

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
OCTOBER 15, 2015**

Those present at 7:03 p.m.:

Members: Jeff Bergstrom, Presiding
Dave Levandoski
Jim McKelvey
Bill Moore

Absent: Kevin Hudson

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

1. APPROVAL OF MINUTES FROM MEETING HELD SEPTEMBER 17, 2015:

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

2. THE APPEAL OF ROBERT MCFARLANE, 125 MADISON DRIVE FOR THE FOLLOWING VARIANCE: (15-BA-12).

- a) Sec. 32-47(j) General Provisions – Existing single family type rental dwellings.** Two off-street parking spaces shall be required per unit for every non-owner occupant, one-family and/or two-family dwelling type structure converted for the taking of boarders and roomers as permitted in this chapter and requiring rental permits as specified in Chapter 17 of the Code. This property has one off-street parking space requiring a variance of one off-street parking space.

ZONING CLASSIFICATION: RR

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.

Ms. Wendy McFarlane, 130 Willow Oak Blvd., Bear, De, was sworn in. Ms. McFarlane was present to speak on behalf of her brother, Robert McFarlane, the property owner. Ms. McFarlane explained her brother had purchased 25 Madison Drive as his primary residence. However, at some time in the near future he anticipates having to move out of state. At that time, he would like to rent the property. Before Mr. McFarlane owned the property there was an existing rental permit that had expired. At the time of negotiating to purchase the house, the previous owner stated they had explored the option of renewing the rental permit, but were denied, due to the parking space in the rear of the property not being up to Code (the parking spot was too narrow by

approximately 6 inches).

Mr. Fortner, Planning & Development Department stated the property did have a rental permit with the previous owner, however they had let the permit lapse. The original rental permit would have been granted when there were different regulations per City Code. When the rental permit expired, the new regulations kicked in. This included two parking spaces. When the previous owner attempted to renew the permit, they were unable to do so. Mr. Fortner reported there is currently one parking spot and there is space for another which is six inches too narrow according to Code. Another option would be for the applicant to obtain an agreement from another property owner to allow them to use one of their spaces. Mr. Fortner stated an owner occupant can take in up to two borders and they would not need a rental permit and would not need the additional parking spot.

Mr. Bergstrom asked how large the existing parking space is. Mr. Fortner stated it was 9x17 and was short by the six inches in width. Ms. McFarlane stated she had spoken with Ryan Straub in Code Enforcement and he had indicated the parking spot was not large enough. Ms. McFarlane stated there are currently two cars parked there.

Mr. Moore asked if the previous owner had not allowed the permit to lapse would this property be grandfathered. Mr. Fortner replied had the permit not lapsed more than a year the property would be a legal non-conformity.

Mr. Levandoski asked if there were any other rental permits in the area where homes do not need two parking spots. Mr. Fortner stated he was sure there were some and that they were grandfathered. Mr. Levandoski asked if there was any parking available on the side of the property. Ms. McFarlane stated there is non-designated parking spots on the street at the end of the units and is first come first served. Mr. Fortner reiterated the Code requires two off-street parking spots.

Mr. McKelvey stated he had viewed this case as an area variance and could be evaluated as such, but the remedy would be to grant a waiver.

Mr. Fortner stated one of the previous property owners had (without a permit) filled in the garage and made it a room. It cannot be a sleeping room. This is one of the reasons this property has a non-conformity. This is one of the reasons this situation is occurring currently. It is not the fault of the current property owner.

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

Mr. McKelvey reviewed the Kwik Checks.

- *The nature of the zone in which the property is located* – is a residential neighborhood with townhouses.
- *The character of the immediate vicinity of the subject property and the uses of the property*

within that immediate vicinity – again is strictly 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 – it was Mr. McKelvey's opinion that the applicant having two parking spots "fits in" with the area and its intended use.*
- *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 – Mr. McKelvey stated it would cause exceptional practical difficulty for the owner when he takes in borders.*

Mr. McKelvey stated he would grant the variance.

Mr. Levandoski concurred with Mr. McKelvey and asked that the parking spots be only used as parking spots not for storage.

Mr. Moore stated he was not sure that granting this variance was justified. However, based on what his colleagues said, he understands the situation and understands the parking in the back of the property.

Mr. Bergstrom stated he views this as an area variance permitting parking spaces that happen to be two spots that are each three inches two narrow. Mr. Bergstrom asked Mr. Fortner when the size of the parking spots were determined. Mr. Fortner stated he did not. Mr. Bergstrom stated he was in agreement with Mr. McKelvey's analysis of the Kwik Check factors and was in favor of granting the variance. He would also agree with Mr. Levandoski and add the stipulation that the parking spot be used for parking only, not storage, etc.

MOTION BY MR. MCKELVEY, SECONDED BY MR. LEVANDOSKI: TO APPROVE THE VARIANCE WITH THE CONDITION THAT THE AREA BE USED SOLELY FOR PARKING.

MOTION PASSED UNANAMIOUSLY 3-1.

Aye: Bergstrom, Levandoski, McKelvey

Nay: Moore

Absent: Hudson

3. The meeting was adjourned at 7:22 p.m.

Tara A. Schiano
Secretary