

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
September 20, 2012**

**12-BA-5
Jay Freebery
221 Murray Road**

Those present at 7:00 p.m.:

Presiding: Clay Foster

Members Present: Jeff Bergstrom
Paul Faust
Howard Smith

Absent: Kevin Hudson

Staff Members: Bruce C. Herron, Deputy City Solicitor
Michael Fortner, Development Supervisor, Planning &
Development Department

1. APPROVAL OF MINUTES FROM MEETINGS HELD AUGUST 16, 2012

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

2. THE APPEAL OF JAY FREEBERY FOR THE PROPERTY AT 221 MURRAY ROAD TO CONSTRUCT 13 NEW TOWNHOMES:

A) CH. 32 SEC.11 (a)(1)(d) – MAXIMUM LOT COVERAGE SHALL BE 20%. PLAN SHOWS 26%, REQUIRING A 6% VARIANCE.

B) CH. 32 SEC. 11(a)(1)(h) – MINIMUM LOT SIZE IS ONE ACRE. PLAN SHOWS A LOT SIZE OF .8476 ACRE, REQUIRING A VARIANCE OF .1524 ACRE.

C) CH. 32-11(c)(5)(6) – REQUIRES A MINIMUM OF 30 FEET FROM PERIMETER STREETS. PLAN SHOWS 16 FEET FROM ELKTON ROAD AND 11 FEET FROM MURRAY ROADS; REQUIRING VARIANCES OF 14 FEET AND 19 FEET RESPECTIVELY.

Ms. Schiano read the above appeal and stated it was advertised in the *Newark Post* and direct notices were mailed. No letters in favor or opposition of were received.

John Tracy, Esquire of Young, Conaway, Stargatt & Taylor, LLP was present to speak on behalf of his client, Mr. Jay Freebery, the developer. Mr. Mike Ryman, Project Engineer, Becker Morgan Group, 309 S. Governors Avenue, Dover, DE was sworn in as well. Mr. Tracy indicated the property being discussed was along Elkton Road bordered by the Sunoco gas station on one side opposite of Murray Road. The property consisted of three lots and was currently a sixteen unit two story apartment complex divided among three buildings. It was constructed the mid 1980's and was currently zoned BLR. It was his belief the site was non-conforming given the time frame it was constructed and zoned. Mr. Freebery was involved in the Rittenhouse project directly across from the proposed project on Elkton Road and it was the same team that was seeking to develop this new project.

The current project was seeking to redevelop the sixteen apartment units to a thirteen unit townhouse complex. It would be necessary to demolish the existing structure and build the new townhouses. The proposed townhouses were within the height limitations of the City Code. The design would be similar to the newer construction along Elkton Road. Architectural features would be consistent with new construction in the area. Stormwater management would be updated including underground technology. Currently, there is a small pond located in the back of the property. Sprinkler systems would be included, as well as Code compliant parking. Current impervious cover would be reduced by approximately 1500 square feet of pavement.

Mr. Tracy discussed the variances requested.

- A minimum one acre was required for apartments. The existing lot was .8476 therefore, a small variance was required.
- Maximum lot coverage was 20%. The plan proposed 26%, requiring a 6% variance.
- A combined 30 foot setback was required off of Murray and Elkton Roads combined with 16 feet required from Elkton Road and 11 feet from Murray Road. The intent is to remain consistent with the trend to build closer to the street. Additionally, the project includes full parking on both sides interior to the project as opposed to exterior. A full fire lane was also being proposed.

Mr. Tracy stated the project would be going before Council to request a zoning change from BLR to RM to permit townhouses. If the zoning were to remain BLR only a 1% variance would be needed. In addition, it was Mr. Tracy's opinion the City would prefer the parking internally, with the parking buffered by the buildings.

Mr. Tracy addressed the Kwik Check factors:

- The nature of the zone and the character of the community will remain consistent. The surrounding zones were BB and RD, with residential zoning located in the rear. He believed it was nice to have the townhouses transitioning into the

duplexes and single family. It is a mixture of residential, commercial and office space.

- The benefit and the harm to the applicant if the variances were not granted, versus the harm to the community if the variances were granted. It was his opinion there would be no harm in this instance. Many improvements to an older site are in the proposal. There was no expansion to the non-conformity. There would be a reduction in units from 16 to 13, in addition to the Code compliant stormwater management and sprinkler systems as previously addressed.

Mr. Tracy asked if the Board had questions. Mr. Foster asked if the project reduced the number of units by one, would the variance request change. Mr. Tracy believed the variance requests would not change. Mr. Smith inquired if the open area issue had been resolved. Mr. Mike Fortner, Planning & Development Department replied that it had been resolved and the applicant was working with Parks & Recreation Department to have a Landscape Plan in place. Mr. Smith inquired if the units would be for rent or purchase. Mr. Tracy indicated they would be available for rent or purchase. Mr. Bergstrom inquired if all parking was external. Mr. Tracy indicated there would be garages as well. There would be 26 outdoor parking spaces and 26 spaces using the garage for a total of four spaces per unit. Mr. Smith asked if the how many bedrooms the units would have. Mr. Tracy indicated the majority would have three, with a few units having four bedrooms.

Mr. Smith addressed the Kwik Check factors:

- In regard to the nature of the zone, where the property is located is fitting to the surrounding area.
- The character of the immediate vicinity of the subject property and uses is consistent with the surround area as well. multi-family and would remain so.
- If the relevant restriction were removed, would it seriously affect the neighborhood. It was Mr. Smith's opinion it would not.
- If the restriction were not removed it would create an unnecessary hardship or exceptional practical difficulty. Mr. Smith did not necessarily believe there was a hardship but he believed there wouldn't be a detriment in granting the variance and he would vote in favor of the variance.

It was Mr. Foster's opinion the variances were too large and he would not vote in favor of the variances. Mr. Bergstrom asked the Planning and Development Department if they had an opinion. Mr. Fortner stated it was the department's opinion the project made sense and would fit in with the new development the City is supporting. Msrs. Smith, Faust, and Foster stated they would vote in favor of the variance because it was a minimal variance.

Mr. Bergstrom agreed this variance met the Kwik Check factors and was a reasonable request and he would vote in favor of the variance. Mr. Smith believed the

variances were consistent with the new development projects being constructed in the City and he would be inclined to vote for the variances.

MOTION BY MR. BERGSTROM, SECONDED BY MR. FAUST: THAT THE VARIANCES BE APPROVED FOR THIS PROJECT AS PRESENTED WITH CONSTRUCTION TO COMMENCE WITHIN SIX MONTHS.

MOTION PASSED: VOTE: 5 to 0.

Aye: Bergstrom, Faust, Foster, Smith

Absent: Hudson

Nay: None

The meeting was adjoined at 7:44 p.m.

Tara A. Schiano
Secretary

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