

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

November 18, 2010

**10-BA-11
University Garden Associates**

Those present at 6:55 p.m.:

Presiding: Clayton Foster

Members Present: Jeffrey Bergstrom
Kevin Hudson
Paul Faust

Absent: Mike Harmer

Staff Members: Roger Akin, City Solicitor
Maureen Feeney-Roser, Assistant Planning & Development
Director

1. APPROVAL OF MINUTES FROM MEETINGS HELD SEPTEMBER 16, 2010

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

2. THE APPEAL UNIVERSITY GARDEN ASSOCIATES, FOR THE PROPERTY AT 281 BEVERLY ROAD FOR THE FOLLOWING VARIANCE:

A) CH. 32 SEC.11 (a)(1)(a) – DWELLING UNITS PER GROSS ACRE – PERMITS A MAXIMUM OF 16 DWELLING UNITS PER ACRE. PROPOSED PLAN INCREASES THE NUMBER OF DWELLING UNITS FROM 68 EXISTING (NON-CONFORMING) TO 76 UNITS ON 4.2126 ACRES.

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. Foster inquired why the lot was non-conforming. Ms. Feeney-Roser stated the Zoning Code called for 16 dwelling units for acre and there were 16.14 units per acre.

Ms. Lisa Goodman, Esquire, 100 West Street, Wilmington, DE was present to

speak on behalf of the applicants. She stated they wished to request a variance for eight additional units on the property. She further stated the property owners purchased the property in 1985 and proposed to upgrade the property to present a more appealing appearance and include modernization in the process. The complex was constructed in 1958, was zoned RM and was situated on 4.2 acres. The complex currently had 68 units. Ms. Goodman stated the increase of eight units would increase the revenue to the owners and allow them to make necessary improvements to the property to update. This included; installing high efficiency windows among other things. The owners also proposed reconfiguration of the parking areas and update the Stormwater Management System.

Ms. Goodman stated the new building would add eight units and aesthetically match the existing building. It was noted a rendering would be included in the file and was distributed to the Board members. Additional landscaping would be proposed as well, including “street trees” along Beverly Road. Ms. Goodman further stated there were 171 parking spaces and there would only be a decrease of 1 with the proposed changes.

Mr. Hudson inquired how the Stormwater Management System would change. Ms. Goodman stated it would change from an “old style” dry pond to a bio-retention facility.

Mr. Mark Ziegler, Engineer, McBride and Ziegler was sworn in. Mr. Ziegler stated the new bio-retention facility was approved and encouraged by DENREC as green technology.

Mr. Faust inquired if the hardship presented was due to the fact that without the additional added units, substantial upgrades would not be feasible. Ms. Goodman responded the true hardship was upgrading old and outdated building/parking areas.

There was no one else who wished to speak against the variance.

Mr. Bergstrom addressed the Kwik Check factors as follows:

- The nature of the zone was RM and would remain so.
- The character of the immediate vicinity would also not be affected by a minor expansion to the existing use.
- It would not affect the nature of the zone as it is currently an apartment complex and would remain so.
- It would create an unnecessary hardship or exceptional difficulty if the restriction were not removed due to the applicant’s inability to make normal and reasonable improvements to the property without the added income from the new units.

Mr. Foster concurred and stated he believed it would be a great benefit to the neighborhood and be a huge improvement. He also wished to state no one had been present to speak against the proposal.

Mr. Faust concurred especially due to the fact there had been no opposition from the neighboring properties.

Mr. Hudson agreed with Mr. Bergstrom's interpretation of the Kwik Check factors. However, he did raise concern about the hardship and exceptional practical difficulty that the applicants would not be able to make the desired upgrades without the added income from the additional units. However, he was prepared to vote in favor of the proposed variance.

MOTION BY MR. BERGSTROM, SECONDED BY MR. FAUST: TO GRANT THE VARIANCE TO PERMIT THE ADDITION OF DWELLING UNITS FROM 68 (EXISTING NON-CONFORMING) TO 76 UNITS ON 4-2126 ACRES WITH THE FOLLOWING CONDITIONS:

- The stormwater management upgrades and the parking areas were to be completed prior to the completion of the building and occupancy of such.
- Construction to commence within six months of approval of plan.

MOTION PASSED UNANIMOUSLY: VOTE: 4 to 0.

Aye: Bergstrom, Faust, Foster, Hudson

Absent: Harmer

Meeting adjourned at 7:30 p.m.

Tara A. Schiano
Secretary

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