

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

AUGUST 15, 2013

13-BA-11
Tupp Signs/Newark Emergency Room
324 E. Main Street

13-BA-12
Nikola Slijepcevic
Petar & Nick Construction
28-30 N. Chapel Street

Those present at 7:00 p.m.:

Presiding: Clay Foster

Members Present: Jeff Bergstrom
Kevin Hudson
David Levandoski

Members Absent: Paul Faust

Staff Members: Bruce Herron, City Solicitor
Michael Fortner, Planning & Development Department

1. APPROVAL OF MINUTES FROM MEETINGS HELD JUNE 20, 2013

Mr. Bergstrom stated on Item #2 the word "Nay" be replaced with "Yay." There being no further additions or corrections, the minutes were approved as amended.

2. THE APPEAL OF TUPP SIGNS ON BEHALF OF NEWARK EMERGENCY CENTER, 324 E. MAIN STREET FOR THE FOLLOWING VARIANCE:

A) CH. 32 SEC. 59(b)(7) – PROHIBITS SIGNS WHICH FLASH EXCEPT FOR TIME AND TEMPERATURE. APPLICANT IS REQUESTING AN ELECTRONIC BULLETIN BOARD SIGN.

Ms. Schiano read the above appeal and stated it was advertised in the Newark Post. Direct notices were mailed. No letters in opposition were received.

Mr. Foster asked if the Planning & Development Department wished to comment. Mr. Fortner stated he did not.

Mr. Alan Goldberg, Tupp Signs, New Castle, DE was sworn in. Mr. Goldberg said his company represented Newark Emergency Center. He stated they were seeking a variance for an electronic message center to be incorporated onto the existing sign. Mr. Goldberg stated Mr. Alan Silverman would present the facts of the case on his behalf.

Mr. Alan Silverman, trustee and board member of Newark Emergency Center, was sworn in. Mr. Silverman stated Newark Emergency Center wished to update the existing sign. The proposed sign was a "billboard type" sign. Mr. Silverman further stated the signs were referred to as "electronic message centers." The proposed sign would be utilized in the existing structure. Mr. Silverman stated it was his opinion there was a difference between the electronic message sign and the type of sign regulated by the City of Newark. Mr. Silverman stated the sign would change relatively infrequently (possibly twice per day) and some days not at all, and that the proposed sign would not distract drivers. There would be no messages used that drivers would think the sign were a "highway type" sign. The proposed sign would not "flash." The sign would not emit sound. In addition, the sign would adjust to ambient light conditions. For example, when the sun goes down, the illumination would decrease. If the sign were to malfunction, there was a default and the current message would freeze in place. Although the sign has the capability to utilize many functions, those functions would not be used. The displayed message would remain in a fixed position throughout the day.

Mr. Robert Lynn, Newark Emergency Center representative was sworn in.

Mr. Herron, City Solicitor stated he was not aware of anything in the Code prohibiting electronic signs per se. Mr. Fortner stated the Code did not permit flashing signs except for time and temperature. Mr. Herron stated based on the submitted application and testimony presented of the infrequency of the sign changing its message, it was Mr. Herron's opinion the applicant's proposal was not prohibited by the Code.

Mr. Hudson asked of the sign was capable of animation and flashing text. Mr. Goldberg stated it was capable of those features.

Mr. Levandoski asked if there was a way to program the sign that would prohibit it to flash and create animation. Mr. Silverman stated as was described to him; the system was very similar to Power Point in that it was a "package." It would have to be stipulated in an agreement that it would be for display and not include moveable images, video, etc. If there were to be a violation, then action could be taken. It was Mr. Hudson's opinion such an agreement would be between the Newark Emergency Center and Tupp Signs and would be difficult to enforce. Mr. Fortner stated they would still have to follow Code regardless of the agreement and the City would enforce the Code.

Mr. Herron stated it was his opinion the Board of Adjustment had no role in this case as this sign would be considered a permitted use under the Code. Mr. Hudson asked how the Board should proceed. It was Mr. Herron's opinion the case should be withdrawn and as a follow-up either the Planning Department or Mr. Herron will issue a letter with an explanation based on what transpired at the meeting.

Based on Mr. Herron's opinion, the applicant withdrew the appeal.

3. THE APPEAL OF PETAR & NICK CONSTRUCTION 28-30 N. CHAPEL STREET FOR THE FOLLOWING VARIANCES:

- A) SEC. 32-11(a)(1) – MAXIMUM NUMBER OF DWELLING UNITS PER ACRE SHALL BE 16. CURRENT PLAN SHOWS 25 UNITS PER ACRE, REQUIRING A VARIANCE OF 9 UNITS PER ACRE.**
- B) SEC. 32-11(a)(d) – LOT COVERAGE. THE MAXIMUM LOT COVERAGE SHALL BE 20% FOR ANY LOT WHICH IS TO BE DEVELOPED FOR GARDEN APARTMENTS. CURRENT PLAN SHOWS THE LOT COVERAGE AS 25%, REQUIRING A VARIANCE OF 5%.**
- C) SEC. 32-11(a)(h) – MINIMUM LOT SIZE. THE MINIMUM LOT SIZE IS ONE ACRE. CURRENT PLAN SHOWS THE LOT SIZE AS 0.16 ACRE, REQUIRING A VARIANCE OF .84 ACRES.**
- D) SEC. 32-11(A)(I) – OPEN AREA. AT LEAST 40% OF THE LOT AREA SHALL BE DEVOTED TO OPEN AREA. CURRENT PLAN SHOWS 685 SQUARE FEET OR 9.8% OF OPEN AREA, REQUIRING A VARIANCE OF 30.2%.**
- E) SEC. 32-11(a)(j) – PARKING AND LOADING SPACES. ALL UNCOVERED PARKING AND LOADING SPACES SHALL BE LOCATED AT LEAST TEN FEET FROM ALL ABUTTING PERIMETER STREETS AND PROPERTY LINES. CURRENT PLAN SHOWS THE PROPOSED PARKING SPOTS TO BE LESS THAN 1 FOOT FROM THE SOUTHERN PROPERTY LINE, REQUIRING A VARIANCE OF 10 FEET.**
- F) SEC. 32-11(c)(5)a – BUILDING SETBACK. THE MINIMUM BUILDING SETBACK REQUIRED IS 30 FEET FROM THE LINE OF ALL PERIMETER STREETS. CURRENT PLAN SHOWS PROPOSED SETBACK TO BE 5.2 FEET, REQUIRING A VARIANCE OF 24.8 FEET.**
- G) SEC. 32-11(c)(7)c – SIDE YARDS. THE MINIMUM SIDE YARD FOR ALL EXTERIOR LOT LINES WAS 25 FEET. CURRENT PLAN SHOWS SIDE YARDS OF 6 FEET AND 7.4 FEET, REQUIRING A VARIANCE OF 19 FEET AND 17.6 FEET**
- H) SEC. 32-45(a) – OFF STREET PARKING. TWO OFF STREET PARKING SPACES ARE REQUIRED PER DWELLING UNIT, PLUS ONE ADDITIONAL OFF STREET PARKING SPACE FOR EACH DWELLING**

UNIT WITH MORE THAN THREE BEDROOMS. CURRENT PLAN SHOWS 4 BEDROOM APARTMENTS AND 8 PARKING SPACES. 12 PARKING IS REQUIRED, NEEDING A VARIANCE FOR 4 PARKING SPACES.

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

Mr. Josiah Wolcott, Esquire, Connolly Gallagher, 267 East Main Street, Newark, DE represented Petar & Nick Construction. He stated the property was located at 28-30 N. Chapel Street and described the property and surrounding properties as predominantly rental units. The proposal before the Board was to tear down the existing structure which had been built in approximately 1900 and construct a new building on the same footprint. It was Mr. Wolcott's opinion the exceptional practical difficulty was if the property were to collapse, reconstruction would not be possible without variances. The restrictions were inherent with the property. Mr. Wolcott clarified most of the variances before the Board consisted of area variances (Items B, C, D, F, and G). The next variance request, Item A was a variance for density. It was Mr. Wolcott's opinion the exceptional practical difficulty was the property owner would not permitted to build the new structure without this variance. The developer would incur between \$400,000 and \$500,000 in debt obligations to build the structure, which could not be met if there were to be less than four units.

The next variance addressed was the parking setback. Currently the parking, located in the backyard, was scattered. The proposed parking setback would be much more orderly and have an improved appearance. The final variance request for off-street parking had changed. In the original submitted plan, there were ten parking spots. The developer made some alterations and there were twelve parking spots. The packets the Board had reflected this. It was his belief this was Code compliant.

Mr. Bergstrom asked if there was any neighboring land available to purchase to augment the existing site. Mr. Wolcott didn't believe so.

Mr. Mitch Slijepcevic, 8 The Horseshoe, Covered Bridge Farms, Newark, DE, was sworn in. After a brief introduction, Mr. Slijepcevic stated his father currently owned the property and he would be in charge of the proposed project. Mr. Wolcott asked Mr. Slijepcevic to describe the condition, the location and the characteristics of the existing project and neighborhood. Mr. Slijepcevic stated the existing structure was a century old house. It was outdated on both the inside and outside. It was a two story duplex with two units that permit four unrelated occupants. All of the major internal systems are outdated. They include plumbing, electric etc. The structure lacks air conditioning. The exterior shingles were starting to crumble due to age. The inside of the structure was plaster and slat walls, which were extremely fragile. There was no sprinkler system and it was not energy efficient. Parking was ample, but not structured. Per Mr. Slijepcevic, the only

advantage to the property was that it remains structurally sound. This has allowed them to continue to “band aid” the issues as they go along.

Mr. Slijepcevic stated the area was primarily a rental residential neighborhood. Mr. Slijepcevic provided photos to be kept in the file to show the existing property. Mr. Slijepcevic stated the back of the property had a six foot high fence and abuts a Newark Shopping Center site (visible in the provided picture).

Mr. Wolcott asked the applicant to discuss the proposed project. The applicant stated the proposal was to demolish the existing structure and replace it with a brand new building. The project would be a three story quad with four townhouse style units. Each unit will have four bedrooms and 2 ½ bathrooms. Each unit will accommodate four unrelated tenants. The footprint would remain the same. It was his opinion the project would greatly improve the look of the street.

The applicant stated they had a similar and very successful project on Choate Street. The applicant provided the Board with pictures of the Choate Street structure for comparison. The current design showed a brick front. However, the applicant stated they were open to other suggestions if need be. The structure would be safer for tenants, for the neighborhood and for the City. The units would have sprinkler systems installed which would mitigate risk. The proposed exterior lighting will improve visibility in the area at night. The new internal systems would greatly decrease the risk of a major event, such as a fire. The sturdy locking windows and doors would be safer for tenants and would potentially deter crime in the area. The building will be energy efficient. The existing structure was very inefficient. While the proposed project would provide many benefits, it would have to be economically feasible. Based on the construction costs of the building constructed on Choate Street, the proposed project would cost between \$400,000 and \$500,000 to construct. Based on rental rates in the area, with four units it would take at least five years to recoup the total investment on the project. It was Mr. Slijepcevic's opinion that this project was the right thing to do for the City and for them.

The proposed structure would relieve an economic disadvantage the developer was facing with the current structure and the extensive time and expense of maintaining the century old home. It was Mr. Slijepcevic's opinion within the next five years they would encounter a number of expensive maintenance issues and project including but not limited to: complete exterior renovations, replacement of old heaters, new windows, new roof. In addition, there were always unforeseen issues that arise. If all of the maintenance projects were to be completed, the costs would not approach the \$400,000 to \$500,000 range. However, Mr. Slijepcevic's opinion was it would compare to “putting bigger band aids on the same size problem.” It was his opinion the proper solution would be to start over and build a structure that would benefit the neighbors and the City. It would also relieve the economic disadvantage the Slijepcevic's were encountering.

Mr. Wolcott asked Mr. Slijepcevic to describe the financing in place for the proposed project. Mr. Slijepcevic stated the Choate Street property was remortgaged using two or three other properties that were mortgage free. He further stated \$500,000 had been borrowed to construct the property. Mr. Slijepcevic's father was in charge of the construction and once complete, Mr. Slijepcevic and his sister bought the property and repaid their father using a mortgage obtained through an LLC. However, for this proposed project, Mr. Slijepcevic's father would continue to own this property.

Mr. Wolcott asked if Mr. Slijepcevic had used an architect or engineer to draw any plans for the proposed project. Mr. Slijepcevic indicated those were the renderings posted on the easel. He further stated it was a three story structure with a brick front; with a similar look to the existing structure. Mr. Slijepcevic reiterated if the City wished to alter the façade they would be agreeable.

Mr. Wolcott asked Mr. Slijepcevic to describe the proposed project's parking. The applicant stated under the proposed plan, the increase in density requested would result in a slight increase in the number of vehicles parking behind the house. The current parking structure wasn't very orderly and tenants were currently parking near the side property lines. The proposed parking structure would be orderly and there would be no impact to the neighbors on the sides. The neighbors to the rear would not be affected due to the existing brick wall that runs the length of the back property line. There would be the same number of tenants at the proposed project as were currently at the existing Choate Street project. There were no parking problems at the Choate Street project.

Mr. Wolcott asked Mr. Slijepcevic to discuss the neighbor's opinion of the Choate Street project. The applicant stated the reaction had been very positive and that the permanent residents appreciated the newer structure. It was his opinion the Chapel Street project would be even more beneficial to the surrounding street.

Mr. Wolcott asked the applicant to discuss the density variance. Mr. Slijepcevic said they were seeking an increase in density which will result in an increase in tenants to make the project economically feasible. It was his opinion this would not have any significant impact to the neighbors since the majority of homes on Chapel Street are currently college rentals. The applicant added that while the Choate Street project was technically a decrease in units (from six to four), the total number of tenants increased. The old structure had one or two bedroom apartments and the new structure was a four townhouse, four bedroom units. By their account, they were of the opinion there had not been a significant impact to the neighbors.

Mr. Wolcott suggested the applicant discuss the footprint variances. Mr. Slijepcevic stated the footprint variances were all existing non-conforming uses. If the proposed project maintained 50% or more of the existing structure, it was the understanding of the applicant they would not need to seek the variances. The applicant believed there wasn't

50% of the structure that was salvageable. However, if the existing structure were to be destroyed by fire or natural disaster, since an acre of property is required for development, it would not be able to be replaced without seeking the same variances they are seeking before the Board. Mr. Slijepcevic wished to note they would be maintaining the same footprint. The new structure would be safer and more attractive. When viewing the variances in totality, the approval of the variances would not change the nature of the zone or the character of the area. Additionally, it was his opinion it would remove two exceptional practical difficulties for the applicant: not being able to construct a new building on the property due to the size of the parcel and current zoning ordinances and the economic disadvantage the applicant faces in maintaining a century old home.

Mr. Slijepcevic stated if the variances were not granted, they would have to continue to patch up the existing structure as necessary because undertaking a smaller reconstruction project would not be economically feasible.

Mr. Fortner stated the property was legal non-conforming as was grandfathered. Therefore, it does not meet today's current zoning code. If the building were to burn down or fall down, the applicant could reconstruct the exact same building within one year. The reason the variances are being requested was because the applicant was looking to add two more units. It currently was a duplex. Adding the additional units made the property a minor subdivision in the eyes of the City.

Mr. Foster asked if there was an issue with the height. Mr. Slijepcevic stated as the property was originally designed it was 37 feet. The requirement was 35 feet being the maximum, so the property was redesigned to meet the 35 foot requirement. Mr. Levandoski asked what the current height of the existing home was. Mr. Slijepcevic stated he did not have the exact height measurements of the current structure. He further stated the current building was a two story structure with a walk-in attic area. The new structure will be virtually the same height with a slight increase in height of a couple of feet and then creating a very shallow attic above.

Mr. Ronnie Carpenter of Carpenter Engineering, 50 Red Fox Drive, Elkton, MD was sworn in. Mr. Carpenter stated he worked closely with the architect on this project. He stated the height of the third story had been changed to conform to the bulk density standards for the zoning district.

Mr. Bergstrom asked if the applicant was aware if the driveway had to be lowered that doesn't give them added height for the structure. Mr. Slijepcevic stated it was measured from the street and Mr. Fortner confirmed this. Thus, the applicant stated if they lowered the floor of the house, they would have to lower it to get the grading correct to the level of the driveways, but would still meet the height requirement. He further stated the original design with the floor plan was exactly at the same level and was 37 feet so the existing floor would only have to be moved approximately two feet. Mr. Carpenter

confirmed the proposed finished level of the floor was lowered than the current existing floor; therefore, the driveway had to be modified to obtain proper drainage around the building. He also confirmed the building was measured from the street.

Mr. Foster asked if there was anyone present from public that wished to speak.

Mr. Hal Prettyman, 163 South Main Street, Newark, DE was sworn in. Mr. Prettyman inquired if the Ordinance regarding height had passed. Mr. Fortner replied it would pertain to BB zoning. Mr. Prettyman stated he thought residential (RM) was going to go to a medium height because of the Code having two different definitions (definition in the Building Code and then a different definition in the Zoning Code). Mr. Fortner replied he was not aware of that and what was being considered. He further stated his memory was the Ordinance was for BB and that included height bonuses, but the height restriction was still 35 feet for RM. Mr. Fortner confirmed it had passed the Planning Commission but had not gone before Council. Mr. Prettyman stated he owned four properties on North Chapel Street. He said he was a big advocate of modernizing these old houses. He believed the home being discussed had "balloon framing," which means there are fire stops and in the event of a fire it would burn very quickly. With those reasons in mind, Mr. Prettyman was in favor of this variance; although he would like to see the height at 40 feet. It was his opinion the structure would be more aesthetically pleasing with the peaked roof rather than the flat roof. It was his opinion the parking issue would alleviate itself with the close proximity of Main Street, because a lot of students walk. He believed cars would get parked and left at home and the student would travel by foot to classes, etc. He had hoped for the continuing of the Chapel Street "facelift."

There being no further questions or comments, the matter returned to the Board. Mr. Hudson asked what the existing lot coverage was and was it the same. Mr. Slijepcevic stated "technically it's not the same," but the reason why was because if you look at the property and walk the grounds, it would be apparent the entire backyard was covered in gravel, which they were proposing for the parking area going forward. Over time, grass had grown up through the gravel and created the open space that currently existed. However, the applicant was proposing to do what was done in the past and that would be to gravel the backyard to use as the parking area. It was his belief that was the issue that was decreasing the open space that had over time been created.

Mr. Foster asked for clarification of the building to rear of the property. Messrs. Hudson and Fortner stated it was Pomeroy Station. Mr. Hudson stated it was his opinion the density variance (the first item) had only one issue and that was the economic viability of the project. Mr. Wolcott stated it wasn't the only issue but it was a major one.

Mr. Wolcott stated he wanted to provide to the Board Delaware Supreme Court case that talked about when the main consideration was economic motivation. The case was McLaughlin v. Board of Adjustment of New Castle County (copy in file). Mr. Wolcott

stated he believed he understood where Mr. Hudson was going with his inquiry. The question was whether or not the variance request was minimal or not or whether it should be dismissed because it was primarily economically motivated. It was his opinion the Delaware Supreme Court said in this case was on the third (right hand column second full paragraph) the Kwik Check was cited “that under this exceptional practical difficulty test, a practical difficulty was present with the requested dimensional change is minimal and the harm to the applicant if the variance is denied will be probable effect on neighboring properties if the variance is granted.” The appellate in the case was relying on this issue to say that for economically motivated variance requests, the change had to be minimal. Then the Supreme Court said that “our statement does not mandate that the Board make a separate analytic step when considering economically motivated application for area variance. Rather, our observation was a specific example of how the Board should consider the four Kwik Check factors weighing the potential harm to the neighboring properties by granting the variance against the harm of the property owner by denying it.”

Mr. Wolcott stated in this instance, the economic harm the Slijepcevic’s may face if the variances were denied would be to continue to maintain the upkeep of the century old building. The effect, or potential harm, on the neighboring property owners would be in the context of the density variance with the increase of approximately 8 tenants. It was Mr. Wolcott’s opinion the increase would be insignificant in an area consisting of student rentals. However, if the variance was granted, the benefit to not only to the Slijepcevic’s but to Chapel Street and the City in general would be greater than any potential harm. The building would be safer, updated, more aesthetically pleasing, and would have sprinkler systems and energy efficient utility systems. The argument that the density requirement was simply an economically motivated factor may be true but there are other considerations. It was his belief that was the intent of the Supreme Court in the case quoted. Whether or not it was economically motivated, it is simply one factor to consider. Also to be considered was the effect on neighboring properties. Mr. Wolcott stated before it was his opinion it would not have a negative impact, and the addition of 8 tenants would be minimal compared to the harm the applicants would face if the variances were denied.

Mr. Hudson asked how many other rental properties were on Chapel Street. Mr. Slijepcevic stated almost every house was a rental property but approximately 35-40 houses in that area of Chapel Street were rentals. Mr. Hudson stated if the variances were granted then other rental properties would follow suit. Mr. Wolcott stated it could. Mr. Slijepcevic stated not all the houses on Chapel Street were in the same situation from a size requirement and the ability to park in the backyard. He stated quite a few of the existing homes were row homes that didn’t have driveways. Therefore if the density were doubled on those homes, the additional parking required would not be possible. He stated the same would apply to the side of Chapel Street where the Slijepcevic’s’ property was located. Some of the lots were much narrower than Slijepcevic’s’ property and do not have the room in the backyard to accommodate additional parking. Therefore, most of the properties on Chapel Street would not be able to pursue the variances.

Mr. Foster suggested going through the list of variances one at a time. Mr. Herron informed the Board he generally agreed with the interpretation of the Supreme Court case that was submitted by Mr. Wolcott. He stated it was an interesting case because it interprets a prior holding by the Supreme Court and basically states if a variance was sought for economic reasons solely which in general is what he believed this was the case here that the Board does not have to make a finding that the requested changes were minimal. The primary focus should be on weighing potential harm to the neighboring properties by granting the variance against the potential harm to the property owner if the variances were denied. Mr. Hudson stated his point in mentioning it was the fact the Kwik Check states the Supreme Court erred in holding the economic consideration standing alone may be sufficient justification for granting an area variance.

Mr. Wolcott stated it was his belief the intent of the Supreme Court's decisions was all the factors had to be considered in total. It was permitted to just pick one and say it's granted because of that reason or it's denied because of that reason.

Mr. Foster asked Mr. Herron if he agreed with Mr. Wolcott's opinion. Mr. Herron replied he concurred. Mr. Levandoski asked what a cost analysis had to do with what was being proposed for the maximum amount of units and tenants and was there a cost analysis done on what the cost would be to replace the house with a similar house. Mr. Slijepcevic stated he had done a rough cost analysis. If the existing structure were to be demolished and rebuilt exactly the same way, it would be probably cost in the \$250,000 - \$300,000 range. It would not be economically feasible for them to do that. Essentially the same rent would be generated. The payback period would be pushed from a 5 year period to approximately 7 or 8 years, given the rental income generated. It was his opinion it didn't make sense to have a 7 year payback on a \$300,000 investment. Typically investors are looking for five years or less. Mr. Hudson asked how much a single unit would cost. Mr. Slijepcevic stated that he did not do an analysis on that, but it would not make sense to them on an economic standpoint.

Mr. Bergstrom agreed the variances should be addressed one at a time. However, he stated the Kwik Check factors would be the same for the first couple of variances.

Mr. Bergstrom addressed the Kwik Check factors: for the first variance, the maximum number of dwelling units per will be 16. Your plan shows 25 units per acre, requiring a variance of 9 units per acre.

- The nature of the zone where the property was located was zoned residential and would not change.
- The character and use of the immediate vicinity of the subject property and uses of the property within that immediate vicinity were residential rental homes; neither would change.

- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. Mr. Bergstrom stated it was his opinion it would not seriously affect the neighboring properties.
- If not removed, the restriction would create unnecessary hardship or exceptional practical difficulty to the owner in relation to efforts to make normal improvements in the character and the permitted use of the property. Mr. Bergstrom stated there was testimony the property was being economically unfeasible to maintain. The restriction, if not removed would cause the property be difficult to maintain.

Mr. Bergstrom believed a strong case could be made that the Kwik Check factors to be considered are in fact met. The question was whether the variance being considered was minimal. The only testimony was from the applicant stating the variance was minimal. No one objected and said it was excessive. Mr. Bergstrom also indicated concern over the amount of variances requested. However there was testimony and by looking at the zoning map, it wasn't conceivable that many other properties could follow suit and request similar variances. Mr. Bergstrom stated he was inclined to agree the request could be granted, but the issue remained that Mr. Herron stated the Board could not consider whether this would be considered a minimal variance request.

Mr. Foster stated he was planning to vote for the variance. He stated the tenants' safety was important and was a real benefit to the community. Mr. Foster stated he thought the presentation was very persuasive.

Mr. Levandoski stated he was thinking differently. It was his opinion the variance request asking for nine additional units was excessive and that he wasn't certain related to what was currently occurring on Chapel Street. Additionally, he believed fire safety was part of the responsibilities of a landlord/homeowner. Maintaining a safe structure was essential. Mr. Levandoski stated he would not be factoring that issue in to his decision.

Mr. Foster asked if existing property owners had to install sprinkler systems. Mr. Fortner stated rental properties require inspections and meet the Code. Mr. Fortner stated only new construction and major reconstruction would be required to have sprinkler systems. Mr. Foster would remain with his original opinion and stated he believed the safety was of the utmost importance.

Mr. Hudson stated it was a very tough decision. When considering all the Kwik Check factors, he would vote in favor of the variance.

Mr. Wolcott stated on behalf of his client if any one of the variances were not approved, the project would not go forward. Mr. Slijepcevic stated he did not see any variances they would be able to alter based on the proposal.

Mr. Herron stated if the Board believed that the comments each Board member has made are equally applicable to all the variances, the Board can vote on the variances

as a whole.

Mr. Bergstrom suggested the Board discuss the remaining variances prior to taking a vote. Mr. Foster concurred. Mr. Bergstrom addressed the lot coverage. It was his opinion the maximum lot coverage variance was a minor variance because the proposed structure was to build on the same footprint.

- The nature of the zone where the property was located was zoned residential and would not change.
- The character and use of the immediate vicinity of the subject property and uses of the property within that immediate vicinity were residential rental homes; neither would change.
- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. Mr. Bergstrom stated it was his opinion it would not seriously affect the neighboring properties because the configuration of the properties would remain the same.
- If not removed, the restriction would create unnecessary hardship or exceptional practical difficulty to the owner in relation to efforts to make normal improvements in the character and the permitted use of the property. The applicant testified the existing property was becoming less and less valuable without some relief.

Mr. Bergstrom would be inclined to vote in favor of the variance. He continued with the third variance, lot size and stated he would use the same argument as above to address the Kwik Check factors.

He continued with the open area variance. He said it would be more effectively used. Mr. Hudson asked if the increased parking changed the open space. Mr. Fortner stated the whole backyard would be used for parking. Mr. Hudson clarified the backyard currently was considered open space. Mr. Fortner stated that was the case. Mr. Hudson said by extending the parking, the open space would decrease. Mr. Fortner said “yes.”

Mr. Bergstrom stated the testimony was the entire backyard was impervious with one tree and grass growing through the gravel and it was a large variance. Mr. Bergstrom stated the applicant was trying to promote a more vital community. The parking and loading spaces are located at the south end of the property and the applicant was requesting a ten foot variance. Judging by the photos provided, it was his opinion; there would not be a significant change. He applied the same Kwik Check factors:

- The nature of the zone where the property was located was zoned residential and would not change.
- The character and use of the immediate vicinity of the subject property and uses of the property within that immediate vicinity were residential rental homes; neither would change.

- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. Mr. Bergstrom stated it was his opinion it would not seriously affect the neighboring properties because the configuration of the properties would remain the same.
- If not removed, the restriction would create unnecessary hardship or exceptional practical difficulty to the owner in relation to efforts to make normal improvements in the character and the permitted use of the property. Mr. Bergstrom stated the applicant would not have the four parking spaces, whatever the configuration would be.

With regard to the building setback, it was his opinion it was clear cut. The front yard setback matched the existing building on the street for the sake of the street scape.

Continuing on with the side yards, he believed the Kwik Checks did not vary between these variance requests.

The one Mr. Bergstrom struggled with was the density. He further stated the Board can only go by the testimony presented and the Board cannot extrapolate what could happen on other properties on the street as a result of this action.

Mr. Fortner asked who can provide testimony the project would be too dense. Mr. Fortner stated everything on the street was RM and were a series of duplexes. The density however was more conforming with an RM zoning with 16 units per acre maximum.

Mr. Herron stated it had to be limited to the impact on the neighboring properties and the potential harm to these neighboring properties by granting these particular variances. The Board cannot speculate on what may happen in the future.

Mr. Levandoski stated the Board also heard testimony saying other neighboring properties may not have the potential to do exactly what this applicant had proposed because of existing limitations on these other properties. Therefore, it was his opinion they would not have the opportunity to increase the safety because it would not be economically feasible for other landlords to do so. However in this case, it would be feasible but not in any other case. The spiral effect wouldn't continue down the street, so it would almost be an unfair advantage.

Mr. Bergstrom stated unless nearby property owners "band" together and come up with a solution for multiple properties. However, Mr. Bergstrom stated only the testimony of this case can be considered. These variances, if granted could be a benefit to the street and to the environment of the community; even though the density was increasing.

Mr. Foster agreed but was not concerned enough to vote no. Mr. Foster would still vote in favor of the variances.

Mr. Hudson stated he was having an issue with the open area. The testimony was it was part of the footprint and nothing would change. The grassy area in the back was currently open space? Mr. Fortner stated the property was grandfathered and never reviewed under the current zoning code. He confirmed under the proposal it would be used for parking. Mr. Fortner reiterated a 40% open space was required as properties get larger. Mr. Slipjecevic stated it was his opinion no one would be able to construct any property on Chapel Street that would meet the parking requirements and still meet the open space requirement of 40%.

Mr. Hudson stated he had an issue with density as well. It was Mr. Hudson's opinion the applicant was requesting more than normal improvements to the character of the property. Mr. Hudson did not see the exceptional practical difficulty. He stated he would vote no for open area and the density variances.

Mr. Herron stated the Board should take a vote on each variance. Mr. Foster called for a vote.

MOTION BY MR. BERGSTROM SECONDED BY MR. FOSTER: DWELLING UNITS PER ACRE.

MOTION FAILED: VOTE: 2-2.

Aye: Bergstrom, Foster,

Nay: Hudson, Levandoski

MOTION BY MR. BERGSTROM SECONDED BY MR. FOSTER: LOT COVERAGE SHALL BE APPROVED AS REQUESTED.

MOTION PASSED: VOTE: 3-1

Aye: Bergstrom, Foster, Levandoski

Nay: Hudson

MOTION BY MR. BERGSTROM SECONDED BY MR. HUDSON: MINIMUM LOT SIZE.

MOTION PASSED: VOTE 4-0

Aye: Bergstrom, Foster, Hudson, Levandoski

MOTION BY MR. BERGSTROM SECONDED BY MR. FOSTER: OPEN AREA

MOTION FAILED: 2-2

Aye: Bergstrom, Foster

Nay: Hudson, Levandoski

MOTION BY MR. BERGSTROM, SECONDED BY MR. FOSTER: PARKING AND LOADING SPACES.

MOTION PASSED: 4-0

Aye: Bergstrom, Foster, Hudson, Levandoski

MOTION BY MR. BERGSTROM, SECONDED BY MR. FOSTER: BUILDING SETBACK.

MOTION PASSED: 4-0

Aye: Bergstrom, Foster, Hudson, Levandoski

MOTION BY MR. BERGSTROM, SECONDED BY MR. FOSTER: SIDE YARDS:

MOTION: PASSED: 4-0

Aye: Bergstrom, Foster, Hudson, Levandoski

The off street parking variance had been resolved, and was not proposed.

4. The meeting was adjoined at 8:49 p.m.

Tara A. Schiano
Secretary

/tas