

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

Those present at 7:01 p.m.:

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

Staff Members: Paul Bilodeau, Deputy City Solicitor
Michael Fortner, Planning & Development Department
Tara Schiano, Secretary

1. APPROVAL OF MINUTES FROM MEETING HELD OCTOBER 15, 2015:

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

2. THE APPEAL OF ALAN E. SCHWEIZER FOR THE PROPERTY AT 129 LOVETT AVENUE FOR THE FOLLOWING VARIANCES: (15-BA-15).

Lot #1

- a) **Sec. 32-11(c)(7) Side yard.** In an RM district, two side yards shall be provided on every lot as follows: on an interior lot, the minimum width of such side yards shall be 7 feet, with a minimum aggregate width of the two side yards of 15 feet. Plan shows a minimum side yard of 0.3 feet with an aggregate width of the two side yards of 7.3 feet, requiring a variance of 7.7 feet.

Lot #2

- a) **Sec. 32-11 (c)(2) Minimum lot area.** The minimum lot area for any other permitted use, together with accessory buildings, shall be 6,250 square feet. Plan shows Lot 2 as 4,480 square feet, requiring a variance of 1,770 square feet.
- b) **Sec. 32-11(c)(7) Side yard.** In an RM district, two side yards shall be provided on every lot as follows: on a corner lot the side yard along the interior side lot line shall have a minimum width of 7 feet. The width of the side yard along the street line shall be governed by the building setback requirements in this article (15 feet). Plan shows Lot 2 having a side yard on the east side of 4.1 feet, requiring a variance of 2.9 feet, and 13.9 feet along the street line, requiring a variance of 1.1 feet.

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 300 feet.

Mr. Alan Schweizer, 1101 Millstone Drive, was sworn in. Mr. Schweizer stated the property in question has two existing buildings, which are both churches. The original church was built in 1940. When the second church was built in 1973, the water service (line) for the new church came directly off the old church, rather than having a separate line and a separate meter. Mr. Schweizer stated he hoped to get an administrative subdivision; however the Planning Department informed him he had to come before the Board of Adjustment for the variances.

He believed there may have already been enough square footage in the lot, however when the lot line was moved, it made the lot smaller. In addition, 1/3 of the existing building will be torn down.

Mr. Bergstrom asked Mr. Schweizer the nature of the occupancy of the existing building. Mr. Schweizer stated it was currently an empty assembly hall. He stated he hoped to make it a single family residence.

Mr. McKelvey asked if the remaining church will remain a church. Mr. Schweizer replied to his knowledge, it will remain a church. Mr. Schweizer stated the church cannot sell the property because the property line goes right through the side of the newer church as the new church was constructed on two parcels. He stated if the project had been correctly when the new church was constructed, he would not have to come before the Board.

Mr. McKelvey confirmed Mr. Schweizer's intention was for the owners to sell the old church (currently an activity hall) and turn it into a dwelling with four off street parking spots. Mr. McKelvey stated he believed the owner is having difficulty doing this because there is not enough of a side yard.

Mr. Fortner, stated it was not so much the side yard but it was a non-conforming lot as well. He further stated a lot for RD district would have to be a maximum of 6,250 square feet. In this case, after the administrative subdivision would be complete, the lot would be 4,480 square feet.

Mr. Hudson asked if Mr. Schweizer was purchasing the property the church was on. Mr. Schweizer stated he was purchasing the property the old church is on. It is a smaller, corner lot. Mr. Schweizer reported the structure is in poor shape with extensive termite damage. Mr. Schweizer stated he is not certain that structure will be completely torn down.

Mr. McKelvey inquired that if the project is approved and it turns out that the existing structure needs to be demolished, does granting the variances give Mr. Schweizer the right to build on a new structure on the existing footprint? Will Mr. Schweizer need to return to the Board of Adjustment? Mr. Fortner stated the applicant by right would have the right to rebuild up to the existing footprint. He stated the change of use may "kicks in" but generally the applicant would be allowed to build on that footprint. He further reported the applicant will follow the building permit

process which includes a review by the fire marshal. The new building will include a sprinkler system which is required under City Code.

Mr. Hudson confirmed the only reason the applicant needs the variances at this juncture is to “clear up” the property line between the two properties.

Mr. Levandoski asked what the existing deck that goes between the two buildings was used for. Mr. Schweizer stated it was a stairway to the newer church only.

Mr. Schweizer stated there may be an air conditioning unit and/or compressor that may need to be moved that is currently located in between the two buildings.

Mr. Hudson inquired if when the property line is moved, will the existing deck still be on the applicant’s property. Mr. Schweizer reported there is an easement for the deck. The deck may have to be rebuilt at some point, regardless.

Mr. Schweizer reported the owners of the church want to sell the old church only. He would like to purchase it, but the problem has to be solved first. He stated the renovations will be an improvement to the neighborhood. The parcel cannot be sold as is without granting the administrative subdivision and once granted, it creates a non-conforming lot.

Michelle Brown, 51 Brandywine Court, Newark, DE, was sworn in. Ms. Brown stated she is the Chairman of the Trustee Board for the church. She is also the real estate agent for the church. She stated the Board of Trustees had decided to make some minor repairs to the existing church. The smaller church that the applicant is purchasing had been a hall the church had rented out to other churches. She reported the church is starting to deteriorate significantly. Roof repairs are needed, there are termite issues. It is too much for the church organization to renovate. Therefore, the board has decided to sell the building, take the money from the sale and put the proceeds into the remaining church.

Mr. Levandoski asked Ms. Brown how extensive will the renovations be to the church. Ms. Brown stated the bathrooms are in need of renovations, there are issues with the roof adjoining the chimney and they would like to consider opening a daycare center on the bottom level.

Mr. Bilodeau stated one of the requirements for an area variance would pertain to the character of immediate vicinity. Mr. Bilodeau asked what the vicinity consists of. Ms. Brown reported there are no churches, but primarily rental homes for the college students.

Ms. Brown stated the church she represents purchased the property in 2000. It was used as a recreational center and at one time, a church for the children of the congregation.

Mr. Hudson asked when the additional parcels had been purchased. Ms. Brown stated all three parcels are all on one deed. The third parcel, located across the street, is a parking lot.

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

Mr. Bergstrom returned the matter to the Board.

Mr. Hudson reviewed the Kwik Checks.

- *The nature of the zone in which the property is located* – is a largely residential area surrounded mostly by rental units with the exception of these properties.
- *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – he reiterated the uses and character are residential and mostly student rentals.
- *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 he does not see this adversely affecting any of the neighboring 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* – Mr. Hudson stated it was his opinion this unique situation qualifies as an exceptional practical difficulty.

Mr. Hudson would vote to grant the variances.

Mr. Levandoski concurred with Mr. Hudson as it is a unique situation. Once the administrative subdivision is granted and the property line is move, the sale of the parcel can happen. With the revenue from the sale, the remaining church can make the necessary repairs and renovations to the church to improve its functionality as well. He would suggest that if the existing structure does have to be torn down due to termites or other circumstances, that perhaps the square footage of the structure would remain the same. Mr. Levandoski would vote to grant the variances.

Mr. McKelvey stated moving the lot line makes sense to him. He likes of keeping the existing footprint. Mr. McKelvey would vote to grant the variances.

Mr. Moore stated it was his opinion they were significant variances. He understands the difficulties the existing church is facing. The more he considers the issues, he believes granting the variances should be approved.

Mr. Bergstrom stated he concurred with Messrs. Hudson, Levandoski and Moore.

Mr. Schweizer stated it was his thought that if the structure had to be demolished then he would rebuild a two story dwelling with a smaller footprint.

Mr. Fortner stated the variances could be granted without any restrictions as the applicant is locked in and would not be permitted to expand without needing additional variances and the

applicant would have to return to the Board of Adjustment.

**MOTION BY MR. HUDSON, SECONDED BY MR. LEVANDOSKI: TO
APPROVE THE VARIANCES FOR LOTS 1 AND 2 AS REQUESTED.**

MOTION PASSED UNANAMIOUSLY 5-0.

Aye: Bergstrom, Hudson, Levandoski, McKelvey, Moore

- 3. The meeting was adjourned at 7:35 p.m.**

Tara A. Schiano
Secretary