

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
JANUARY 19, 2017**

Those present at 7:01 p.m.:

Members:	Acting Chair, Kevin Hudson Dave Levandoski Bill Moore
Absent:	Jeff Bergstrom Jim McKelvey
Staff:	Michael Fortner, Planner, Planning & Development Department Paul Bilodeau, Deputy City Solicitor Tara Schiano, Deputy City Secretary Sarah Campanelli, Secretary

The acting chair called the meeting to order at 7:01 p.m.

1. APPROVAL OF MINUTES FROM MEETING HELD OCTOBER 20, 2016:

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

2. Francis Fierro addressed the Board in reference to the appeal of Timothy Chopko, 250 Dallam Road. Mr. Fierro advised that he and his wife will be appealing the Board's decision to grant the variance at 250 Dallam Road to the Delaware Superior Court. This variance was granted at the meeting on October 20, 2016.

3. The appeal of Charles B. Perkins, 205 Bent Lane for the following variances:

- **Sec. 32.9(c)(5) – Building setback lines** – Each story or part of 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 25 feet in RS district. The current plan shows a setback of 18 feet, 7 inches, requiring a variance of 6 feet, 5 inches.

ZONING CLASSIFICATION: RS

Willard F. Hurd, 115 Lovett Avenue, the architect for the Perkins family was sworn in. He referred the Board to the provided drawing of the property. He advised that the unique position of the property at the corner of Bent and Briar Lanes causes the home to have two front yards. This shortens the amount of space available to extend the house and add a new garage. He advised that his client wants the added room to store and work on cars.

Mr. Levandoski asked for confirmation that the front of the house is not going to extend any further than the existing front. Mr. Hurd affirmed and advised that he will mimic the existing gables of the house. Mr. Moore inquired as to whether any neighbors had any comments about the situation. Mr. Hurd advised that his client has two signatures of support from Curtis B. and Lisa King and from Thomas and Patricia Brill. Mr. Hurd

specified that the only setback line being crossed was at the corner of the lot.

Mr. Hudson asked if there were any other persons who wished to speak to the matter. Charles B. Perkins, 3 Saint Regis Drive, was sworn in. He stated this home was his father's and he is trying to fix up the house and make it look nicer. He wants to add the new garage because he is currently paying for his cars to be stored at a storage facility. He also wants the house to look more like a traditional ranch. Mr. Perkins advised that he has already spoken to contractors who have no issues with the project.

Mr. Moore advised that he has driven by the house, as well as looked over the proposed project and thinks that the project certainly has appeal.

Mr. Moore reviewed the Kwik Checks.

1. *The nature of the zone in which the property is located-* is residential RS.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – very nice residential area, single family homes.
3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – Mr. Moore does not believe it would. Mr. Moore believes it would not adversely affect the character of the surrounding neighborhood and could actually add to the value.
4. *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. Moore believes that the variance is rather small in nature. If not allowed, Mr. Moore believes it would create an exceptional practical difficulty.

Mr. Moore voted to approve the variance request.

Mr. Levandoski agreed with Mr. Moore's statements and believes that the lot is an odd shape. Mr. Levandoski also believes that the variance being requested is small and would not have an adverse effect on neighboring properties. Mr. Levandoski moves to grant the variance.

Mr. Hudson concurred with Messrs. Moore and Levandoski. Mr. Hudson also emphasized that being a corner lot and having an odd shape, the lot would be a classic example of needing a variance.

MOTION BY MR. MOORE, SECONDED BY MR. LEVANDOSKI: TO GRANT THE VARIANCES AS PRESENTED.

MOTION PASSED. VOTE: 3 to 0.

Aye: Hudson, Moore, Levandoski

Absent: Bergstrom, McKelvey

4. **The appeal of David Dalby on behalf of Dunkin Donuts, 1002 S. College Avenue for the following variances:**
 - **Sec. 32-19(b)(6)a – Minimum lot size** – Minimum lot size shall be one acre. Plan shows 0.57 acres, requiring a variance of 0.43 acres.
 - **Sec. 32-19(b)(6)b – Minimum lot width** – Minimum lot width shall be 200 feet. Plan shows 187.9 feet, requiring a variance of 12.1 feet.

- **Sec. 32-19(b)(6)c – Minimum lot depth** – Minimum lot depth on one side shall be 218 feet. Plan shows a depth of 157.9 feet, requiring a variance of 60.1 feet.
- **Sec. 32-19(b)(6)d – Minimum setback from all street lines** – Minimum setback from all street lines shall be 75 feet. Plan shows setbacks of 63 feet, requiring a variance of 12 feet.
- **Sec. 32-19(b)(6)e – Minimum distance from all property lines** – Minimum distance from all property lines other than street lines shall be 50 feet. Plan shows proposed setback from the rear lot line being 13 feet, requiring a variance of 27 feet. Existing setback from the south side lot line is 30 feet, requiring a 20 foot variance.
- **Sec. 32-19(b)(6)e – Minimum distance from all property lines** – Minimum distance from all property lines other than street lines shall be 50 feet. Plan shows setbacks of 33 feet, requiring a variance of 17 feet; and 10.6 feet, requiring a variance of 39.4 feet.
- **Sec. 32-60(a)(2) – Ground signs in Business District** – One (1) ground sign per parcel is permitted. Maximum sq. ft. is 60 ft. Maximum height is 18 ft. Minimum distance to a residential zoning district is 100 ft. Plan shows a proposed ground sign. There is a pre-existing ground sign. A variance is required for the drive-thru sign.

ZONING CLASSIFICATION: BC

Stephen Kessler, attorney with Danneman Firm, introduced himself and advised that he was there on behalf of Tasnim Inc. located at 1002 S. College Avenue.

Ms. Schiano stated there were two letters received in support that were entered into the record. All board members received the letters of support prior to the hearing.

Mr. Kessler introduced the development team for the Dunkin Donuts remodel project; Mr. David Dalby, architect, Mr. Mike Paraskewich, engineer, and Mr. Mimi Farag, owner. Mr. Kessler stated that Mr. Farag has operated this location for more than 20 years. Mr. Kessler explained that this business is not owned by Dunkin Donuts Corporate and is a family-run business. Mr. Kessler showed maps of the current building, as well as the proposed drive-thru. Mr. Kessler pointed out that the houses behind the Dunkin Donuts are actually some distance away. Mr. Kessler advised that this renovation is necessary to keep Mr. Farag's business competitive and relevant in comparison to similarly situated Dunkin Donuts locations. The full presentation was entered into the record and can be referred to.

Mr. Mike Paraskewich was sworn in. Mr. Paraskewich pointed out the non-conformities that already exist on the property. He pointed out the FEMA flood plain line on the map, which was delineated improperly. He advised that the entire site has been removed from federal flood plain mapping. Mr. Paraskewich also noted that the shed marked on the site map has been removed. Mr. Paraskewich pointed out that this building has been used as a Dunkin Donuts for 20 years, as well as being used as an auto part store prior to that, and for all that time has existed with these non-conformities. He advised that many of the variances being asked for are part of the sites current condition. Mr. Paraskewich advised that a small part of the back of the building is being clipped off to make room for a 12-foot aisle for vehicles and a guard rail. Mr. Paraskewich explained the small display sign, which serves as an ordering menu. He stated that this will not be a nuisance. Mr. Paraskewich advised that the distance between the ordering menu and pick-up window allows plenty of room for stacking vehicles and keeping traffic moving. Mr. Paraskewich pointed out that most customers would want to use to the drive-thru, which would avoid the potential for existing traffic issues. He advised that one existing parking space may be taken away in the proposed plan. He believes that the drive-thru will be a more organized way to get cars out of traffic and around the building.

Mr. Moore asked Mr. Paraskewich whether, as the line forms, the incoming vehicles will stack in front of the parked cars. Mr. Paraskewich advised that they will, but that there will be sufficient room for stacking. Mr. Moore inquired as to which of the variances are part of the existing non-conformities. Mr. Fortner advised that all the variances with the exception of the added sign are existing non-conformities. Mr. Levandoski asked Mr. Fortner for clarification as to whether a variance of 37 or 27 feet was needed in reference to Sec. 32.19(b)(6)e, minimum setback from the south side of the property line. Mr. Paraskewich advised that part of the building is to be clipped off per the proposed plans.

Mr. Fortner advised that this is a change of use for a drive-thru restaurant. Mr. Levandoski asked if Mr. Paraskewich thought that the proposed drive-thru would back up traffic onto Route 896. Mr. Paraskewich answered that he thought it would not. Mr. Paraskewich thinks that the drive-thru is a more beneficial path that would actually improve traffic flow. He also pointed out that Dunkin Donuts operates with enough speed that the drive-thru should not back up. Mr. Levandoski asked for confirmation that the drive-thru would operate with an order screen as well as pick up window. Mr. Paraskewich affirmed.

Mr. Dave Dalby, 170 E. Main Street, was sworn in. Mr. Dalby commented that the architects are not proposing any enlargement of the building, in fact, the building will have a corner clipped off, making it smaller. Mr. Dalby also pointed out that the ordering sign is simply an ordering device designed by Dunkin Donuts, not a custom made advertising sign.

Mrs. Jocelyn Wardrup, 1 Plymouth Drive, was sworn in. Mrs. Wardrup advised that her family has lived in this area for quite a while and realizes that the land use has changed. She advised that she enjoys the ease of walking to Dunkin Donuts. Mrs. Wardrup requested that a fence be added along the north property line to prevent the homes on the other side from feeling too exposed. Mrs. Wardrup also requested that the architects pay attention to the fact that cars should not be able to see into homes. She stated that she would like vegetation planted on either side to reduce noise and emissions pollution from the vehicles in the drive-thru. Mrs. Wardrup suggested quiet hours because of the amplification system's location only about 150 feet away from her home. She suggested quiet hours of 7 p.m. to 7 a.m. Mrs. Wardrup requested the addition of a do not enter sign on the side of the site, near parking lot 3.

Mr. Moore asked for a clarification as to where Mrs. Wardrup's house is located. Mrs. Wardrup advised that she lives in the two-story house next to Dunkin Donuts on Plymouth Drive. She advised that she can sometimes see headlights shine into her yard from the Dunkin Donuts. Mrs. Wardrup stated that she likes Dunkin Donuts but would like to make provisions for the neighbors' privacy and maintain a respectful relationship with the business.

Mr. Jason Wardrup, 1 Plymouth Drive, was sworn in. Mr. Wardrup advised he has the same concerns as his wife, Jocelyn Wardrup. He advised that there is a small vegetative buffer already that causes issues with sound pollution. He is concerned about the volume of the drive-thru window, as well as the light pollution from headlights. Mr. Wardrup also pointed out possible issues with storm water runoff that comes with the drive-thru. He advised that the outfall for the site is a catch basin on the north side by Route 896. Mr. Wardrup reiterated that a buffer would solve most of the neighbors' concerns. Mr. Wardrup believes Dunkin Donuts is a good member of the community and advised that he is a frequent customer. He stated that, with some common sense measures, he does not oppose the business trying to do more service for its customers. Mrs. Jean White, 13 Radcliffe Drive, was sworn in. Mrs. White advised that she does not live near this site,

however, she has frequented this Dunkin Donuts. Mrs. White asked for clarification as to whether Dunkin Donuts corporate is requiring Mr. Farag to build the drive-thru. Mrs. White advised that there are some towns that do not allow drive-thrus due to the issue of idling vehicles. She is aware that Newark has no regulations prohibiting drive-thrus, but advised that other citizens have suggested this provision in other meetings. Mrs. White advised that this proposed project does not affect her directly, but she would be concerned if she did live in that area. Mrs. White believes that if the drive-thru is not required by Dunkin Donuts corporate, the variances should be denied due to how small the lot is. Mrs. White also believes that the Dunkin Donuts gets a lot of business as it currently is.

Mr. Mimi Farag, 407 Cypress Way, Bear, was sworn in. Mr. Farag stated that this is a requirement from Dunkin Donuts and that the corporation has been asking him to put in a drive-thru for a long time. Mr. Farag advised that he wanted to wait to get the drive-thru until he could remodel the entire store. He also clarified that the orders are more limited at the drive-thru and that customers cannot make large orders there. Mr. Farag advised that the rush hour for his store is in the morning and that in the evening time it will be much slower. He advised that the drive-thru will be very quiet during the slow hours. Mr. Farag stated that he has owned this store since 1997 and has never had any issue with the neighbors. He also stated that he has always had a good relationship with the city of Newark.

Mr. Fortner advised that the next stage after getting the variances would be to apply for a special use permit. Mr. Fortner suggested that at this point, it would be easier to set conditions and restrictions. Mr. Fortner explained why a special use permit is necessary per city code. Mr. Bilodeau inquired as to how the lot would be able to accommodate the buffers and landscaping. Mr. Kessler conferred with Mr. Farag. Upon their return, Mr. Kessler advised that Mr. Farag agreed to the installment of an opaque fence along the back border of the property. Mr. Kessler advised that any fence would have to be incorporated into the guard rail, which is possible. Mr. Kessler also advised that the property backing up to the site is parkland and as such is fully vegetated. Mr. Kessler believes that even if they had room to plant, it probably would not survive. Mr. Kessler advised that they would conform to any planting necessary, but he is not sure if it is functionally possible. Mr. Kessler advised that Mr. Farag would be willing to shut down the illuminated ordering menu during the hours of 7 p.m. to 5 a.m. During this time, customers would pull up to the window.

Mr. Moore stated that the neighbors wanted a large privacy fence and asked for clarification as to where the fence would be located. Mr. Paraskewich advised that the fence would go as far as possible on the west side without getting too close to the roadway. Mr. Moore asked whether the drive-thru is a Dunkin Donuts requirement. Mr. Kessler affirmed. Mr. Paraskewich stated that he is personally working on other locations that are moving because of the lack of a drive-thru on the property. Mr. Levandoski asked for clarification as to whether, if Mr. Farag is unable to construct the drive-thru, he would have to close his store. Mr. Kessler advised that Mr. Farag is an independent entrepreneur. Mr. Kessler noted that Mr. Farag's ability to get things from the organization relies on his resources. Mr. Kessler advised that Mr. Farag would not have to shut down his store if he does not construct the drive-thru, but it would reduce his ability to compete with other businesses and function with the franchise.

Mr. Kessler reviewed the Kwik Check elements. Mr. Kessler believes that the nature of the area around the site is consistent with the proposed uses of the project. Mr. Kessler submitted that the project would not adversely affect surrounding properties. Mr. Kessler submitted that if not granted, Mr. Farag would experience an exceptional practical difficulty in an effort to make improvements to his property. Mr. Kessler also advised that the sign is not going to be a distracting advertising sign, but simply an ordering device. Mr.

Kessler referred to the diagram of the dimensions of the sign.

Mr. Levandoski reviewed the Kwik Checks.

1. *The nature of the zone in which the property is located-* is a business zone along South College Avenue with businesses on all sides, with some residences to the north of the property.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – business use.
3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – Mr. Levandoski does not believe it would negatively affect neighboring properties.
4. *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. Levandoski believes that Mr. Farag is trying to comply with requests of the parent company and would be at a disadvantage if he is not able to install the drive-thru.

Mr. Levandoski believes they should grant the variances, with the conditions that an opaque fence be installed on the north and west borders and the installment of quiet hours from 7 p.m. to 5 a.m.

Mr. Kessler clarified that the amplification system on the speaker would not operate during these hours, however, customers can still come through the drive-thru and order face-to-face at the window.

Mr. Moore brought up the issue of the vegetation installation. Mr. Moore clarified that most of the variances brought before the board were pre-existing, and that the only new variance to be granted is the additional sign. Mr. Moore agrees to approve the variances with the conditions laid out by Mr. Levandoski.

Mr. Hudson agrees with Messrs. Moore and Levandoski, with the exception that he believes it does adversely affect the neighboring properties. However, Mr. Hudson believes that the neighbors have successfully suggested ways to mitigate that adverse effect. Mr. Hudson added that the required opaque fence should be a minimum of 8 feet high. After some discussion, Mr. Fortner advised that an 8-foot fence is permissible on the north and west sides of the property per city code.

MOTION BY MR. HUDSON, SECONDED BY MR. MOORE: TO GRANT THE VARIANCES PURSUANT TO THE FOLLOWING CONDITIONS: THE EXTERNAL AMPLIFICATION SYSTEM BE SHUT DOWN FROM THE HOURS OF 7 P.M. TO 5 A.M. FOR QUIET HOURS, AND AN OPAQUE PRIVACY FENCE WITH A MINIMUM OF 8 FEET BE INSTALLED TO EXTEND THE LENGTH OF THE NORTH AND WEST PROPERTY LINES.

MOTION PASSED. VOTE: 3 to 0.

**Aye: Hudson, Moore, Levandoski
Absent: Bergstrom, McKelvey**

The meeting was adjourned at 8:14 p.m.

Sarah Campanelli
Secretary