

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES**

April 17, 2008

**08-BA-2
Caffé Gelato
90 E. Main Street**

**08-BA-3
Mark Sisk, agent for Al Schweizer,
Sal Sedita, et.al
420 S. College Avenue**

Those present at 7:30 p.m.:

Presiding: Clayton Foster

Members Present: Jeffrey Bergstrom
Cathy Johnston
Michael Harmer

Members Absent: Linda Shopland

Staff Members: Tom Sciulli, Building Director

1. APPROVAL OF MINUTES FROM MEETING HELD FEBRUARY 21, 2008

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

2. THE APPEAL OF RYAN GERMAN, CAFFÉ GELATO, FOR THE PROPERTY AT 90 EAST MAIN STREET FOR THE FOLLOWING VARIANCE TO PROVIDE TEN SEATS AT THE SERVICE BAR:

A) CH. 32, SEC. 32-56.4(a)(3) PROHIBITS BAR FACILITIES WITHIN 300' FROM THE PROPERTY LINE OF A CHURCH OR A LOT ZONED RESIDENTIAL. SITE PLAN SHOWS THIS FACILITY IS LOCATED 103.5' FROM THE NEWARK UNITED METHODIST CHURCH AND 280' FROM MULTIPLE RESIDENCES ON CENTER STREET. A VARIANCE OF 196.5' AND 20' IS NEEDED.

Ms. Van Veen read the above appeal and stated that it was advertised in the *Newark Post*, and direct notices were mailed. One letter was received objecting to the variance from property owner Niles Norton, 27 Center Street.

Ryan German, 101 Tyre Avenue, was sworn in.

Mr. German stated his hardship was in the way the Code was written restricting bar facilities in order to protect the integrity and improve the downtown Newark area. Mr. German considered Caffé Gelato an asset to the City during its eight years in operation, but the restaurant was being handicapped by the bar restriction. Several years ago the restaurant was reviewed by AAA who advised Mr. German that the restaurant could be improved by adding a host stand and a waiting area for patrons. During Caffé Gelato's recent renovation, more table space, a waiting area and a host stand were added. Mr. German felt the ten seats at the bar were important to better serve the customers and, in particular, business guests who often like to eat by themselves at a bar. Caffé Gelato patrons expected a full service restaurant as well as the opportunity to sit and have a drink while waiting for their table.

The Chair opened the discussion to the public.

Patrick Hart, 257 West Main Street, was sworn in. He attended the Board of Adjustment meeting when a similar appeal was considered for Doc Magrogans Oyster House. While Dr. Hart had objections to the Doc Magrogans appeal, he supported the appeal of Caffé Gelato. His support was based on Mr. German's strong ties to the Newark community, and the quality and reputation of the restaurant. Dr. Hart felt the best restaurants were those that were owner/managed (such as Home Grown), and he supported the variance.

Mrs. Jean White, 103 Radcliffe Drive, was sworn in. Mrs. White asked how many seats the restaurant had and where the ten seat bar would be located. Mr. German replied the occupancy of the restaurant was 85 with 10 additional seats requested at the service bar. The bar was located in the old Bert's Music Store toward the front and was adjacent to the new wine cellar.

Mrs. White discussed alcohol problems in college towns in relation to the density of area bars and noted the passage of the ordinance in 2002 curtailing bars within 300' of certain protected uses including churches and residential properties. She felt the excessive use of alcohol and the resultant negative consequences could best be mitigated by a many-pronged approach. Mrs. White was disappointed in the December 19, 2007 BOA meeting where the Board approved a variance for a bar at 102 E. Main Street for Doc Magrogans (a restaurant not yet established in Newark with no proven track record). She failed to see their hardship and argued if they were granted a variance, it would be difficult to deny one to other restaurants with alcohol licenses that wanted bars. Mrs. White named six establishments that would be affected by the Board's decision in December. She did not want Caffé Gelato to be denied a bar. The restaurant had no problems with alcohol but her focus was what might happen after the variance was granted (which ran with the land). She asked Mr. German if he would be willing to have the City impose a special use permit meaning there would be a certain amount of control over alcohol-related problems. Mrs. White explained Caffé Gelato was grandfathered and thus did not come under the requirement for a special use permit. Mrs. White asked the Board to think of a

meaningful condition to put on their approval in the event the restaurant was sold or request Mr. German to come under a special use permit if the restaurant changed ownership.

There being no further comments forthcoming, the discussion was returned to the table.

Mr. Bergstrom noted Caffé Gelato needed only a simple area variance based on the proximity to the Newark United Methodist Church and multiple residences on Center Street.

Mr. Bergstrom reviewed the Kwik Checks. The nature of the zone in which the property was located was Main Street with an existing business that fit in with surrounding businesses. The character of the immediate vicinity of the subject property and the uses of the property within the immediate vicinity included a number of eating and drinking establishments as well as a variety of retail businesses and commercial space. If the relevant restrictions on the property were removed, such removal would not seriously affect the neighboring properties – there was no testimony suggesting any concerns from adjacent property owners. If the variance request was not approved, it could continue an unnecessary hardship on the owner in relation to normal improvements to the character of the permitted use of the property – there was adequate testimony at the meeting supporting that fact. In Mr. Bergstrom's opinion, the Kwik Checks requirements for the variance were easily satisfied.

Mr. Harmer supported the variance. He was a lifetime member of Newark United Methodist Church and did not see the addition of a bar as a detriment to the church. Mr. German kept tight control of his establishment which was a boutique specialty restaurant, and Mr. Harmer fully agreed with the hardships and the Kwik Checks.

Mr. Foster concurred with the analysis of the Kwik Checks. He was impressed with Mrs. White's point that Caffé Gelato had a positive track record, and he planned to vote for the variance. Mr. Foster thought the Board should consider including the same stipulation regarding noise violations that was done for Doc Magrogans.

Mr. Bergstrom said the only stipulation for Doc Magrogans regarded the variance for the amplified music, and after considerable discussion, the Board did not make any stipulation for the simple area variance.

Mr. German said whether the Board added a stipulation or required a special use permit, he would be in favor of that 100% only if the same restrictions were applied throughout Main Street. However, the burden should not be placed on his establishment alone.

Mr. Foster thought the Board should still consider putting a restriction on the variance stating if more than two violations of the City's noise ordinance would occur in any individual calendar year, it would result in termination of the variance.

Mr. Bergstrom thought the Board should not put any restrictions on for exterior noise

violations as they were tough to call and would place an undue burden on the applicant, on the City's Code Enforcement Department, and on the Police Department.

Mr. Foster was convinced by Mr. Bergstrom's comments and agreed there should be no restrictions.

Ms. Johnston appreciated Dr. Hart's comments. She agreed Mr. German was a good, active citizen with a positive track record, and his restaurant was an asset to the community. She understood Mrs. White's concerns but did not think the Board could address those issues at this meeting. Ms. Johnston agreed with Mr. Bergstrom's evaluation of the Kwik Checks and would vote in favor of the appeal.

MOTION BY MR. BERGSTROM, SECONDED BY MS. JOHNSTON: TO ALLOW A BAR FACILITY WITH TEN SEATS AT CAFFÉ GELATO, 90 EAST MAIN STREET.

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Foster, Harmer, Johnston

Nay: 0.

Absent: Shopland

3. THE APPEAL OF MARK SISK, AGENT FOR AL SCHWEIZER, SAL SEDITA, ET. AL FOR THE PROPERTY AT 420 SOUTH COLLEGE AVENUE FOR THE FOLLOWING VARIANCE TO ALLOW ONE ADDITIONAL BOARDER:

A) CH. 32, SEC. 32-10(a)(6.1) THE TAKING OF NON-TRANSIENT BOARDERS OR ROOMERS IN A ONE-FAMILY DWELLING BY A NON-OWNER/OCCUPANT FAMILY RESIDENT ON THE PREMISES IS A CONDITIONAL USE...PROVIDED THERE ARE NOT MORE THAN TWO BOARDERS OR ROOMERS IN ANY ONE-FAMILY DWELLING. A VARIANCE OF ONE ADDITIONAL BOARDER IS REQUESTED.

Ms. Van Veen read the above appeal and stated that it was advertised in the *Newark Post*, and direct notices were mailed.

Mark Sisk, Esquire, represented the property owners, Messrs. Schweizer and Sedita. The house at 420 S. College burned twice in its history, and the owners appeared before the Board in June, 2007, (appeal 07-BA-04) to request several area variances. In that case, the owners (who represented themselves) did not address the subject of occupancy. Mr. Sisk regarded the occupancy of one additional tenant as an issue that should have been requested in the previous application. According to Mr. Sisk, there were numerous properties in the area approved for four boarders, and the square footage of the house was more than adequate for this number of people. Mr. Sisk noted the new home was an attractive-looking building, and the owners worked to preserve as much green space as possible. He felt the house was a positive improvement to

the area which was in close proximity to the Amtrak railroad tracks and the City yard.

In reviewing the minutes of the June, 2007 meeting, Mr. Foster noticed the one year deadline to be covered by the grandfathering was missed by only a matter of days. Mr. Foster asked how many bedrooms were in the house.

Mr. Alan Schweizer, 28 White Oak Road, Landenberg, PA was sworn in. Mr. Schweizer replied the property was built with four bedrooms, two on the first floor and two on the second and confirmed the property was now fully sprinklered.

Mr. Bergstrom reviewed the minutes from the previous appeal and said it was unfortunate the applicant was not represented by counsel because he believed the occupancy variance should have been requested at that time as there were valid reasons to grant it then. At the 2007 appeal, Mr. Bergstrom thought the active arson investigation should have stopped the clock for the one year appeal deadline since the petitioners had no right to do anything with the property during the investigation.

Mr. Foster opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table.

Mr. Harmer reviewed the Kwik Checks. The nature of the zone in which the property was located - there were no detrimental effects based on this request and the location of the property. The character in the immediate vicinity of the property and the uses of the property within the immediate vicinity - there were other rentals in the area and that was the basic character of the area. The affect of the variance on other properties – again, there was no detrimental impact.

The affect on the applicant if the variance was not granted was that it would be a financial hardship with a four bedroom property not to have those rooms occupied.

Mr. Foster favored granting the variance request and added it was a real hardship because of the loss of the grandfathering which he previously discussed. During the June, 2007 appeal, the Board felt there were mitigating circumstances on the grandfathering issue due to the suspicion of arson.

Mr. Bergstrom agreed with the Kwik Checks that this was a perfect zone for the rental and was an appropriate use of the property. Also, the dwelling was greatly improved from the previous property, so he felt this was a plus for the residents and for the property owners and would vote to grant the variance.

Ms. Johnston was in favor of granting the variance.

MOTION BY MR. HARMER, SECONDED BY MR. BERGSTROM: TO ALLOW ONE

ADDITIONAL BOARDER ON THE PREMISES AT 420 SOUTH COLLEGE AVENUE FOR
A TOTAL OF 4 TENANTS.

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Foster, Harmer, Johnston

Nay: 0.

Absent: Shopland

4. Meeting adjourned at 8:35 p.m.

Alice Van Veen
Secretary

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Attachments