

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
NOVEMBER 21, 2013**

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

13-BA-14
105 W. Mistletoe Court
Mr. & Mrs. Anthony Tenebruso

13-BA-15
McDonalds, USA, LLC
374 E. Main Street

Those present at 7:00 p.m.:

Presiding: Clay Foster

Members Present: Curtis Bedford
Jeff Bergstrom
Kevin Hudson
David Levandoski

Staff Members: Paul Bilodeau, Deputy City Solicitor
Michael Fortner, Planning & Development Department

1. APPROVAL OF MINUTES FROM MEETING HELD OCTOBER 17, 2013

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

The Board recommended the order of the meeting be amended with the re-hearing of 28-30 N. Chapel Street be moved to the last item on the agenda.

2. THE APPEAL OF MR. & MRS. ANTHONY TENEBRUSO, 105 MISTLETOE COURT, FOR THE FOLLOWING VARIANCE:

A) CH. 32 SEC. 48(b) – ALL ACCESSORY BUILDINGS IN RESIDENTIAL DISTRICTS SHALL BE SUBJECT TO THE APPLICABLE SIDE YARD REQUIREMENTS FOR THE DISTRICT IN WHICH THEY ARE LOCATED. THE SIDE YARD REQUIREMENT FOR THE RT DISTRICT IS 15 FT. WITH AN AGGREGATE OF 35 FT. YOUR PLAN SHOWS A NEW SIDE YARD OF 6.5 FT. AND AN AGGREGATE OF 22.5 FT., REQUIRING A VARIANCE OF 8.5 FT FOR MINIMUM SIDE YARD AND 12.5 FT. AGGREGATE.

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. Anthony Tenebruso, 105 Mistletoe Court, Newark, DE, was sworn in. Mr. Tenebruso informed the Board he was requesting the variance to install a swimming pool on the side yard of his residence. Mr. Tenebruso stated the pool would not fit in the back yard. He further stated his property backs up to Paper Mill Road, which requires a twenty foot easement on his property that includes shrubbery and bushes. In addition, the home has a deck off the back of the house which extends sixteen feet. With both easements, it leaves no room for the addition of the pool.

Mr. Foster asked if the Board had any questions. Mr. Bergstrom asked Mr. Tenebruso if there were any objections from his neighbors. Mr. Tenebruso stated there were no objections from neighbors.

Mr. Bergstrom wished to note the lot was extremely irregularly shaped and was not a deep lot. Mr. Bergstrom further stated swimming pools are common in the City and did not see anything unreasonable or out of the ordinary with this request.

Mr. Foster asked if there was anyone else present that wished to speak. There being no one else, Mr. Bergstrom 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 was residential homes; some with pools.
- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. It was Mr. Bergstrom's opinion it would not affect the uses upon review of the plans. The plans adequately addressed stormwater flow across the property. It was his opinion it would not affect the neighbors.
- 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 property owner would not be able to fit a pool on the property.

Mr. Bergstrom stated he was in favor of granting the variance.

Messrs. Foster and Hudson agreed with the assessment and wished to note the irregular shaped lot, as well as the 6.5 foot area infringement (according the plan) was only the corner of pool directly at the property line. The remainder of the proposed pool extends away from the property line. Mr. Levandoski concurred with Mr. Bergstrom and

appreciated the efforts noted on the plan to ensure additional runoff would be negligible.

Messrs. Levandoski and Bedford stated they were in agreement with the reasoning from Messrs. Bergstrom, Foster and Hudson.

MOTION BY MR. BERGSTROM SECONDED BY MR. HUDSON: THE MOTION BE APPROVED AS PRESENTED.

MOTION PASSED: VOTE: 5-0

Aye: Bedford, Bergstrom, Foster, Hudson, Levandoski

3. THE APPEAL OF MCDONALD'S USA, LLC, 374 E. MAIN STREET, FOR THE FOLLOWING VARIANCES:

- A) SEC. 32-19(B)(6)&(7)(D) – FAST FOOD AND CAFETERIA STYLE RESTAURANTS ARE SUBJECT TO THE FOLLOWING REQUIREMENTS: MINIMUM SETBACK FROM ALL STREET LINES SHALL BE 75 FT. PLAN SHOWS THE SETBACK FROM E. MAIN STREET AT 36.3 FT. AND FROM MCKEES LANE AT 54.4 FT., REQUIRING VARIANCES OF 38.7 FT. AND 20.6 FT. RESPECTIVELY.**
- B) SEC. 32-19(B)(6)&(7)(E) – FAST FOOD AND CAFETERIA STYLE RESTAURANTS ARE SUBJECT TO THE FOLLOWING SPECIAL REQUIREMENTS: MINIMUM DISTANCE FROM ALL PROPERTY LINES OTHER THAN STREET LINES SHALL BE 50 FT. PLAN SHOWS THE SMALLEST DISTANCE TO A NON-STREET PROPERTY LINE IS ONLY 26.7 FT., REQUIRING A VARIANCE OF 23.3 FT.**
- C) SEC. 32-60(A)(2) – GROUND SIGNS IN BUSINESS DISTRICT. ONE (1) GROUND SIGN PER PARCEL IS PERMITTED WITH A 60 SQ. FT. MAXIMUM, AND A MAXIMUM HEIGHT OF 18 FT. THE MINIMUM DISTANCE TO A RESIDENTIAL ZONING DISTRICT IS 100 FT. CURRENT PLAN SHOWS FOUR (4) GROUND SIGNS. VARIANCES FOR ALL FOUR (4) SIGNS ARE REQUIRED.**
 - 1- GROUND SIGN “A” IS 100 SQ. FT. AND 12 FT. IN HEIGHT. A VARIANCE OF 40 SQ. FT. IS REQUIRED.**
 - 2- GROUND SIGNS “E” MENU TYPE BULLETIN BOARD SIGNS LOCATED IN THE DRIVE THRU AREA. 41 SQ. FT. EACH WITH A MAXIMUM HEIGHT OF 7 FT. EACH. A VARIANCE IS REQUIRED FOR THESE TWO (2) GROUND SIGNS AND A 39.9 FT. & 50.8 FT. VARIANCE TO RESIDENTIAL ZONING IS REQUIRED.**
 - 1 – GROUND SIGN “F” IS A MENU TYPE BULLETIN BOARD MAXIMUM AREA OF 12 SQ. FT. AND 7 FT. IN HEIGHT. A VARIANCE IS REQUIRED FOR THIS GROUND SIGN.**
 - TOTAL OF FOUR (4) GROUND SIGNS**

- D) 32-60(A)(2) – BUSINESS WALL SIGNS – WALL SIGNS IN BUSINESS DISTRICT. MAXIMUM NUMBER OF ONE OR OF ONE PER 25 FT. OF STREET FRONTAGE OR FRACTION THEREOF WHICHEVER IS GREATER. IN THE CASE OF A PROPERTY FACING MORE THAN ONE STREET, SIGNS SHALL BE PERMITTED AS PER THIS STANDARD OF EACH FRONTAGE. COMBINATION WITH ONE PROJECTING SIGN OR ONE GROUND SIGN PERMITTED. CURRENT PLAN SHOWS EIGHT (8) WALL SIGNS. A VARIANCE FOR SEVEN (7) WALL SIGNS IS REQUIRED.
- E) 32-60(A)(2) – BUSINESS INSTRUCTIONAL SIGNS – INSTRUCTIONAL SIGNS IN A BUSINESS DISTRICT. MAXIMUM NUMBER UNLIMITED WITH A MAXIMUM AREA OF 2 SQ. FT. AND MAXIMUM HEIGHT OF 10 FT. CURRENT PLAN SHOWS NINE (9) INSTRUCTIONAL SIGNS. VARIANCES ARE REQUIRED FOR ALL NINE (9) SIGNS. THEY ARE AS FOLLOWS:
- 1 - DRIVE THRU SIGN “G” – PLAN SHOWS AREA TO BE 5.06 SQ. FT. AND THE HEIGHT TO BE 10 FT. 10 IN. A VARIANCE OF 3.06 SQ. FT. IN AREA AND 10 IN. IN HEIGHT IS REQUIRED.
 - 2 – ORDER HERE SIGN “H” – PLAN SHOWS TWO SIGNS A TOTAL OF 8 SQ. FT. (4 SQ. FT EACH) IN AREA AND MAXIMUM HEIGHT OF 10 FT. VARIANCE OF 2 SQ. FT. IN AREA PER SIGN AND A VARIANCE OF 1 FOOT TO 11 FT. IN. HEIGHT IS REQUIRED.
 - 7 – INSTRUCTIONAL SIGNS – AT VARIOUS LOCATIONS ON THE SITE; ALL WITH A MAXIMUM OF 4 SQ. FT. VARIANCE OF 2 SQ. FT. ARE REQUIRED FOR ALL SEVEN (7) SIGNS.

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. William Rhodunda, Esquire at Rhodunda & Williams, was present to speak on behalf of McDonalds, USA. Mr. Rhodunda stated the revised agenda had been given to the Board at the beginning of the meeting. Mr. Rhodunda stated from the time the application was submitted to the City, DELDOT required additional right-of-ways which required a slight adjustment to the plan. Some of the changes will result in smaller variance requests, some are slightly greater. In addition, there was a new sign package McDonalds was implementing in re-builds like the project before the Board this evening. The proposed signs in the re-builds of McDonalds are slightly different in size so that additional modification to the agenda was made as well to reflect the different sized signs. Mr. Rhodunda stated this McDonalds has been owned and operated by the DuKart family since 1960. It was Mr. Rhodunda's opinion the re-build of this McDonalds will bring a huge improvement to the site. The existing site will be re-built with improved stormwater management, improved travel circulation with an upgraded drive-through to assist in efficiency, less impervious coverage, and improved landscaping.

Mr. Steve Wilson, Code Enforcement Supervisor for the City of Newark addressed

Item D on the revised agenda, (Business Wall Signs). Mr. Wilson stated City Code 32-60 (a)(2) has a section on ground signs. The ground sign section states a ground sign may accompany one wall sign. This proposal is requesting eight wall signs. Should the Board grant the approval, the seven additional signs will be at the Board's discretion.

Mr. Bergstrom asked how many ground signs currently exist. Mr. Wilson stated there are many signs, but he was not sure of an exact number.

Mr. Michael Jeitner, Bohler Engineering was present to speak on behalf of McDonald's and was sworn in. Mr. Jeitner stated the rationale of the proposed re-build at E. Main Street and McKees Lane includes many factors, including the age of the facility and site circulation. There are safety concerns, sight line issues around the building, and unsafe stacking of the drive through. Frequently, the drive-through backs up to the main entrance of the facility. Pedestrian circulation is also an issue. The re-build and new look is taking place nationwide. The proposed building will incorporate an east to west plan rather than a north to south presentation on the site. The rotation of the proposed building will improve the negative issues listed above. The site is 1.4 acres and the existing building has an area of 6,900 square feet, including the main restaurant and the Play Place. Currently on the site there are seventy five parking spaces with an impervious coverage of 86% or approximately 53,000 square feet. City Code permits 100%. The proposed coverage will be a drastic improvement. The existing site has full access to E. Main Street. There is a right-in, right-out driveway along E. Main Street. Additionally, there is full access on McKees Lane which is important for safe access. Landscaping is limited on the site. Parking on the perimeter on the site and pedestrians have to cross lanes of traffic to access the restaurant. The drive through is comprised of a single menu board operation which causes the "stacking" out onto the main access as addressed above.

Mr. Jeitner addressed the proposed plan. The building area would be reduced from 6,900 square feet to approximately 4,600 square feet since there will no longer be a Play Place. The front third of the building will be a dining area, the middle third, a kitchen and the back third a storage area. Landscaping will be added along the perimeter, reducing impervious coverage from approximately 53,000 square feet to approximately 49,000 square feet. As such, rain garden and water quality areas will be added that do not currently exist. Access to the proposed building will change. The front of the building will be facing E. Main Street, the main access will remain and the right-in right-out located further south on E. Main Street will be converted to a right out only. The current full access on McKees Lane will be converted to an in-only. A new access (out-only) will be added further north of the site. The proposed access changes should alleviate the bottle neck that currently exists on the site. The proposal includes two side by side drive-through lanes with two menu boards and a merge back into a single lane for payment, pick up and exit. The perimeter parking will be on the northern side of the site with two main entrance points to the building on the north and another on the east side of the building. The parking will be altered so people will park, use the sidewalk and enter the building rather

than cross through lanes of traffic to enter. With alterations to the right in and right out rather than full access, existing congestion will be alleviated at the front of the site.

Mr. Jeitner addressed the proposed building set back variances for the Board. The front of the site (E. Main Street) has a proposed setback of 36.3 feet; the ordinance requires a 75 foot setback. On McKees Lane, the proposed setback is 54.4 feet, the ordinance requires a seventy five foot setback. Along the southern property line, the proposed setback is 26.7 feet and the ordinance requires a fifty foot setback. The proposed setback will result in a very small building footprint within the site. The existing site has an odd shaped configuration resulting in an allowable building footprint within the site. With the rotation of the building it is the opinion of the engineer, "safe site circulation" becomes critical and as a result deviations in the ordinance have been encountered.

Mr. Jeitner addressed the ground signs. Mr. Jeitner provided photographs (in the files) to better show the typical signage associated with the re-build of the drive through. The additional signs are related to the enhanced drive through component. Mr. Jeitner added the additional proposed signs are only visible to the driver entering the drive through area. The signs are informational only, they do not contain "branding." A variance is being requested for a total of four ground signs. There is one non-conforming 116 square foot sign currently located on the south side of the site. Upon review, it was the opinion of McDonald's after viewing the existing site, the best location and use for the sign would be a monument sign rather than a freestanding sign.

Mr. Jeitner stated there were variance requests for four freestanding signs. The proposed monument sign will be slightly smaller at 100 square feet. It will be compliant with setback and height but not area compliant. (sixty square feet is permitted). The three other proposed signs relate to menu board signs located at the rear of the site in the drive through area. The proposed signs are forty one square feet with a height of seven feet. They are compliant in height and area; however there is a residential zone setback requirement of 100 feet along McKees Lane.

The proposed pre-menu board sign and the two menu board signs are approximately twelve square feet in area. (Sign F) The sign is height compliant but not area compliant. The menu boards contain branding and are only readily visible for the drive through individuals.

Mr. Jeitner discussed the variances for wall signs. The request is for eight signs. (one is permitted), with two of the signs McDonald's script signs. One proposed sign is located on the front of the building and one proposed sign is located on the drive through side of the building. In addition, four "M" logo signs are proposed which are approximately fourteen square feet each located on each side of the four sides of the building. It was the opinion all four are critical as all four sides of the newly proposed sign are visible. The remaining two proposed signs are welcome signs. They are two square feet in area and

are located at the main entrance points on the front and side of the building.

The last variance was for business and directional signs, which are associated with the drive through area. The gateway clearance sign is five square feet in area, with a height of ten feet, ten inches and provides a clearance bar sign (Sign G) to warn drivers of the height clearance for the drive through area. The “order here” canopies have an area of four square feet each (two feet each are permitted). The total height of the signs is eleven feet (ten feet is permitted). The directional signs are located at each of the driveway locations with a total of six signs. The proposed signs have an area of 5.7 square feet (two square feet each is permitted).

Mr. Foster stated it was his opinion there were too many signs. Mr. Levandoski asked if the City had a position on the amount of signs. Mr. Fortner replied, “No.” Mr. Wilson, Code Enforcement Supervisor stated the directional signs were permitted in an unlimited number. Mr. Wilson stated the issue was the size and the height of the signs.

Mr. Rhodunda stated the goal of the new updated McDonald’s prototype is to reduce the number of signs in use. The bright yellows and reds previously used have been toned down. The goal is to be practical and as minimal as possible, yet still ensure the drive through area is effective and efficient. McDonald’s drive through accounts for 70% of their business. Therefore, with that volume, McDonald’s has found the new side by side drive through has more efficient traffic flow. The majority of the signs proposed have to do with the drive through.

Mr. Rhodunda asked the Board to consider that this has been an existing McDonald’s property for over 50 years. Mr. Rhodunda addressed the Kwik Check factors.

- The nature of the zone where the property was located was zoned commercial and would not change. The size of the building is being reduced.
- The character and use of the immediate vicinity of the subject property and uses of the property contained therein. The property is an existing site, with a paint store on the front corner and high density residential nearby. The proposed landscaping will assist in protecting the nearby residential properties.
- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. It was Mr. Rhodunda’s opinion; the neighboring properties would not be affected by the improvements to the site.
- 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. Rhodunda stated the inherent difficulty with the property is the shape of the site. It is a pie shaped site. The intent is to maximize the efficiency and circulation within the site.

Mr. Bergstrom addressed the Kwik Check factors:

- The nature of the zone where the property was located was zoned commercial 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 was commercial.
- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. Mr. Bergstrom stated he struggled with this. However, after review it was his opinion the variances for signage are going to essentially decrease the visual impact and the look will be more subdued. He further stated if the Board had to use that as “their judgment” and the effect to the neighboring property and its uses; it was his opinion it would not negatively affect the neighbors (car dealership, railroad, Shinn’s paints). The only impact would be the apartments and the lighting from the improved signage would decrease the effect to those residents.
- 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 it was his opinion the improvements were ambitious and was a well thought out rebuild of the property. It was his opinion the site will be safer with better stormwater management. Mr. Bergstrom stated he was in favor of granting the variances.

Mr. Foster stated he was generally in agreement with Mr. Bergstrom’s comments. It was his opinion it was a pretty good plan for the available lot. Mr. Foster appreciated the proposed trees that would block the light to the neighbors and liked the actual building. He also liked the improved traffic flow.

Mr. Hudson stated he was in agreement with the first three Kwik Check factors. However, he was having issues with the exceptional practical difficulty factor. He agreed a lot of the issues are a result of the irregular shaped property and the fact that McDonald is located between E. Main Street and McKees Lane. It was his opinion the setback variances were definitely warranted. Mr. Hudson stated he was having more issue with sign variances. However, difficulties are created with multi-area access. He appreciated the decrease in light to the residential apartments. For those two reasons, he would vote in favor of the variance.

Mr. Bedford stated he was in agreement with Mr. Bergstrom and would vote in favor of the variance.

Mr. Levandoski was in agreement with Mr. Bergstrom especially with regard to the improved traffic flow, safety and improved handicapped access to the restaurant the tree buffer; and also improved stormwater management. Although he was concerned with the number of sign variances requested, was quite high, it was his opinion the flow will be improved and would not be detrimental to the property or to the surrounding property

owners. He would vote in favor of the variances.

MOTION BY MR. BERGSTROM SECONDED BY MR. HUDSON: THE MOTION BE APPROVED AS PRESENTED.

MOTION PASSED: VOTE: 5-0

Aye: Bedford, Bergstrom, Foster, Hudson, Levandoski

**4. THE RE-HEARING OF THE APPEAL OF PETAR & NICK CONSTRUCTION –
28 -30 N. CHAPEL STREET FOR THE FOLLOWING VARIANCES:**

A) SEC. 32-11(a)(1)(a) – MAXIMUM NUMBER OF DWELLING UNITS PER ACRE. THE MAXIMUM NUMBER OF DWELLINGS 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)(1)(i) – OPEN AREA. AT LEAST 40% OF THE LOT AREA SHALL BE DEVOTED TO OPEN AREA. CURRENT PLAN SHOWS 685 SQ. FT. OR 9.8% OF OPEN AREA, REQUIRING A VARIANCE OF 30.2%.

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. Josiah Wolcott, Esquire, of the law firm Connolly Gallagher, Main Street, Newark, DE was present to speak on behalf of this client, Petar & Nick Construction. Mr. Wolcott stated this appeal was a rehearing of the case heard before the Board in August, 2013. In August, there were eight variances before the Board, with one variance (parking) was with resolution prior by the applicant. Of the seven remaining variances, five were granted. The remaining two resulted in a tie vote of 2-2.

Mr. Mitch Slijepcevic, 8 The Horseshoe, Newark, DE, was sworn in. Mr. Slijepcevic stated the existing property was over a century old. It shows age inside and out. It is located in a residential zone. The vast majority of homes are tenant occupied. The current property is a duplex with two units and four unrelated tenants in each unit. All major internal systems are outdated. There is no air conditioning. The exterior has shingles that are crumbling from age. The interior has plaster walls needing constant repair. There is no sprinkler system. Energy efficiency is non-existent. There is plenty of parking located behind the house, but is unorganized currently. However, the house is structurally sound.

Mr. Wolcott stated the Board had several other photos and they would be entered into the file. One picture details the front of the home, the other the rear of the home.

Mr. Mitch Slijepcevic stated the proposed plan includes the demolition of the existing structure. It will be replaced by a three story quad with four townhouse style units.

There will be two entrances in the front and two entrances in the back. Each unit would have four bedrooms and two and one half bathrooms to accommodate four unrelated tenants. The existing footprint would not change. The proposed project would greatly improve the look of the street. The current proposed design is a brick front, but the applicant is open for other suggestions. The proposed structure will be much safer to the tenants, the neighbors and to the City. It will include a sprinkler system, new exterior lighting will improve area visibility at night. New internal systems would greatly decrease the probability of a major event such as a fire. Sturdy locking windows and doors will help to deter crime. The proposed building will be energy efficient.

He further stated the property is located in the middle of N. Chapel Street on the right hand side. All surrounding homes are rental units. Mr. Slijepcevic reported to demolish and reconstruct the current structure would cost approximately \$550,000.00 with the proposed project occurring in 2015. The construction will be funded by \$550,000.00 of ten year mortgages at an approximate rate of 6% in June of 2015.

The two additional proposed units to be rented at \$2,500.00 each nearly cover the debt, which at a 6% borrowing rate, would result in a \$6,100.00 monthly payment. During the year of construction, \$96,000.00 will be lost with \$21,000.00 of lost revenue and the remaining amount of \$75,000.00 will be property taxes and mortgage payments. It was Mr. Slijepcevic's opinion this reconstruction was necessary because they would be facing approximately \$250,000.00 in routine and major repairs to the structure over the next ten year period. The applicant stated they currently do most of the repairs themselves.

Mr. Slijepcevic stated the density variance will result in an increase in the number of tenants to make to the project economically feasible. They do not anticipate a significant impact to the neighbors since the vast majority of homes on Chapel Street are college rentals. The developers have undertaken a similar project on Choate Street with positive results from the neighbors which consist of more permanent residents rather than rentals. The applicant stated the exceptional practical difficulty would be the repair costs and the ability for them to maintain such an old structure.

Mr. Slijepcevic discussed the open area variance. He stated they are seeking a technical decrease in the open space to allow for the required parking. Currently, the entire backyard was covered with gravel. With the proposed project, parking will be improved with delineated parking spots, if necessary.

Mr. Hudson asked how many units there are currently. Mr. Slijepcevic stated there were two and the number of units will increase from two to four. The increase in tenants will be from eight to sixteen.

Mr. Levandoski asked what the cost would be to raise the current house and rebuild it for the current number of tenants. Mr. Slijepcevic stated it be approximately

\$250,000-\$300,000 to complete such a project.

Mr. John Smith, 26 Georgian Circle, Newark, DE, was sworn in. Mr. Smith stated he owned the property adjoining on the north side of the Slijepcevs. He concurred with the applicant. Most of the properties are old and do not have sprinklers. He reported one of his properties on Chapel Street had a fire and property was damaged. It would be a big improvement to grant the variances. Mr. Foster asked if Mr. Smith objected to the increase in tenants. Mr. Smith stated the additional students wouldn't increase car traffic as most students walk. It was his opinion additional foot traffic would not pose a problem.

Mr. Hal Prettyman, 163 South Main Street, Newark, DE, was sworn in. Mr. Prettyman stated he owned several properties on the street. He stated one of his properties had a sprinkler system, but to his knowledge, it was the only one. In addition, upgraded systems, most importantly, sprinkler systems are a much needed addition to old homes that have numerous safety issues. It was his opinion the street needed a face lift. He stated he was in favor of this project. It was his opinion the closer students live to Main Street and the University the less vehicular traffic.

Mr. Levandoski asked why Mr. Prettyman installed the sprinkler system in his existing rental house. Mr. Prettyman stated the Board had given him a variance for that particular duplex, which he upgraded. He further stated he had the money and could afford to put the money back into the property.

Mr. Nick Baldini, 202 Redberry Court, Hockessin, DE, was sworn in. He reported his sons had a property at 16-18 N. Chapel Street. He agreed it would make a big improvement on the street if the Board granted the variances.

Mr. Wolcott addressed the Kwik Check factors:

- The nature of the zone where the property was located was zoned residential neighborhood and would not change.
- The character and use of the immediate vicinity of the subject property and uses of property within the immediate vicinity was rental residential and would not change.
- Whether if the relevant restriction was removed, such removal would seriously affect neighboring properties and uses. Mr. Wolcott stated it was his opinion it would not. Additionally, there had been testimony from neighboring landlords who concurred.
- 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. Wolcott stated it was his opinion the economic motivation was not a problem under the case law of the Delaware Supreme Court. It was merely a factor in the consideration of all factors. It was his opinion the benefits that would result are very important to Chapel Street

and the City as a whole.

Mr. Wolcott stated if both the variances are not granted, the new project will not be built as it would not be economically feasible for the applicant to do so. Mr. Wolcott wished to add no one from the public had objected to the project.

Mr. Bergstrom stated his opinions remained the same from the last meeting and he would vote in favor of the variance. There was no testimony this project was objectionable to anyone in the community. He reported he did not like the increase in density; however he thought the project would have a positive effect on the community.

Mr. Bedford stated after hearing the testimony he was in agreement with Mr. Bergstrom and would vote in favor of the variances.

Mr. Foster concurred. The addition of the sprinkler was a big improvement in his opinion.

Mr. Hudson stated his vote would still be no. It was his opinion the exceptional practical difficulty had not been met. He stated improving one's business and staying competitive is a factor. However, the Kwik Checks states the exceptional practical difficulties apply when the request is minimal and the hardship to the applicant if the variances are denied would be greater than the probable effect to the properties if the variances are granted. It was Mr. Hudson's opinion the variances were not minimal. He stated the purpose of the statutes was to prevent projects like this from happening.

In addition, the Kwik Checks state the efforts of the homeowner to make "normal" improvement in the character and the use of that property. It was Mr. Hudson's opinion the testimony had stated improvements would be windows, new roof, new heaters, etc. He stated these repairs are what a homeowner can expect. They are routine, not exceptional. He further stated he was not persuaded by the sprinkler system argument. He stated 90% of the homes in Newark did not have them. It was his belief that the applicant had stated he did not have difficulty renting the property so the argument about staying competitive essentially was moot point. He stated it was not the responsibility of the Board to make every project economical. Additionally, he stated it was the responsibility of Council to decide if it was a benefit to the City. If regulations need to be changed that is Council's job, not the job of the Board of Adjustment. He stated it was the Board's responsibility to interpret the statutes and the case law.

Mr. Levandoski stated he would not vote in favor of the variances. He was not in favor of doubling the number of tenants from eight to sixteen. It was his opinion Chapel Street was overcrowded already. In addition, he agreed with Mr. Hudson's comments.

Mr. Bergstrom agreed with Mr. Hudson's statement the applicant was not having a problem renting the property. Mr. Bergstrom asked what the density was with eight

people. Mr. Fortner stated it would be 25 units per acre if the variances were permitted. Currently, they are at 12.5 units per acre. Mr. Bergstrom suggested an increase to three units rather than four, which would increase in a minor variance request. Mr. Bergstrom stated it was his opinion an effective argument had not presented for economic exceptional practical difficulty.

Mr. Wolcott stated the under Delaware Law self-created hardships is not a per se “bar” to the granting of a variance. In addition, Mr. Wolcott stated the applicant had stated building three units as opposed to four was not viable; as it was not a dollar for dollar decrease. In addition, from a construction standpoint, the only possible way to get three units on the site would be to have two facing front and one facing sideways. That major alteration would create construction issues which would increase the cost significantly.

Mr. Bedford asked if the applicant had to come to the Board for the property on Choate Street. Mr. Slijepcevic stated they did not. The Choate Street property was zoned commercial and the number of units decreased during reconstruction.

Ms. Carol McKelvey, 48 Winslow Rd, Newark, DE, was sworn in. Mrs. McKelvey stated she was concerned about the Board setting precedence for other landlords’ economic benefit.

Mr. Hal Prettyman, 163 South Main Street, Newark, DE, was sworn in. Mr. Prettyman stated he was a lifelong resident of Newark. He stated there were no representatives from N. Chapel Street present. It was his opinion that it was imperative that local residents from the applicants street object, not neighbors across town. It was his opinion that someone needed to stand up and speak for a property needing updates that would make significant improvements to the street.

Mr. Hudson wished to add that Mr. Prettyman’s arguments are valid. However, it was his opinion it was not for the Board to address, but rather Council.

Mr. Bergstrom stated he had been swayed by his colleague’s opinion and would change his vote. He would not be in favor of granting the variances.

MOTION BY MR. HUDSON SECONDED BY MR. LEVANDOSKI: THE VARIANCES BE DENIED AS PRESENTED.

MOTION DENIED: VOTE: 3-2

Nay: Bergstrom, Hudson, Levandoski

Aye: Bedford, Foster

Tara A. Schiano
Secretary

/tas