

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
OCTOBER 17, 2013**

**13-BA-13
Wooten Construction/
Diane Terranova
7 Scotch Pine Road**

**13-BA-12
28-30 N. Chapel Street
Petar & Nick Construction
28-30 N. Chapel Street
(request for re-hearing)**

Those present at 7:00 p.m.:

Presiding: Clay Foster

Members Present: Curtis Bedford
Jeff Bergstrom
Kevin Hudson
David Levandoski

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

1. APPROVAL OF MINUTES FROM MEETING HELD AUGUST 15, 2013

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

2. THE APPEAL OF JOSEPH WOOTTEN CONSTRUCTION ON BEHALF OF DIANE TERRANOVA, 7 SCOTCH PINE ROAD, FOR THE FOLLOWING VARIANCES:

- A) CH. 32 SEC. 59(c)(6) – REAR YARDS. UNDER RS ZONING WITH SITE PLAN APPROVAL FOR THIS SUBDIVISION, THE MINIMUM REAR YARD IS 25 FEET. THE CURRENT PLAN SHOWS A REAR YARD OF 15.8 FEET. A VARIANCE OF 9.2 FEET IS NEEDED.**
- B) SEC. 32-9(c)(2) – MAXIMUM LOT COVERAGE. UNDER RS ZONING WITH SITE PLAN APPROVAL FOR THIS SUBDIVISION, THE MAXIMUM LOT COVERAGE IS 26.3%. THE CURRENT PLAN SHOWS LOT COVERAGE AT 29.6%. A VARIANCE OF 3.3% IS NEEDED.**

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. Joseph Wootten, Wootten Construction, 319 Pond View Lane, Bear, DE was sworn in. Mr. Wootten informed the Board Ms. Terranova proposed building a larger structure to the already existing deck.

Clay Foster, Chairman asked if Mr. Fortner, Planning & Development Department had any comment. Mr. Fortner, provided a memorandum from Roy Lopata to be entered into the record. The document discussed the complexity of the Evergreen subdivision (where the property is located). Evergreen was approved by Council in May 1986 with site plan approval. Site plan approval essentially means the City has the authority to modify the existing zoning area requirements under certain conditions in order to encourage attractive, unique or otherwise unusual development that will benefit the community. In the case of the Evergreen subdivision, certain lots had a permitted lot coverage of 25 percent in contrast to a normal RS zoning lot coverage of 20%. Additionally, some rear yards were as small as 25 feet, with normal RS zoning requirements at least 30 feet. Therefore, due to the variation of lot sizes in the Evergreen subdivision, some of the lots were able to add decks/sunrooms without the need for a variance.

Mr. Hudson asked what was in the back of the property. Mr. Wootten stated it was his understanding the property backed up to another neighbor's rear lot.

Mr. Levandoski asked if the proposed addition would match the exterior. Mr. Wootten stated the proposed addition would have sliding windows and the siding and roofing would be matched to the existing materials used. The proposed landing adjacent to the exit door to the patio will be the same color as the existing deck.

Mr. Foster asked if there would be rainwater management. Mr. Wootten stated there would be downspouts added and they would be extended toward the front of the house and buried with the intent to have the water land in the mulch bed.

Mr. Wallace H. Hansen, 45 Scotch Pine Road, was sworn in. Mr. Hansen stated he had been a City resident since 1989. Mr. Hansen provided pictures to the Board to view depicting water runoff issues that were to be returned to Mr. Hansen at the end of the meeting. Mr. Hansen stated it was his belief there were other residents affected by water runoff issues that were not present at the meeting. Mr. Hansen wanted to request the water runoff issue be addressed. Mr. Hansen stated during heavy rains the water drained through the yards washing away the topsoil. He further stated he had to annually replace the ground soil. It was his opinion when homes uphill from his property add on structures it resulted in more water coming down through the swales and downhill towards his property and other downhill neighbors. Mr. Hansen also wished to thank the City for the letter notifying him of the proposal and of the meeting. He further stated the Homeowner Association in Evergreen had not notified him of any issues or proposals uphill from his property.

Mr. Bergstrom asked Mr. Hansen if the City of Newark or the New Castle Conservation District had been contacted regarding the drainage problem. Mr. Hansen stated he had contacted both organizations to no avail.

Mr. Fortner asked Mr. Hansen if he had met earlier in the day with Roy Simonson, Public Works and Water Resources Director. It was determined that Mr. Simonson had met with the Homeowner Association President of Evergreen and Mr. Hansen. Mr. Fortner reported Mr. Simonson's assessment was the swale that may not have been constructed properly and/or filled with dirt. In addition, it was Mr. Simonson's opinion that some well-meaning efforts may have been done, i.e. placement of new dirt, planting of new trees, etc. These efforts are causing the redirection of water and causing more issues rather than helping. Furthermore, it was Mr. Simonson's opinion the water drainage issues were not necessarily related to the density of the existing housing, but rather the swale not draining properly.

Mr. Foster asked if there was a simple fix to the issue. Mr. Fortner stated Mr. Simonson had referred the Homeowner Association to New Castle Conservation District.

Ms. Eliza Zulli, 43 Scotch Pine Road, was sworn in. Ms. Zulli wished to thank the Board for the notification letter of the proposed project and meeting. Ms. Zulli stated she was Mr. Hansen's neighbor and had also experienced water drainage issues. She reported they had a pressure relief system installed approximately one year ago to alleviate the water in their basement. She further stated during heavy rains, their property experiences a "river gushing by." It was her opinion the slope of the land contributes to this problem. She said she had spoken to Mr. Wooten prior to the meeting and was encouraged by interest in not adding to the drainage issues. She further stated if there were additional steps that could be taken to alleviate any additional water issues, it would be greatly appreciated.

It was Mr. Bergstrom's opinion the potential for increased groundwater was a concern. He stated if he were to vote to grant the variance he would want to make sure a civil engineer inspect the site and confirm it would not have a measurable effect. Mr. Foster asked what could be expected from the soil conservation people. Mr. Bergstrom stated they are effective in fixing issues such as this. It was Mr. Bergstrom's initial opinion that perhaps a civil engineer may suggest methods to bring the stormwater to the front of the property. Mr. Fortner stated Roy Simonson, Public Works Director was agreeable to working with the neighborhood to address the issue. It was Mr. Simonson's opinion the swale was not operating properly. He repeated some of the efforts of the neighbors was contributing to the problem and would need to be addressed as well. In addition, he wished to reiterate it was Mr. Simonson's assessment the proposed addition would not have a noticeable impact.

Mr. Bergstrom asked if a drainage easement was in place for the subdivision. Mr. Fortner stated it was his belief there was. Mr. Foster stated it was the Board's prerogative to put a condition on the variance, if granted.

Mr. Herron stated it may be difficult to put a condition on the variance when the Board doesn't have the specifics of what the City has determined; other than the summary of what Mr. Fortner provided. Mr. Hudson stated it was his opinion if a condition was placed on the variance then it would have to run with the land. Mr. Herron stated it was his opinion the Board could postpone the case to a definite future date and ask the City provide a report regarding the impact of this particular proposal on the water problem.

Mr. Foster asked if this would be agreeable to the Board. Mr. Wootten, contractor on record wanted clarification the total responsibility of solving the problem would not fall on the homeowner. Mr. Bergstrom stated the incremental difference of the addition and what issues it would cause with additional stormwater problems was what the Board should be concerned with.

Mr. Fortner asked if the Board could consider granting the variance on the condition the applicant work with Public Works and Code Enforcement to address and resolve the issue of stormwater management. Mr. Herron replied it was within the Board's authority to put such a condition on the proposed variance.

Mr. Bergstrom stated it was his opinion if an engineer stated the water could effectively be directed to the front of the yard and it would have no impact on the rear of the property and will perhaps improve it, he would vote in favor of the variance. It was his opinion the setback issues were not troubling. Mr. Herron stated a condition be placed on the variance that certification would be required by the Public Works Department that the addition would not adversely impact the homeowners. The Board agreed on this proposal.

Mr. Hudson addressed the 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 homes; neither would change.
- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. It was Mr. Hudson's opinion it would not affect the uses. The issue that was of concern, the stormwater drainage with neighboring properties, was addressed with the conditions that were placed on granting the variance.
- 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. Hudson stated the Board heard testimony the homeowner wanted to make an improvement that will allow her to enjoy the outdoor deck for at least three seasons of the year.

Mr. Bergstrom stated he was in favor of granting the variance due to the small variance request and the conditions the additional stormwater runoff is negligible.

Mr. Levandoski concurred with Mr. Bergstrom. He was in favor of the contributions of the City in ensuring the additional runoff would be negligible.

Mr. Bedford stated he was in agreement with Mr. Hudson.

MOTION BY MR. HUDSON SECONDED BY MR. FOSTER: THE MOTION BE APPROVED ON THE CONDITION THE APPLICANT RECEIVE CERTIFICATION FROM THE PUBLIC WORKS DEPARTMENT FOR WATER MANAGEMENT TO ENSURE THE IMPACT OF STORMWATER WOULD BE NEGLIGIBLE ONCE THE PROPOSED ADDITION WAS COMPLETE.

MOTION PASSED: VOTE: 5-0

Aye: Bedford, Bergstrom, Foster, Hudson, Levandoski

3. THE REQUEST OF D. BARRETT EDWARDS, ESQUIRE ON BEHALF OF PETAR & NICK CONSTRUCTION 28-30 N. CHAPEL STREET FOR A PREVIOUS CASE HEARD BY THE BOARD ON AUGUST 15, 2013.

Mr. Herron stated at the last meeting of the Board some variances were granted. Two variances were subject to a tie vote, with the four Board members that were present. The applicant has filed a Writ of Certiorari in Superior Court appealing the decision. However, the attorney has written a letter offering to withdraw the appeal if the Board grants the request for a re-hearing before all five members of the Board. Mr. Herron stated it would be his recommendation to grant the request because it has the potential to save the City time and money. Mr. Herron stated it was a fair and equitable request given the 2-2 vote for the matter to be considered by the Board as a whole.

Mr. Foster asked if the applicant would be asking for a significant change during the rehearing. Mr. Hudson asked if the case was reheard and it was denied again, would the Board be prolonging the inevitable? Mr. Herron stated it remained to be seen. Mr. Herron stated the Board members would not be bound by their previous vote.

Mr. Fortner stated it would be important at rehearing to follow procedure and be very clear and no ambiguity about the decision with all five Board members present.

MOTION BY MR. BERGSTROM SECONDED BY MR. LEVANDOSKI: THE BOARD RE-HEAR THE NORTH CHAPEL STREET CASE THAT WAS HEARD ON AUGUST 15, 2013.

MOTION PASSED: VOTE: 5-0

Aye: Bedford, Bergstrom, Foster, Hudson, Levandoski

- 4. The meeting was adjoined at 7:49 p.m.**

Tara A. Schiano
Secretary

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