

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
MAY 18, 2017**

Those present at 7:05 p.m.:

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

Staff: Bruce Herron, City Solicitor
Michael Fortner, Planner, Planning & Development Department
Sarah Campanelli, Secretary

The chairman called the meeting to order at 7:05 p.m.

1. APPROVAL OF MINUTES FROM MEETING HELD FEBRUARY 16, 2017:

MOTION BY MR. MOORE, SECONDED BY MR. LEVANDOSKI: TO APPROVE THE MINUTES AS PRESENTED.

MOTION PASSED. VOTE: 5 to 0.

**Aye: Bergstrom, Hudson, Levandoski, McKelvey, Moore
Nay: 0.**

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

Sec. 32-45 – *Off Street Parking Requirements* – Hotels and Motels – one off street parking space for each guest room. An expansion to the formerly granted parking variance is needed. Each of the 7 two-room suites requires 2 parking spaces, requiring an additional 7 spaces. This would bring the total number of parking spaces in the variance to 43.

ZONING CLASSIFICATION: BC

Stephen Kessler, an attorney with The Danneman Firm came forward. Mr. Kessler advised that he was joined by his client and colleague, George Danneman, who is the managing member of the applicant. Mr. Kessler stated that he was there to request an expansion to the existing parking variance that was granted in March 2016. Mr. Kessler stated that one of the design professionals had erroneously believed that the 7 two-room suites that made up the 125 room count for the hotel could be counted as single rooms. Mr. Kessler advised that some consultation was done internally and with the Planning Department and it was discovered that the two-room suites count as two rooms each. This increased the parking analysis by 7 spaces. Mr. Kessler noted that the 125 rooms, under City Code, should be 132 rooms. Mr. Kessler went through the Kwik Check standard. Mr. Kessler stated that the property is located at the corner of Ogletown Road and Capitol Trail. The site plan was displayed during the presentation, which was entered into the record.

Mr. Kessler recapped the details of the hotel and restaurant. He pointed out that the hotel had 125 rooms, a

restaurant of 100 seats and the total number of required parking spaces of 74. Mr. Kessler advised that they had calculated that 20% of guests arrived by shuttle or taxi and, though that number did not incorporate groups of people arriving by bus into the analysis, he estimated it would be approximately the same amount. Mr. Kessler stated that the previous variance was granted on the condition that they seek an off-site parking arrangement for 16 additional parking spaces, making the net spaces required 133 and total spaces provided 140. Mr. Kessler stated that there are now 7 spaces in leeway based on the previous analysis. However, to be proactive, Mr. Kessler advised that they had gone to the Aetna Fire House and requested to lease 7 parking spaces. Danneman Hospitality has now entered into a parking lease with Aetna Fire House for 25 parking spaces. Mr. Kessler advised that currently with 132 rooms, with a number of total required spaces of 181, the hotel is in a better position than it was before.

Mr. Hudson asked whether the other 16 spaces were also at Aetna. Mr. Kessler confirmed that they were. Mr. McKelvey asked whether Mr. Kessler had brought a copy of the lease. Mr. Kessler advised it was submitted to the City as part of the building permit. Mr. Kessler noted that along with the lease, they also planned to utilize the Park and Ride facilities located in close proximity to the hotel. There will also be a hotel shuttle that will transport employees to and from the hotel. Mr. McKelvey asked if there was direct access to the Aetna lot. Mr. Kessler stated that the lots are connected and that there are no barriers between them, however you cannot drive between them. Mr. Kessler pointed out that it is rare that every single space would be needed as that would mean that the hotel was at complete capacity. However, if that did happen he stated that they would direct guests to the Aetna lot as needed. Mr. Kessler did not feel they would ever need these spots. Mr. Moore asked whether the employees would be parking in the Aetna lot only. Mr. Kessler replied that the employees would park first in the Aetna lot. Mr. Moore asked how they would get from the lot to the hotel. Mr. Kessler answered that the parking lease allows for ingress and egress over the two sites.

Mr. Danneman came forward. Mr. Danneman advised that it is easy to walk between the sites. Mr. Danneman advised there are curbs the length of the site so that people cannot drive between them, as well as a chain in the one spot without a curb. Mr. McKelvey asked whether there was an entrance to the building that faces the Aetna parking lot. Mr. Kessler advised there is an entrance on the back of the building that leads to a hallway, but there is no rear entrance to the lobby. Mr. Levandoski asked if they had considered inclement weather and whether there would be provisions in place to avoid snow piles blocking the lots. Mr. Kessler assured that they would make sure that there was a pathway at all times for pedestrian ingress and egress. Mr. McKelvey asked if there was a document to assure the board and anyone else who had questions or issues later on that the Danneman group had assured pedestrian walkways. Mr. Kessler advised that under their parking lease, pedestrian ingress and egress was required and stated this document could be referred to.

Jean White, District 1, was sworn in. Ms. White felt that the location of the Aetna lot was ideal so that employees did not need to be shuttled in. Ms. White wished to know where in the Aetna lot the parking spaces were located. Ms. White also asked how it happened that the Danneman group realized that the two-bedroom suites counted as two rooms. Ms. White was also concerned that this is not the first time that a business has thought it needed a certain amount of parking spaces, but then returned later realizing they needed more. Ms. White was not sure whether it was the fault of the developers or of the City of Newark that this error occurred. Ms. White wished to know whether there had been two-bedroom suites from the beginning of the plans. Ms. White also pointed out that it was optimal that the employees would be parking in the Aetna lot because they would know how to get from there to the hotel. Ms. White was concerned that the directions from the fire hall to the hotel may be confusing to guests. Ms. White noted that the DelDot study showed that this would be 570 extra trips per day with 58 more during the peak time in the morning and 15 during the peak time in the evening. Ms. White stated that the developer could contribute an area-wide study fee of \$10 for 570 trips per day. Ms. White wished to know if the developer had yet paid that fee.

Mr. Kessler advised that the parking spots being leased are the closest ones to the hotel. Mr. Kessler advised

that this issue first came to light when the City pointed out the error during the building permit review process. Mr. Kessler stated that they were only at the hearing to discuss the amendment to the existing variance, not traffic issues. Mr. Kessler noted that they had already been through the traffic analysis with the board and the City. Ms. White pointed out that the problem of the 2-room suites should have been discovered sooner during the months long process. Mr. Fortner stated that the error was discovered during the CIP process. Mr. Fortner clarified that during the planning phase, Council and the Planning Commission only sees a site plan not an internal map of the building.

Mr. Hudson stated that he had been surprised to see this applicant return for another variance. However, Mr. Hudson was appreciative that the situation had been remedied before the applicant came back before the board. Mr. Hudson felt that the explanation of how the rooms were missed made sense.

Mr. Hudson reviewed the Kwik Checks.

1. *The nature of the zone in which the property is located*- is commercial area, BC.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – commercial properties, Post Office, Fire House.
3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – Mr. Hudson did not see this seriously affecting any of the neighboring properties or uses. Mr. Hudson felt the area would actually benefit from this.
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. Hudson felt that the applicant was in a difficult situation here. Mr. Hudson would be voting to approve this.

Mr. Moore stated that he had the same concerns as Mr. Hudson. Mr. Moore found it heartening that the applicant was proactive in fixing this problem. Mr. Moore agreed with the Kwik Check analysis of Mr. Hudson and would be voting to grant the additional variance.

Mr. Levandoski agreed with Messrs. Moore and Hudson. Mr. Levandoski felt that the applicant had gone beyond the call of duty and made great provisions to provide the additional spaces. Mr. Levandoski would also be in favor of granting the variance.

Mr. McKelvey felt that this was an excellent solution to a difficult problem. Mr. McKelvey felt that the extra spaces at Aetna were a reasonable way to solve a problem.

Mr. Bergstrom was in agreement with Mr. Hudson's Kwik Check analysis.

MOTION BY MR. HUDSON, SECONDED BY MR. MOORE: TO GRANT THE VARIANCES ON THE CONDITION THAT THE 7 REQUIRED PARKING SPACES ARE PROVIDED FOR ELSEWHERE AND THAT THERE IS TRANSPORTATION TO THAT SITE, IF NEEDED.

MOTION PASSED. VOTE: 5 to 0.

**Aye: Bergstrom, Hudson, Levandoski, McKelvey, Moore
Nay: 0.**

3. **Discussion and potential action regarding an amendment to the Board of Adjustment Rules of Procedure regarding the withdrawal and subsequent rescheduling of applications.**

Mr. Hudson stated that there have been several times when applicants were looking for a variance but waited

to see which members or how many members would be present for a hearing. Mr. Hudson noted that even though there is a valid quorum, there have been times that the applicant has withdrawn because they do not like the makeup of the board. Mr. Hudson felt that this was an issue. Mr. Hudson stated that his proposed rule would remedy this problem. Mr. Hudson read the rule, which was submitted into the record. Mr. Hudson saw an issue with this happening several times and wished to bring it up as a discussion point before the board.

Mr. Moore noted that he had seen this a couple of times and that it had raised questions in his mind as the Board of Adjustment is a quasi-jurisdictional body. Mr. Moore asked why the new rule would be 8 months. Mr. Hudson felt that 6 months would still allow the applicant to be within a building season, but 8 months would push them out of that and provide a bigger penalty. Mr. Moore asked whether this kind of thing happened often in the past or whether this was a recent problem. Mr. Bergstrom noted that it did happen from time to time and pointed out that the fees were already high. Mr. Fortner noted that planning fees had gone up. Mr. Bergstrom pointed out that readvertising can also cost over the \$150 readvertisement fee. Mr. Fortner asked if there was a way to distinguish between an illness or other true reason for withdrawing the application. Mr. Levandoski echoed Mr. Fortner's concern. Mr. Levandoski also asked for clarification as to reasoning of the applicant being able to withdraw up to 15 days before the hearing. Mr. Hudson advised that 14 days is the final deadline for the application, so he chose 15 days to deter the applicant from waiting until the last minute to try to determine the makeup of the board. Mr. Levandoski asked about extenuating circumstances that cannot be anticipated, such as sickness. Mr. Hudson advised he had not thought of that and wondered how the board would verify that.

Mr. Bergstrom pointed out that the board could mull this over and discuss more at the next meeting. Mr. McKelvey noted that the filing fee would be forfeited. Mr. Hudson advised that was how the current rule read. Mr. Herron noted that the applicant does not lose the filing fee if they withdraw prior to the scheduling of the hearing. Mr. Hudson stated that this part of the rule had not changed. Mr. Herron advised that state law requires that municipalities have boards of adjustment to consider exceptions to the terms of an ordinance. Mr. Herron stated that he needed to do some research because the effect of this new rule would be closing off any possible avenue of appeal for 8 months if someone is seeking an exception to an ordinance. Mr. Herron was not sure if this was something the board could do or if there should be steeper monetary penalties so that the avenue of appeal would not be closed off. Mr. Moore asked Mr. Herron if other commissions had rules such as this and whether if the Board of Adjustment passed this new rule, would it affect the other boards and commissions of the city. Mr. Herron stated it would not affect other boards and commissions because the Board of Adjustment has the right to adopt their own rules of procedures. Mr. Moore asked how this was similar to the rules of other boards. Mr. Hudson answered that while formulating this new rule, he had referred to other boards that had rules similar to this.

Mr. Moore felt that Mr. Hudson's proposal had some appeal and that he would like to do more research on the topic. Mr. Levandoski noted that in the past an applicant had withdrawn his application during the meeting when he had realized that the board was going to deny the variance. Mr. Herron stated that, as the rule reads now, the applicant may withdraw the application any time prior to a decision being made. Mr. Herron stated that it could be changed to any time prior to the beginning of the hearing to eliminate that problem. Mr. Hudson was more concerned about the withdrawal of an application to gain better odds. Mr. Herron pointed out that this current rule allowed that. Mr. Fortner noted that this could be a benefit at times because the applicant could hear the objections of the board and withdraw to fix those problems then come back with a better application. Mr. Herron suggested that the applicant could only withdraw during a hearing with a majority vote of the board. Mr. Hudson felt that if the applicant did this they were taking two bites of the apple at the City's expense. Mr. Levandoski felt that most people coming before the board were honest and would hate to see a person or entity penalized in a way that could delay a project for a long amount of time. Mr. Hudson felt that a monetary penalty would hit non-commercial applicants much harder than developers. Mr. Moore agreed and felt that there was big difference between a local individual applying for a

variance to their home and a large developer applying. Mr. Fortner asked whether the raising of fees would have to go before Council. Mr. Herron advised it would. Mr. Fortner asked if procedural changes would also need to go before Council. Mr. Herron stated that it would not because it is within the purview of the board to adopt its own rules of procedure but they must be consistent with state law. Mr. Bergstrom stated that the board members should consider this proposal and be ready to discuss at the next meeting. Mr. Herron stated he would also put something together for the board to consider.

4. The meeting was adjourned at 7:54 p.m.

Sarah Campanelli
Secretary