multiple parcels. Mr. Prettyman stated he had been unable to purchase additional adjacent parcels in order to meet the minimum one acre lot size.

The original site plan called for 8 units on a half-acre; however, by increasing occupancy or maximizing interior living space Mr. Prettyman stated he was able to decrease the number of units to five which equates to 10 units per acre resulting in less density and any need for additional variances.

Mrs. Jean White, 103 Radcliffe Drive, was sworn in. She stated her objection to Mr. Prettyman's variance request.

Mr. Prettyman addressed the Kwik Check factors:

- The nature of the zone (residential) would remain the same.
- The character of the immediate vicinity will remain the same.
- If the relevant restriction were not removed, such removal would seriously affect the neighboring properties and uses. The new apartment building will include installing sprinkler systems, hardwire smoke detectors and bring all systems, electric, plumbing and HVAC up to current building codes.
- If the restriction were not removed, it would create unnecessary hardship or exceptional difficulty. Mr. Prettyman believed it would create an exceptional practical difficulty in his efforts to make normal modern day improvements in the character of the permitted use of his property.

MOTION BY MR. BERGSTROM, SECONDED BY MR HARMER: THAT THIS VARIANCE BE GRANTED AS STATED.

MOTION GRANTED: 3-2

Nay: Hudson

Nay: Foster

Meeting adjourned at 9:19 p.m.

Tara A. Schiano
Secretary