

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
JANUARY 16, 2014**

**14-BA-1
Harold Prettyman
163 S. Main Street
(Chimney Ridge)**

**14-BA-2
Mr. & Mrs. Davis
114 Amherst Drive**

Those present at 7:00 p.m.:

Presiding: Kevin Hudson

Members Present: Curtis Bedford
David Levandoski

Absent: Jeffrey Bergstrom

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

1. APPROVAL OF MINUTES FROM MEETING HELD NOVEMBER 19, 2013

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

2. THE APPEAL OF HAROLD PRETTYMAN – 163 S. MAIN STREET FOR THE FOLLOWING VARIANCE:

- A) SEC. 32-12(C)(5)(C) – BUILDING SETBACK LINES – EXCEPT AS SPECIFIED IN ARTICLE XVI, SECTION 32-56.2(D)(1) AND (2), OF THIS CHAPTER, EACH STORY OR PART OF A BUILDING EXCLUSIVE OF CORNICES, BALCONIES, AND UNCOVERED STEPS AND UNCOVERED PORCHES, SHALL BE SET BACK AT LEAST 25 FEET FROM ALL EXTERIOR LOT LINES. THE PROPOSED PLAN AMENDMENT WOULD MOVE THE ROW OF APARTMENTS ON THE NORTH, NORTHWEST AND WEST SIDE OF THE PROPERTY FROM 25 FEET TO 20 FEET FROM THE PROPERTY LINE OF UNIVERSITY GARDEN APARTMENTS, REQUIRING A VARIANCE OF FIVE FEET.**

Ms. Schiano read the above appeal and stated it was advertised in the Newark Post. Direct notices were mailed. No letters in opposition were received.

Mr. Hal Prettyman, 163 S. Main Street, Suite A-11, Newark, DE, was sworn in. Mr. Prettyman stated he was the owner of the proposed project and was present to speak on behalf of such. Mr. Prettyman stated he was requesting a variance because it was his opinion the Code section (referred to above) posed an exceptional practical difficulty on Chimney Ridge's site plan (the name of the project).

Mr. Prettyman stated he was requesting variances on three lot lines (marked on the attached exhibit in file). The first lot line is marked on the drawing on the north side. Mr. Prettyman stated they are requesting to move a row of townhouse style apartments five feet towards the lot line. University Garden Apartments is the adjacent property owner. Mr. Prettyman stated he was requesting this change for safety reasons. The current design would require the resident of the end unit to essentially back out into a line of traffic. If the line of townhouses is shifted down five feet, it will alleviate this issue. With the proposed change, a 20 foot setback will still remain rather than 25 feet.

Mr. Prettyman stated the other two proposed lot line changes are necessary in his opinion to maintain uniformity. The adjoining property is zoned BB with an 8 foot setback. The other setback being requested is between his property and another adjoining property zoned BB as well. With the proposed change, a 20 foot setback will remain as well rather than 25 feet. Mr. Prettyman further stated it was his opinion these minor changes will allow him to continue with the preferred design that has garnered community support.

Mr. Prettyman addressed the Kwik Check factors:

- The nature of the zone where the property was located had several different zones. Mr. Prettyman stated the requested setbacks for this proposed project are either equal to or greater than the setbacks that are adjacent to his property. That being said, it was his opinion the nature of the zone would not change.
- The character and use of the immediate vicinity of the subject property and uses of the property within that immediate vicinity. It was Mr. Prettyman's opinion that since there had not been a request for additional density or building height and because the permitted use is allowable, he believed the character of the property will not change.
- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. It was Mr. Prettyman's opinion there would not be a detriment to the neighbors.
- If not removed, the restriction would create unnecessary hardship or exceptional practical difficulty to the owner in relation to make normal improvements in the character and the permitted use of the property. It was Mr. Prettyman's opinion if the residents of the proposed project were to have an auto accident it would be a detriment.

It was Mr. Prettyman's opinion it was a win-win situation for everyone involved. The proposed project will be a safer design and more effective site plan.

Mr. Hudson asked Mr. Prettyman if the setback was not granted for the parking matter, would the applicant be able to build it the way he was proposing. Mr. Prettyman stated it could be built the way he originally intended, however if the change in setback

were granted it would enable the building to be shifted away from the roadway, it would make it safer for the end resident to back up from their parking spot. Mr. Prettyman stated these additional issues were noticed as the building process progressed.

Mr. Prettyman referred back to correspondence issued by a past city solicitor in which it was the solicitor's opinion the state law sets forth the areas in which the Board may rule. One of those areas is to authorize the variance from the Zoning Ordinance Codes and Regulations which are not contrary to public interest. It was Mr. Prettyman's opinion this variance request was not contrary to the public interest. The correspondence from the City Solicitor also stated such variances are permitted when because of special conditions (which the applicant believed there were) or exceptional situations a literal application of the Zoning Ordinance or Code would result in an unnecessary hardship or an exceptional practical difficulty for the owner. Variances are granted in such instances so the spirit of the Code is observed and substantial justice is done. The applicant was making his request based on this assertion.

Mr. Levandoski confirmed the applicant had been previously approved for the construction of the project and that Mr. Prettyman was requesting the variances for a safety aspect. Mr. Prettyman replied that is one reason. The other reason was resident input. Mr. Prettyman stated there was issue with cornices and overhangs, which resulted in the northern variance request. It was not a footprint issue but the building has a slight overhang in the rear of the building. It can be corrected by moving the entire row closer to the neighboring residents. However, when consulting with the residents, they would not prefer that. Mr. Prettyman further stated according to the City Solicitor's opinion, it is permissible to come before the Board and ask for a variance and it is within the Board's scope to grant a variance under those circumstances. Mr. Prettyman states it was his opinion it was a legitimate reason. Mr. Prettyman stated the project was Code and had been approved by the Planning Commission and City Council.

Mr. Hudson asked if there was anyone from the public that wished to speak.

Ms. Catherine Robbins, 216 Beverly Road, Newark, DE, was sworn in. Ms. Robbins stated her house was very near to the proposed project. Ms. Robbins stated she was the person that spearheaded the community interaction with the Prettyman family regarding this project. She had gone door to door to get community support and encouraged "66" people to attend the meetings during the initial approval stages. She further reported she was initially concerned to hear the project would be built in an existing open field. Ms. Robbins stated the interaction with the Prettyman's had been very positive. She further stated the applicant had made huge changes to the original "by right" plan to make it better for the neighboring residents. Ms. Robbins stated her main concern was her home could be located behind the "long section of buildings." It was her opinion that if the Board does not approve the requested variance the buildings would shift closer to her house and the other single family homes on Beverly Road. Ms.

Robbins said she was aware her neighbors agree. She stated to the Board, "if you can approve it, we would be very grateful."

Mr. Jim McKelvey, 48 Winslow Road, Newark, DE, was sworn in. Mr. McKelvey stated he was also appreciative of the interaction between the owner and City staff to ensure the project was satisfactory to all involved. Mr. McKelvey stated the applicant had the right to build the original plan approved by the City and initially the residents opposed the plan. The plan was re-worked several times until it was met with approval by the surrounding community.

Mr. Jim Dunson, 202 Winslow Road, Newark, DE, was sworn in. Mr. Dunson wanted to concur with Ms. Robbins' and Mr. McKelvey's comments. He wanted to say he appreciated the applicant's willingness to be collaborative with the community. He was in support of the variance.

Mr. Levandoski addressed the Kwik Check factors:

- The nature of the zone where the property was located; the zoning district is RM, therefore the apartments are permitted in this zoning and are applicable.
- The character and use of the immediate vicinity of the subject property and uses of the property within that immediate vicinity. The proposed project has apartment complexes in the vicinity; however the zoning is mixed use.
- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. Mr. Levandoski reaffirmed the neighbors were in support of the project.
- If not removed, the restriction would create an unnecessary hardship or exceptional practical difficulty to the owner in relation to make normal improvements in the character and the permitted use of the property. It was Mr. Levandoski's opinion the owner has gone to great lengths to garner community support and accommodate them. He also stated the applicant is improving the safety of the parking and the safe flow of traffic through the main thoroughfare.

Mr. Levandoski stated he would vote in favor of the variance based on the Kwik Check factors.

Mr. Bedford stated he agreed with Mr. Levandoski's assessment and due to the added support of the neighbors he would vote in favor of the variance.

Mr. Hudson concurred with the above statements and wished to add the property was irregularly shaped and the westerly point that needs a variance is at an irregular angle as well. With that in mind, it increases the unnecessary hardship factor. He would vote in favor of the variance.

MOTION BY MR. LEVANDOSKI SECONDED BY MR. BEDFORD: THE MOTION BE APPROVED AS PRESENTED.

MOTION PASSED: VOTE: 3-0

Aye: Bedford, Hudson, Levandoski

Absent: Bergstrom

3. THE APPEAL OF MR. & MRS. EDWARD DAVIS, 114 AMHERST DRIVE, FOR THE FOLLOWING VARIANCE:

- A) SEC. 32-9(C)(6) – THE MINIMUM REAR YARD FOR ANY BUILDING, EXCLUSIVE OF ACCESSORY BUILDINGS, SHALL BE 30 FEET. SINCE THE LOT IS A CORNER LOT, THE REAR YARD MAY BE REDUCED 20% IN DEPTH TO ALLOW FOR THE “SKEWING” OF A RESIDENTIAL DWELLING ON THE LOT. THEREFORE, THE MINIMUM SIDE YARD FOR A CORNER LOT IS 24 FEET. PLAN SHOWS THE REAR SIDE YARD TO BE 22 FEET. A TWO FOOT VARIANCE IS REQUIRED.**
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Ms. Schiano read the above appeal and stated it was advertised in the Newark Post. Direct notices were mailed. No letters in opposition were received.

Mr. Edward Davis, 114 Amherst Drive, Newark, DE, was sworn in. Mr. Davis stated he and his wife would like to install a deck with a screened porch on the rear of the home. When they consulted with a contractor, they found the back yard was not large enough.

Mr. Levandoski asked Mr. Davis if he had a rear yard neighbor. Mr. Davis described the back yard of the property stating the lot was irregular and sloped downward and with the angle it gets smaller. The property is located on a hill. That portion of the yard has ivy. There is a good portion of the rear yard that is not unusable. He further stated there is a concrete slab present where the proposed screened deck will be.

Mr. Hudson asked the current condition of the patio. Mr. Davis stated there are cracks present and some settling. In addition, Mr. Davis stated, the steps are skewed due to slight sinking of the yard, due to the burial 40+ years ago of scrap metal during the building of the home.

Mr. Bedford inquired if there was a rear neighborhood. Mr. Davis stated the home faced Amherst. The rear neighbor faces Fiske so the house is sideways to their property. Mr. Davis further stated there are trees that allow privacy in the summertime.

There being no further public comment, Mr. Levandoski addressed the Kwik Check factors:

- The nature of the zone where the property was located is residential and will remain so.
- The character and use of the immediate vicinity of the subject property and uses of the property within that immediate vicinity. The character and the use will remain the same.
- Whether the relevant restriction on the property was removed, such removal would seriously affect neighboring properties and uses. Mr. Levandoski stated it would have an impact because the applicant would not be permitted to build the deck and screened porch, thus removing the hazard of the concrete deck. It was Mr. Levandoski's opinion the improvements will be safer and the applicant will be able to remedy an existing problem.
- If not removed, the restriction would create unnecessary hardship or exceptional practical difficulty to the owner in relation to make normal improvements in the character and the permitted use of the property. It was Mr. Levandoski's opinion if the restriction were not removed, the applicant will not be able to construct the deck and screened porch. The applicant would not be able to enjoy the backyard as he would like to see fit due to the current condition of the patio.

Mr. Levandoski stated he would vote in favor of the variance based on the Kwik Check factors.

Mr. Bedford stated he was in agreement with Mr. Levandoski's assessment and would approve the variance.

Mr. Hudson stated he concurred and wished to note the property was a corner lot of irregular shape. In addition, the house is also skewed on the lot as well. He would vote in favor of the variance.

MOTION BY MR. LEVANDOSKI SECONDED BY MR. BEDFORD: THE MOTION BE APPROVED AS PRESENTED.

MOTION PASSED: VOTE: 3-0

Aye: Bedford, Hudson, Levandoski

Absent: Bergstrom

4. The meeting was adjourned at 8:28 p.m.

Tara A. Schiano
Secretary

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