

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
MAY 21, 2015**

Those present at 7:10 p.m.:

Members: Jeff Bergstrom, Presiding
Kevin Hudson
David Levandoski
Jim McKelvey

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

1. APPROVAL OF MINUTES FROM MEETING HELD MARCH 21, 2015:

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

2. THE APPEAL OF HAROLD P. KRINKSY FOR THE PROPERTY AT 3 PROSPECT AVENUE FOR THE FOLLOWING VARIANCES: (15-BA-06):

- a) **Sec. 32-10(c)(1)** – *minimum lot area*: The minimum lot area for any dwelling or permitted non-residential use, together with accessory buildings, shall be 6,250 sq. ft. for a detached or semi-detached single family use. Plan shows Lot 1 with 4,583 sq. ft. requiring a variance of 1,667 sq. ft. Lot 2 shows 4,250 sq. ft. requiring a variance of 2000 sq. ft.
- b) **Sec. 32-10(c)(2)** – *maximum lot coverage*: The total maximum lot coverage including any building, accessory buildings, and manmade improvements on the ground surface which are more impervious than the natural surface and which are used for parking and driveways, not including swimming pools, patios, terraces, outdoor grills, and similar facilities not intended for parking, shall be 50%. Plan shows Lot 1 with a lot coverage of 2,562 sq. ft. requiring a variance of 6%, Lot 2 with a lot coverage of 2,294 sq. ft. requiring a variance of 4%.
- c) **Sec. 32-10(a)(6.1)** – *taking of non-transient boarders in a one-family dwelling by a non-owner occupant*: A one-family dwelling occupied by a non-owner occupant may not take more than two boarders (maximum 3 unrelated persons). 3 Prospect Avenue has a current occupancy of 4 persons unrelated (pre-existing) to be applied to Lot 1. Applicant is requesting to have a 4 person unrelated occupancy to be applied to Lot 2. A one-person variance is requested for Lot 2.

ZONING CLASSIFICATION: RD

Ms. Schiano read the above appeal. The appeal was advertised in the Newark Post and direct notices were mailed to the surrounding neighbors within 500 feet. There was one letter in opposition signed by 3 separate residences which was entered into the record.

Matthew Longo, Esquire, Hillcrest Associates, was present to speak on behalf of the applicant, Howard Krinsky. Mr. Longo stated the property currently exists as a single family detached dwelling. It is currently rented to four tenants. Mr. Krinsky has owned the property for approximately 30 years and in Mr. Longo's opinion, a well-respected landlord. The property is located at the corner of Prospect and N. College Avenues. The project is proposed for a duplex and a re-subdivision into two parcels.

Richard Longo, Architect and Professional Engineer, Hillcrest Associates, was sworn in. Mr. Longo stated he has extensive experience locally and has won many awards since the inception of his career at Hillcrest Associates in 1972. He stated the property is located directly across the street from a UDEL property and student housing. Mr. Longo detailed some of the improvements his firm proposed for the property.

- No balloon framing
- Sprinkler systems
- Poured basements
- Improved air conditioning systems

It is Mr. Longo's opinion that the hardship spreads across a multitude of conditions. For example:

- Police Department, because in his opinion the police encounter less problems with this type of construction (i.e. the University uses surveillance cameras on the nearby property.)
- Fire Department due to the newly installed sprinkler systems and the proposed property will have all the necessary fire walls.

In addition tax revenues increase, the real estate comparable increases and permits flexibility to future uses.

Mr. Matthew Longo reviewed the Kwik Checks.

- *The nature of the zone in which the property is located* – is residential and will remain residential.
- *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – consists of multi-family and will remain so.
- *Whether, if the restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – it was Mr. Longo's opinion that if the variances were granted, the property would fit in better with the surrounding properties.
- *Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to efforts to make normal improvements in the character of that use of the property* – If the variance were denied, the applicant would have difficulties to make normal improvements to the property and find it difficult to fit in with the surrounding properties

Mr. Matthew Longo reported Hillcrest Engineering had studied 62 properties (RD zoning). Of those, only seven of the properties are lot size compliant. He further stated approximately 50 of the lots have a lot size of 3,400 square feet. The proposal for the lots is for 4,500 square feet and 4,240 square feet. It is Mr. Matthew Longo's opinion when comparing neighboring lot sizes, there would not be any hardship. In addition, the existing lot is located on a corner thereby restricting them further. There is significant street frontage and that takes away from the right-of-way.

The proposed project would have one entrance off of Prospect Avenue with parking located behind the structure (3 spaces per unit required for a total of 6 spaces). The requested variance for maximum impervious surfaces is minimal. (4% and 6% per lot) The proposed project could be Code compliant, however aesthetically would not be as pleasing with front entry parking. Some on-street parking is lost. Additionally, a safety issue would exist with residents having to back out onto either Prospect or N. College Avenue.

Mr. Matthew Longo stated maximum per the Code is three unrelated tenants. The proposal asks for four unrelated tenants. There are currently four unrelated tenants in the existing structure, however the proposal is requesting four tenants as well in the proposed additional structure. Mr. Matthew Longo believes tenants per acre is not a calculation per Code, it is a fair comparison. Their proposed eight tenants would exist on .2 of an acre. This equates to 40 tenants per acre. In comparison there are some nearby projects that have 60-70 residents per acre. The majority of the properties on Prospect Avenue (45 units) have four tenants. The overwhelming majority have three or four tenants. It was his opinion this is a comparable comparison.

Mr. Hudson asked if the properties that have four tenants how many of them are pre-existing and how many are granted by variance. Mr. Matthew Longo stated he did not know.

Mr. Rick Longo stated when he comes before the Board of Adjustment, he insists that architecture and features are well thought out. In addition, the most sophisticated stormwater management is proposed. It is his opinion this type of construction helps the City of Newark.

There being no more questions, Mr. Bergstrom returned the matter to the Board.

Mr. Hudson asked if the property was currently being rented. Mr. Matthew Longo replied that it was being rented.

Mr. McKelvey asked how many tenants currently reside in the building. Mr. Matthew Longo replied there were four.

Mr. Levandoski stated it was his understanding the zoning district at 3 Prospect Avenue is zoned RD. He believed that in RD zoning a semi-detached family dwelling is permitted. Mr. Levandoski stated the lot currently conforms to permit that type of construction. Mr. Levandoski asked why the applicant proposed splitting the lot into two lots.

Mr. Fortner, Planning & Development Department confirmed semi-detached is permitted with two lots.

Mr. Hudson stated it was his opinion the requirements for granting a variance is because the applicant would have difficulty making normal improvements. He does not believe tearing the existing structure down which is grandfathered for four tenants, adding another structure and doubling the occupancy is a normal improvement.

Mr. Matthew Longo believed it was a normal improvement because when considering the surrounding RD especially with regard to lot size, it is his opinion it is the only way. He believes these are normal improvements for the vicinity.

Mr. Matthew Longo stated it is not financially feasible for the applicant to demolish the structure and only replace it with a four tenant dwelling. In addition, that proposed structure would be a single family detached located in an area with a many duplex homes.

Mr. Bergstrom asked Bruce Herron, City Solicitor to offer his opinion on a normal improvement. Mr. Herron stated it was up to the Board to make that decision. The Board may consider surrounding properties when making their decision. Mr. Bergstrom stated the Board may be reluctant to grant variances of this magnitude as a general rule because it is significant.

Mr. McKelvey stated it was his opinion that if everyone involved understood the limits of the zone why do they propose to build structures that are too big for the lot. It is aesthetically pleasing, but does it have to be that large to succeed?

Mr. Rick Longo stated economics do play a large role. He stated the applicant claims to need that many tenants to make it financially feasible. If not, the existing structure has to remain and "band aid" type repairs will have to occur. Mr. Rick Longo stated it was his opinion that no one objects to these projects once they are completed. Mr. Rick Longo stated if the variances were not approved then it will be an old building with four students in what he considers a structure that is not healthy and does not have environmentally good conditions.

There was no one present from the public that wished to speak.

Ms. Tara Schiano, Board secretary read the letter in objection that was received from three neighboring residents (Michael and Amala Fahey, Jerry and Sheila Grant and Tom & Barb McKeown) and it was entered into the record.

Mr. Matthew Longo stated in his opinion the increase in lot size was minimal and the proposed parking was a great improvement. Mr. Longo would disagree that there is not a need for student housing as they border on UDEL and the housing need is certainly there. Mr. Fortner stated the anticipated vacancy rate is 1.9% which is extremely low. To keep pace with student growth, 50 units per year are needed. Mr. Fortner noted that number doesn't take into account the number of units needed to rent to non-students.

Mr. Matthew Longo wanted to reiterate how much land was taken by the right-of-way (due to it being a corner property) on the applicant's property (approximately 30 feet on both streets). Mr. Longo asked the Board to vote on each variance separately. Mr. Bergstrom asked Mr. Herron if this was acceptable. Mr. Herron stated it was acceptable.

Mr. McKelvey asked when the right-of-way went into effect. Mr. Matt Longo stated it was his belief it was approximately 60 years. Mr. Hudson confirmed a right-of-way applies to a lot of properties as detailed in the Code and it cannot be taken into account. Mr. Matthew Longo stated that was correct however, the right-of-way is a much larger percentage when located on a corner lot.

Mr. Hudson asked when the applicant purchased the property. Mr. Matthew Longo stated in the late 1980's. Mr. Hudson stated the property owner purchased the land with the right-of-way in effect.

Mr. McKelvey asked with that issue in mind why is the right-of-way being factored as part of the consideration. Mr. Hudson stated it does not have to be considered and Mr. Matthew Longo was using it as part of his argument.

Mr. Hudson addressed the Kwik Check factors:

- *The nature of the zone in which the property is located* – is a residential zone (RD) with rental units surrounding the property with other semi-detached units.
- *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – the property is a rental unit similar to neighboring properties and semi-detached.
- *Whether, if the restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – Mr. Hudson stated it was his opinion it would seriously affect the neighboring properties and uses. Residents that live on the street are opposing the variances.
- *Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to efforts to make normal improvements in the character of that use of the property* – in this case Mr. Hudson believes it is not a normal improvement. It is his opinion this is a drastic request and a vast change to the property.

Mr. McKelvey addressed the Kwik Check factors:

- *The nature of the zone in which the property is located* – he is in agreement with Mr. Hudson's analogy that this is a residential zone (RD) with rental units surrounding the property with other semi-detached units.
- *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – he is in agreement with Mr. Hudson that the property is a rental unit similar to neighboring properties and semi-detached.
- *Whether, if the restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – he stated he takes very seriously opposition from neighbors as they are the ones that are affected. He stated granting this variance would seriously affect the neighbors.
- *Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to efforts to make normal improvements in the character of that use of the property* – in this case Mr. McKelvey stated it was his opinion that the benefits represent exceptional practical difficulty for the owner. He believes the Code is in place for a reason.

Mr. Levandoski addressed the Kwik Check factors:

- *The nature of the zone in which the property is located* – is residential with rental properties.
- *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – the applicant is proposing a rental property and the majority of the neighboring properties are rental.
- *Whether, if the restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – he stated the majority of the properties on Prospect Avenue with the majority of them being duplexes. It was his opinion increasing a property by adding another duplex does not equate to a significant hardship on the neighboring properties. In addition, the proposed lots will be larger than the other neighboring duplexes.
- *Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to efforts to make normal improvements in the character of that use of the property* – in this case Mr. Levandoski stated it was his opinion that it would present an exceptional practical difficulty for the owner.

Mr. Bergstrom addressed the Kwik Check factors:

- *The nature of the zone in which the property is located* – is residential and located on a street with predominantly rental properties.
- *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – it is a current rental property with the applicant proposing to keep it a rental property with the neighboring properties rental properties.
- *Whether, if the restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – he stated there were no members present from the public to speak in favor of the public.
- *Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to efforts to make normal improvements in the character of that use of the property* – in this case Mr. Bergstrom stated it was his opinion that the proposed project would make a nice addition to the corner lot.

Mr. Hudson wished to add that most of the neighboring properties are non-conforming and the reason the Zoning laws are in effect are because the City wants them. It is his opinion that by granting the variances it sends the message that more non-conforming properties are permissible. He believes if the structure is going to be demolished it is the perfect time to reconstruct it and make it conforming.

Mr. Bergstrom stated his opinion is the opposite and this is the time to equalize the non-conformities because that is what the neighborhood has evolved to. A pedestrian community is a major asset for college students. It is his opinion that it is not a stretch to grant a variance that will bring this lot into compliance with neighboring lots.

Mr. Levandoski asked Mr. Matthew Longo what is the average age of the existing duplexes. Mr. Longo stated he was not sure. Mr. Hudson stated the majority are the neighboring properties have not been rebuilt.

Mr. Longo confirmed there were only four voting members present. Mr. Bergstrom stated Curt Bedford had resigned because he was moving out of the City. Mr. Longo asked if the City Solicitor voted. Mr. Herron stated he did not vote. Mr. Longo asked if a two vote to two vote was granted or denied. Mr. Herron stated a two vote to two vote constituted a denial.

The Board took a five minute recess at the request of Mr. Matthew Longo.

The Board resumed deliberations after a five minute recess.

Mr. Matthew Longo made a request to withdraw the application. The applicant would prefer to have the case heard before a full board.

Mr. Herron stated the applicant does have a right to withdraw the application.

3. The meeting was adjourned at 8:13 p.m.

Tara A. Schiano
Secretary