

**CITY OF NEWARK  
DELAWARE  
BOARD OF ADJUSTMENT  
MINUTES  
SEPTEMBER 17, 2015**

Those present at 7:00 p.m.:

Members: Jeff Bergstrom, Presiding  
Kevin Hudson  
Bill Moore

Absent: Dave Levandoski  
Jim McKelvey

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

**1. APPROVAL OF MINUTES FROM MEETING HELD AUGUST 20, 2015:**

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

2. Chairman Bergstrom suggested moving the non-commercial item on the agenda up to be decided upon first. All concurred.
3. **THE APPEAL OF ROBYN & MATTHEW WEBB, 3 VASSAR DRIVE FOR THE FOLLOWING VARIANCE: (15-BA-11).**

- a) **Sec. 32-9(c)(5) Area Regulations & Building Setback Lines** – Each story or part of a building, exclusive of cornices and uncovered steps and uncovered porches, shall be set back from the line of the street on which the building fronts by at least a minimum distance of 25 feet. Plan shows an added roof to a front porch that extends 4’9” from the primary structure located 26.9 feet from the front property line resulting in a 22.15 foot setback. This requires a 2.85 foot variance for building setback.

**ZONING CLASSIFICATION: RS**

Ms. Schiano read the above appeal. The appeal was advertised in the Newark Post and direct notices were mailed to the surrounding neighbors within 300 feet.

Mr. Matthew Webb, 372 Chickory Way, was sworn in. Mr. Webb explained the position of the house limits the sun exposure to the front porch area. During winter months, rain, snow and ice remain on the porch and freeze, thaw during the day and refreeze at night. It creates a hazard for his family as well as visitors to the home, postal workers, etc. In addition, due to moisture issues the brick steps had to be replaced. As a result of the difficulties they have encountered, Mr. Webb

would like to add an A-frame portico. This would not extend beyond the steps and would provide a covered entryway to mitigate the hazardous conditions caused by weather.

Mr. Bergstrom asked if the home had a similar setback to other properties on the street. Mr. Webb stated it did. Mr. Bergstrom asked when the current zoning requirements took effect in the City. Mr. Fortner, Planning & Development Department stated the current zoning guidelines took effect in 1976. Mr. Webb stated his home was built before this date.

Mr. Webb stated he had spoken to his neighbors and they do not object to his proposed portico.

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

Mr. Hudson reviewed the Kwik Checks.

- *The nature of the zone in which the property is located* – is a residential neighborhood.
- *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – is a neighborhood of residential homes.
- *Whether, if the relevant restrictions upon the applicant’s property were removed, such removal would seriously affect the neighboring properties and uses* – as the applicant stated he has already spoken with his neighbors and they do not object to his proposal. They thought it was a good idea. Mr. Hudson does not see how adding a portico on the home could seriously affect the neighbors or seem unsightly.
- *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* – as stated before, it is a residential home and the applicant has reported there are major issues in the winter months with freezing, and re-freezing of the front steps causing a hazard for his wife and small children and visitors to the home. This will help minimize these problems. Mr. Hudson stated it was his opinion the proposed variance is rather diminimis.

Mr. Hudson stated the proposed variance seems quite reasonable.

Mr. Moore concurred with Mr. Hudson’s analysis of the Kwik Check factors and would vote in favor of granting the variance. Mr. Bergstrom asked if the proposed portico would extend beyond the face of the porch. Mr. Webb stated it would not. Mr. Bergstrom suggested extending the top roofline of the portico a bit further out so the “drip line” would not be directly under the last step of the porch. The Board as well as the applicant concurred and thought this was a good idea. Therefore the following motion was made.

**MOTION BY MR. HUDSON, SECONDED BY MR. MOORE: TO APPROVE THE VARIANCE AS MODIFIED TO A 3.85 FOOT VARIANCE.**

**MOTION PASSED UNANAMIOUSLY 3-0.**

**Aye: Bergstrom, Hudson, Moore**

**Absent: Levandoski, McKelvey**

**4. THE APPEAL OF JAMES WATTS ON BEHALF OF 6 ANNABELLE LLC FOR THE PROPERTY AT 6 ANNABELLE STREET, FOR THE FOLLOWING VARIANCES: (15-BA-10).**

- a) **Sec. 32-11(b)(1)a. Lot Area** – There shall be a lot area of at least 4,000 square feet for each family to be accommodated thereon. The required lot area for four (4) apartments is 16,000 square feet. Plan shows a lot area of 13,068 square feet, requiring a variance of 2,932 square feet.
- b) **Sect. 32-11(b)(1)b. Gross Floor Area** – There shall be a gross floor area, computed as the sum of those areas enclosed by the outside faces of all exterior walls surrounding each story used for residence exclusive of any area for an attached private garage, of at least 1,000 square feet per family to be accommodated therein. Plan shows four (4) dwelling units. Dwelling units 1 and 2 meet the gross floor area requirement. Dwelling unit 3 is 855 square feet, requiring a variance of 145 square feet. Dwelling unit 4 is 778 square feet, requiring a variance of 212 square feet.

**ZONING CLASSIFICATION: RM**

Ms. Schiano read the above appeal. The appeal was advertised in the Newark Post and direct notices were mailed to the surrounding neighbors within 300 feet.

Mr. James Watts, 41 Bridlebrook Lane, Newark, DE, was sworn in. Mr. Watts stated upon speaking to Maureen Feeney Roser, Planning & Development Director he reported there were no other residential homes that had been converted to apartments. Mr. Watts reported 6 Annabelle Street is a family residence and has been owned by the Watts family since 1963. Mr. Watts stated Annabelle Street consists exclusively of student rentals. Although Mr. Watts had considered residing there with his family he has found he is unable to do so due to various issues of the property being located in close proximity to student rentals.

Because of the size of the house, Mr. Watts would like to divide the house into 4 apartments. There is a section of the Newark Code that permits for large house conversions to apartments. However, it is very restrictive. He stated the most important issue considered is the protection of existing residents which is understandable. The property is currently zoned RM and apartments are permitted if there is enough land. When reviewing the Code, and looking at the requirements for building apartments they are much less restrictive than for converting a house to apartments.

The Code requires 2,722 square feet of land for each apartment in RM zoning, but 4,000 square feet of land per apartment for a house conversion. It is his opinion it does not seem necessary to have the 4,000 square foot requirement in a neighborhood zoned RM where all the hours are non-owner occupied. Therefore, the applicant is requesting to have the lot area reduced from 4,000 square feet requirement to the 3,267 feet which is still well above the 2,722 square feet requirement for apartments. Mr. Watts stated there will still be significant open space as indicated on the submitted plan. Mr. Watts also reported that 3 Annabelle Street appears to have four apartments as there are four electric meters. 3 Annabelle Street has existed this way for at least 50 years. White Clay Mill Apartments sits adjacent to the backyard of 6 Annabelle Street .

As it currently stands, the proposal could be for 3 large apartments. The apartment on the first floor would be very large (over 1,400 square feet). It is Mr. Watts' opinion that the City of Newark has enough large apartments. Mr. Watts stated after speaking with the Planning Department, the trend is currently for smaller apartments. Mr. Watt's stated Mr. Hal Prettyman owns 4 Annabelle Street and he does not have any objection to this proposal.

Mr. Hudson if there was any reason the proposal could be limited to three apartments. Mr. Watts stated there was no reason except they would like to do four apartments as there is a lot to be accomplished when converting an existing house into apartments. To bring the new structure up to Code, a sprinkler system needs to be added, fire separations, etc. Additionally, it would make the proposed project financially feasible for the applicant if there were four apartments rather than three.

Mr. Fortner confirmed the City is encouraging the trend for smaller apartments by providing incentives. The smaller units with less bedrooms can be more appealing to non-students.

Mr. Hudson stated one of the tasks of the Board of Adjustment is to assess whether the applicant has an exceptional practical difficulty.

Mr. Watts stated as owners, they would like to save the house. Economically, they need to put four apartments to do that. Mr. Moore asked if the home was on the historical registry. Mr. Watts stated it was not. Mr. Watts stated it his hope to rent to graduate students or young families.

Jane Wilson, Newark, DE wanted to speak on behalf of the Watts project. Ms. Wilson stated as a member of the Watts family she was a resident of the property as a young child. She stated the home was a shell when the family purchased it and the family re-designed and renovated the home together. She hopes to preserve the property and by constructing the apartments enables them to do so.

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

Mr. Moore stated that although he originally struggled with the concept of what the

applicant proposed to do, he is now clear on the intent. The area is exclusively student housing with some retail in the area. Mr. Moore stated that the applicant holding onto the property and making the changes as requested has some appeal to him.

Mr. Hudson stated this a difficult decision, but due to the applicant's desire to preserve the house and the City's desire to encourage smaller units, it is now his opinion this is a reasonable request. He would vote in favor of granting the variances.

Mr. Hudson reviewed the Kwik Checks.

- *The nature of the zone in which the property is located* – is exclusively student housing.
- *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – is student housing and many of the buildings have an “older” design.
- *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – it was Mr. Hudson's opinion that the removal would not affect the neighboring properties in any way.
- *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 they did limit the structure to three apartments, they would be large and given the City's consideration and encouragement to construct smaller apartments, it seems the lot area and gross floor area requests are reasonable for the keeping the property as is.

Mr. Bergstrom stated the request is a good design, a good proposal and very unique. He concurs with Mr. Hudson's logic and would vote in favor of the variances. Mr. Moore agreed with his colleagues and would not like to see the structure demolished. He would vote in favor of granting the variances.

**MOTION BY MR. HUDSON, SECONDED BY MR. MOORE: TO APPROVE THE VARIANCES AS REQUESTED.**

**MOTION PASSED UNANAMIOUSLY 3-0.**

**Aye: Bergstrom, Hudson, Moore**

**Absent: Levandoski, McKelvey**

**5. The meeting was adjourned at 7:34 p.m.**

Tara A. Schiano  
Secretary