

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
MARCH 17, 2016**

Those present at 7:00 p.m.:

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

1. APPROVAL OF MINUTES FROM MEETING HELD JANUARY 27, 2016 AND FEBRUARY 16, 2016:

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

Mr. Bergstrom asked that the election of a formal Vice-Chairman for the Board be placed on the next meeting agenda.

2. THE APPEAL OF ADVANCETO GO ASSOCIATES, LLC, 108-110 WILBUR STREET, FOR THE FOLLOWING VARIANCES: (15-BA-06):

- a) **Sec. 32-11(a)(1)(d) Lot Coverage** – Maximum lot coverage shall be 20% for any lot which is to be developed for garden apartments. Plan shows lot coverage of 70.4%, requiring a variance of 50.4%.
- b) **Sec. 32-11(a)(1)(h) Minimum lot size** – The minimum lot size for a lot which is to be developed for garden apartments is one acre. Plan shows a lot size of .13 acres, requiring a variance of .87 acres.
- c) **Sec. 32-11(a)(1)(i) Open area** – At least 40% of the lot area shall be devoted to open area. Plan shows 29.6%, requiring a variance of 10.4%.
- d) **Sec. 32-11(a)(1)(j) Parking and loading spaces** – All uncovered parking and loading spaces shall be located at least 10 feet from all abutting perimeter streets and property lines. Plan shows 2 parking spaces located 4.5 feet from rear property line, requiring a variance of 5.5 feet.
- e) **Sec. 32-11(c)(4) Height of buildings** – Except as specified in Article XVI, Sec. 32-56.2(c)(1)(2) of this chapter, the height of a building or structure hereafter erected or altered shall not exceed three stories or 35 feet. Plan shows the proposed building to be 3 stories and 40 feet tall, requiring a variance of 5 feet.
- f) **Sec. 32-11(c)(5) Building setback lines** – Except as specified in Article XVI, Section 32-56.2(d)(1)(2)(3)(4) of this chapter, 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 minimum distance of 15 feet, except

for an apartment building, each story or part of building, exclusive of cornices, balconies, and uncovered steps and uncovered porches, shall be set back at least:

- a. 30 feet from the line of all perimeter streets; plan shows the covered porch 11.4 feet from line of street, requiring a variance of 18.6 feet.
- b. 25 feet from all exterior lot lines; plan shows a 15.6 foot setback from north lot line, requiring a variance of 9.4 feet; a 6.8 foot setback from the south lot line, requiring a variance of 18.2 feet.

g) Sec. 32-11(a)(1) Use variance – A duplex is not permitted in RM zoning as a garden apartment and requires a use variance. The existing building currently is a non-conforming duplex in the RM zoning and the client desires to demolish the existing non-conforming duplex and construct a new duplex.

ZONING CLASSIFICATION: RM

Mr. Bergstrom stated the Board would address the use variance first.

Mr. Matt Longo, Esquire was present to speak on behalf of the applicant, Matt and Mary Jean Orticelle. Various staff from Hillcrest Engineering was present as well. Mr. Longo stated the applicants were long standing landlords in the City since 1999. Mr. Longo had a rendering of the proposed project that was entered into the record. Mr. Longo stated the existing structure was 5,900 square feet and zoned RM. Mr. Longo stated the surrounding area was zoned RM. Mr. Longo described the proposed project and the surrounding area. He said the applicant is asking the Board to define the project as a garden apartment. A duplex is not permitted in RM and is not listed as a permitted use in any zoning district. A garden apartment are a use by right in RM zoning and the Code has a one acre requirement. Mr. Longo further stated the project could be proposed meeting Code with regard to lot coverage and open area. However, the parking would be provided along the front of the structure. This would impact the street scape and the aesthetics and would cause cars to have to back out directly onto Wilbur, rather than the parking be located in the rear of the structure.

Mr. Bergstrom asked Mr. Fortner if the existing duplex could be rebuilt with the same setbacks. Mr. Fortner replied that it could be rebuilt as existing. It would be viewed by the Planning Department as two independent rental units and bound by the same regulations of all single family households. Mr. Fortner stated neighboring properties are all non-conforming duplexes and are regulated as single family houses. (Limit of four tenants)

Mr. Alan Hill, Hillcrest Associates, was sworn in. Mr. Hill stated the cost of the replacement per unit is \$250,000 and this covers all lot improvements and stormwater management as well. Furthermore, there is a loss of a year's rental income. We further stated the renovations cannot be done from a financial standpoint without adding tenants because the rent does not increase significantly enough to recoup the additional money. Mr. Hill also stated the property is a non-conforming duplex in existing RM zoning. The advantage to zone as a garden apartment is there is not a restriction on the number of tenants. If it is continued to be zoned as a duplex the

applicants would need to increase the tenants and obtain a variance to do so.

Mr. Levandoski asked Mr. Hill of the return on investment calculations. Mr. Hill did not have the calculations on hand. Mr. Longo stated the applicant would appreciate returning to the Board to present specific financials including construction timeframes, etc.

Mr. Bergstrom asked if the tenant would continue a return to the next meeting of the Board of Adjustment. Mr. Longo stated if the applicant could be afforded the time to put together specific financials, that would be appreciated. Mr. Bergstrom stated the applicant has to prove to the Board there is no reasonable return on the property under the existing conditions. Mr. Hudson stated he preferred to proceed at the current meeting. Mr. Moore concurred. Mr. McKelvey stated he would be agreeable to have the applicant return.

MOTION BY MR. MCKELVEY, SECONDED BY MR. BERGSTROM: TO GRANT THE CONTINUANCE TO THE APPLICANT TO RETURN TO THE BOARD OF ADJUSTMENT AT A LATER DATE.

MOTION PASSED. VOTE: 3 to 2.

Aye: Bergstrom, Levandoski, McKelvey

Nay: Hudson, Moore

Messrs. Hudson and Moore stated he was not in favor of the granting the continuance as the parties should have been prepared with the financials as they pertain to the project.

Mr. Levandoski asked if similar projects had come before the Board of Adjustment. Mr. Fortner replied Cleveland Station was done by site plan approval. Site plan approval allows for variations.

Mr. Bergstrom stated for the record the reasons there was not public comment was the Board was considering the merits of the case, it was only a procedural matter.

3. The appeal of Danneman Hospitality, LLC, 400 Ogletown Road, for the following variance:

- a) Sec. 32-45 – *off street parking requirements*** -- hotels and motels – one off street parking space for each guest room, plus one off-street parking space for each employee and, restaurants and diners – one off-street space per employee on shift of greatest employment Hotel use requires 131 spaces; restaurant use requires 44 spaces for a total of 175 required parking spaces. Total provided parking is 139 spaces. A variance of 36 parking spaces is required.

ZONING CLASSIFICATION: BC

Ms. Jean Danneman, resident and lifelong Delawarean stated she was the owner of 400

Ogletown Road which has been owned by the Danneman family for decades. She stated she was honored to be part of a project that will create a new gateway to the City of Newark. Once developed the property will provide a first class hotel and restaurant. She thanked the Board for their time and appreciated the Boards consideration.

Steven Kessler, Esquire, represented the applicant, Danneman Hospitality, LLC. He stated it was his opinion the applicant would experience an exceptional practical difficulty as they would not be able to pursue the project if the variance were denied. He said due to the location of the property, located between two main roads with railroad tracks on one side and due to its unique size and shape and other site limitations, the proposed project is 35 parking spaces short of the required number of spaces. Additionally, due to road work in recent years, the size of the site has decreased by approximately 8%. This land was taken by the state by DELDOT and would have created the additional required parking needed to satisfy Code without a variance.

To remain Code compliant and to create the required number of parking spaces, the applicant has gone to great lengths. He stated the applicant is spending an extra \$500,000 to raise the height of the proposed hotel structure in order to provide parking spaces underneath the structure. Without the parking variance the project would not be possible. He further stated by adding this feature, the applicant is able to ask for the minimum amount of relief to proceed with the project.

It was his opinion the variance would not have serious impact on neighboring properties or the neighboring vicinity and would not result in an undesirable change in the character of the neighborhood, a commercial district. He stated letters of support had been received from neighboring properties. The applicants believed the project was in the spirit of the zoning ordinance.

Mr. George Danneman, Esquire stated he was the owner/operator of the project. He stated after analysis they had entered the process with the hope to transform the intersection into the “gateway to the City” that Mr. Kessler had described. It was his opinion that a hotel and restaurant combination is the best use. In addition he stated the proposed project contributes to the growth of City by increased property taxes, construction, building permit fees and jobs, among other benefits.

Mr. Craig Johnson, North Star Construction Management, was sworn in. He stated in order due to parking restraints due the railroad tracks and the lot shape they believed the plan proposed is the most efficient layout. They were able to come up with 140 spaces, one more than previously stated on the original application. The 140 spaces consisted of surface parking around the buildings and 28 spaces located under the podium which is essentially surface parking on the building level above it. Mr. Johnson reiterated Mr. Kessler’s and Mr. Danneman’s comments that the DELDOT taking of 6,000 square feet of road frontage had greatly impacted the site. Mr. Hudson asked the applicant if they were compensated by DELDOT. Mr. Danneman stated they were compensated as there is with every DELDOT “taking.”

Mr. Moore asked the applicant if any consideration had been given to proposing a garage facility or a second story for parking. Mr. Danneman stated it would be financially infeasible to do anything additional. He stated the parking pedestal is an enormous expense.

Mr. Levandoski asked if the applicant had asked Aetna Fire Department to rent parking spaces. Mr. Danneman stated Aetna supports their project and they may at some point may find additional offsite parking for employees. He further stated on an average night the parking proposed is more than enough.

Mr. Kostas Kalogeropoulos, TKO Management, was sworn in. He briefly described his experience and the project. It was his opinion that 30-40% of guests will patronize restaurants that are close (i.e. the onsite restaurant). Hotel guests exclusively will use the onsite restaurant. The employees will encourage guests to patronize Main Street businesses. There will be an on-site shuttle available for guests to go to Main Street.

Mr. Moore asked the applicant what the next step in the process was. Mr. Danneman stated the next step would be Planning Commission followed by City Council. A Special Use permit is required for a hotel in this zoning district.

Mr. Levandoski asked if there were any hotels recently constructed that had similar issues with parking difficulties. Mr. Fortner stated he was not aware of any that needed parking variances from the City.

Mr. John Morgan, District 1, was sworn in. He stated he had concerns about the project with regard to parking. He suggested building the hotel higher, thereby reducing the footprint and allowing more parking. He also suggested putting the restaurant on top of the hotel. Additionally, Mr. Morgan inquired about working about an agreement with Aetna. He also had concerns hotel patrons may use the post office parking lot.

Ms. Jean White, Radcliffe Drive, was sworn in. She stated she was a supporter of the Danneman establishment. She stated she was opposed to granting the variance for the parking spaces that were being requested. It was her opinion that the total number of parking spaces should be available. She also stated it was her opinion that walking to Main Street would not be feasible as it was very dangerous. She stated it was her opinion was too dense and she would like to see it reduced.

Ms. Carol McKelvey, Winslow Road, was sworn in. She stated there was a property at 1 South Main Street. She believed it had come before the Board of Adjustment and had made a special arrangement with the UDEL to use one of their lots.

Mr. Levandoski reiterated about asking Aetna to rent parking spots. The applicant stated all avenues would be considered. Mr. Danneman stated Aetna currently leases to the neighbor on the

other side of the property. Aetna also needs all available parking when they have their social events.

Mr. Hudson asked if a floor was taken off the proposed plan, would it then meet the Code. Mr. Danneman stated it would not be financially feasible and creates an issue with the “brand”.

Mr. Levandoski asked if the restaurant could be located within the current footprint. Mr. Danneman stated this is a branding issue and the issue with a restaurant wanting a front entrance to increase use.

It was clarified that a parking garage (structure parking) would not be feasible due to the cost (\$3 million) and once the building goes above a certain number of stories, the “loads” in the ground become excessive.

The matter was returned to the Board.

Mr. Herron reiterated to the Board and to Mr. Moore the process that follows once the Board of Adjustment hears the case. He stated he understand the concerns from the public but he see advantages and benefits of the project. However, he is concerned with the parking matter.

Mr. Levandoski stated it was his opinion there was a lot of compelling information the 36 spaces that are being requested are not needed. He believed the shuttle will address any safety issues and discourage patrons from walking to Main Street. It was his opinion that there may already be issues with students parking in the post office lot or the shopping center and is for the post office to address. It was also his opinion that patrons would not be using the post office lot. He stated he would be in favor of the variance.

Mr. Hudson stated the Board could make the shuttle a condition of the variance. He was not certain if the shuttle would even matter and does not necessarily alleviate the parking problem. He had concerns with the flexibility of the “brand.” He viewed that as a self-impediment.

Mr. McKelvey stated he liked the design and thought it was beautiful and would be a nice gateway to Newark. However, the City is always addressing parking issues. He stated if Mr. Danneman were willing to find some offsite parking for his employees he believes the whole issue would be solved.

Mr. Bergstrom asked approximately how many hotel guests would be visiting the restaurant. Mr. Kalogeropoulos stated 30-35% will go to the restaurant.

Mr. Hudson reviewed the Kwik Checks.

- *The nature of the zone in which the property is located* – is a commercial district with a

large intersection.

- *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity – again is strictly a commercial/government use.*
- *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 applicant would alleviate any concern during peak times with the shuttle and offsite parking for employees. He was not convinced the DELDOT taking was a mitigating factor in the applicant's request since there was compensation.*
- *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 the property is located at a corner thus making parking somewhat difficult.*

Messrs. Moore, McKelvey and Levandoski concurred with Mr. Hudson.

After further consideration, the following motion was passed.

MOTION BY MR. HUDSON, SECONDED BY MR. BERGSTROM: TO GRANT THE VARIANCE WITH THE CONDITION THAT THE OWNER GUARANTEE OFFSITE PARKING SPACES FOR THE EMPLOYEES OF THE HOTEL AND THE RESTAURANT WITH PERIODIC ENFORCEMENT AND A SHUTTLE IS PROVIDED FOR PATRONS.

MOTION PASSED. VOTE: 5 to 0.

Aye: Bergstrom, Hudson, Levandoski, McKelvey, Moore

4. The meeting was adjourned at 8:15 p.m.

Tara Schiano
Secretary