

**CITY OF NEWARK  
DELAWARE  
BOARD OF ADJUSTMENT  
MINUTES  
*Special Meeting*  
November 2, 2011**

**11-BA-08  
Mr. & Mrs. Guillermo Miranda  
12 Long Meadow Court**

**11-BA-10  
Mr. Christian Newell  
600 Nemours Lane**

**11-BA-11  
Wawa, Inc.  
601 Ogletown Road**

Those present at 7:00 p.m.:

Presiding: Clay Foster

Members Present: Jeffrey Bergstrom  
Paul Faust  
Kevin Hudson  
Howard Smith

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

**1. APPROVAL OF MINUTES FROM MEETINGS HELD SEPTEMBER 15, 2011**

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

**2. THE APPEAL OF MR. & MRS. GUILLERMO MIRANDA FOR THE PROPERTY AT 12 LONG ACRE COURT, FOR THE FOLLOWING VARIANCE:**

**A) CH. 32 SEC.10 (c)(2) – “MAXIMUM LOT COVERAGE” – THE MAXIMUM LOT COVERAGE FOR ANY BUILDING, EXCLUSIVE OF ACCESSORY BUILDINGS, SHALL BE 25%. PLAN SHOWS 28.+/-%.**

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. Foster asked Mr. Lopata to remind the Board why the City had limits on ground coverage. Mr. Lopata replied the City had limits on ground coverage because the Code was based on the concept that lots and residential areas should not completely consist of asphalt or a building. Green space was required.

Guillermo Miranda, 12 Long Acre Court, Newark, DE was sworn in. Mr. Miranda

stated he and his wife were the original homeowners of the property. Their intention was to remain in the home for the duration of their lives. As such, they designed the home with a first floor master bedroom and had recently found it necessary to live exclusively downstairs.

Mr. Miranda stated he had suffered two major accidents within the last three years resulting in injuries that prohibited him from walking, climbing and descending stairs comfortably and safely. Because of these issues, the Mirandas' proposed the addition of a home office adjoining the master bedroom. Mr. Miranda provided letters from his neighbors stating they had no objection to the addition. He noted his backyard adjoined woods and the house behind was not visible. The addition would not be visible from the front of the property.

Mrs. Stacey Miranda, 12 Long Acre Court, Newark, DE was sworn in. Mrs. Miranda stated the addition would simplify their lives by allowing them to live exclusively on the first floor.

There was no one present who wished to speak for or against the variance.

Mr. Faust and Mr. Bergstrom addressed the Kwik Check factors:

- The nature of the zone which in which the property was located was zoned RD and would remain so.
- The character of the immediate vicinity of the subject property and the use of the properties within that immediate vicinity was consistent (residential) with neighboring properties. There were neighboring properties with additions so it would not be out of place.
- It was Mr. Bergstrom's opinion the small variance request (3%) would not negatively affect or diminish neighboring property values.
- It would create an unnecessary hardship or exceptional difficulty if the restriction were not removed as the applicant would have to consider more expensive options and the variance request was small and a reasonable accommodation for the practical difficulty.

Mr. Bergstrom stated with the Kwik Check factors in mind, he would vote to grant the variance. Mr. Foster concurred with Mr. Bergstrom and would vote in favor of the variance. Mr. Hudson stated he agreed as well. The nature of zone was residential and would remain so. The character of the immediate vicinity would not be altered and the variance would not unduly affect other neighboring properties. Mr. Hudson stated a 3% variance for the hardship the applicants were facing (i.e. medical conditions) was a valid hardship. Mr. Smith concurred with all the Board members comments and planned to vote in favor of the variance.

**MOTION BY MR. HUDSON, SECONDED BY MR. BERGSTROM: TO GRANT THE VARIANCE CONTINGENT UPON CONSTRUCTION COMMENCING WITHIN SIX MONTHS.**

**MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.**

**Aye: Bergstrom, Faust, Foster, Hudson, Smith**

**3. THE APPEAL OF MR. CHRISTIAN NEWELL, FOR THE PROPERTY AT 600 NEMOURS LANE, FOR THE FOLLOWING VARIANCES:**

**A) CH. 32 SEC. 4 (43.1) – FENCE – MUST CREATE A VISUAL SCREEN THAT IS AT LEAST 75% SOLID. PROPOSED FENCE IS LESS THAN 75% SOLID.**

**B) CH. 32 SEC. 56.6 – FENCE IN FRONT YARDS – SHALL NOT EXCEED THREE FEET IN HEIGHT. PROPOSED FENCE IS FOUR (4) FEET IN HEIGHT.**

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

Mr. Christian Newell, 600 Nemours Lane, was sworn in. Mr. Newell stated the property was a corner lot and he was seeking an aesthetically pleasing option to enclose the property with a fence for the purposes of protecting their dog and for their future children. The difficulties they faced because it was a corner property was that the side yard was actually considered the front yard. The proposed fence was 3 1/2 feet and 4 feet in the center with a scalloped edge. Code required fences not to exceed three feet in height. They had spoken with neighbors and received no opposition to the installation.

Mr. Lopata added the fence restriction was intended for the safety of people backing out of driveways. The applicants were in a unique position due to the corner lot property. The front yard height restriction was designed to assist in sight distance. In this case, the fence would have no bearing on access in and out of their neighbor's property. He further stated the Code Enforcement Department did not have an objection to the installation of the fence. He added that it was a quirk in the Code that corner lots fall under the same restrictions as front yards.

Mr. Hudson asked Mr. Lopata for clarification on the "visual screen" issue. Mr. Lopata stated the denial letter was incorrectly worded and should read "a visual screen should not "exceed" 75% solid. A variance was only needed to be granted for the height variance. Mr. Lopata clarified if a fence was opaque or if a fence was difficult to see through then it would fall under the Ordinance. The language was not relevant in this case. In his opinion, what was important was the fact that the property was a corner lot, was not located near a driveway, and the fence was parallel to the street and not

creating any sight issues. Therefore, a variance was only needed for the second item “fence in front yards – should not exceed three feet in height.” Mr. Lopata stated the applicants had a “classic” hardship.”

Mr. Bergstrom addressed the Kwik Check factors:

- The nature of the zone was residential and would remain so.
- The character and use of the immediate vicinity would not be affected by the addition of a fence as other properties in the immediate vicinity have fences.
- It would not affect the nature of the zone and would not create a negative impact on the adjacent properties as they were very similar.
- It would create an unnecessary hardship or exceptional difficulty if the restriction were not removed due to the applicant’s inability to effectively install a fence on a corner lot.

Messrs. Foster, Smith, Faust agreed with the Kwik Check factors and stated they would vote in favor of the variance.

**MOTION BY MR. BERGSTROM, SECONDED BY MR. HUDSON: TO GRANT THE VARIANCE TO PERMIT THE PROPOSED FOUR FOOT FENCE AS REQUESTED.**

**MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.  
Aye: Bergstrom, Faust, Foster, Hudson, Smith**

**4. THE APPEAL OF WAWA, INC., FOR THE PROPERTY AT 601 OGLETOWN ROAD, FOR THE FOLLOWING VARIANCE:**

**A) CH. 32 SEC. 60 (a)(2) – A MAXIMUM OF ONE GROUND SIGN IS PERMITTED IN A BUSINESS ZONING DISTRICT. PROPOSED PLAN INCLUDES TWO BUSINESS GROUND SIGNS.**

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Ms. Lisa Goodman, attorney with Young, Conaway, Stargatt & Taylor, was present to speak on behalf of her client, Wawa, Inc. Also present was the account manager from Icon, Company, the sign provider. Ms. Goodman stated her client was seeking a variance for one additional ground sign. The Code allowed one ground sign, regardless of the size. The signs were dimensionally compliant (size, height, setback and is approximately 50 square feet). She explained the proposed Wawa was located at the corner of Marrows and Ogletown Roads. The physical address was 601 Ogletown Road. The store was currently under construction. Wawa was seeking to erect two signs on the property which was a corner lot. The issue with a commercial corner lot was the access on both sides. The access was complicated by the fact there was a shared access road. The access road to the Wawa entrance/exit was located approximately 165’ feet from where the access road meets Ogletown Road. The property adjoins two roads, one of

which has only a right-in/right-out access point, one of which is on a shared access road with the Wawa entrance/exit with a 165' setback from the main road. Two ground signs were needed to ensure safe and orderly access to the site. She further stated if one sign was positioned at the intersection, it still would not provide a clear concept of where vehicles should turn to access the Wawa.

Mr. Hudson addressed the Kwik Check factors:

- The nature of the zone was commercial and would remain so.
- The character and use of the immediate vicinity would not be affected as other properties in the immediate vicinity are businesses that have signs.
- It would not affect the nature of the zone and would not create a negative impact on the adjacent properties as they were very similar.
- It would create an unnecessary hardship or exceptional difficulty if the restriction were not removed due to the applicant's inability to effectively and safely direct customers into the business with a complicated access.

Mr. Hudson, stated with the Kwik Check factors in mind he would vote in favor of the variance. Messrs. Smith, Bergstrom and Faust concurred with Mr. Hudson.

Motion by Mr. Bergstrom, seconded by Mr. Hudson to grant the variance to permit one additional ground sign as requested.

**The meeting was adjoined at 7:45 p.m.**

Tara A. Schiano  
Secretary

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