

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
DECEMBER 21, 2017**

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chairman Dave Levandoski Bill Moore Jim McKelvey
Absent:	Kevin Hudson
Staff:	Bruce Herron, City Solicitor Mike Fortner, Development Manager Sarah Campanelli, Secretary

The chairman called the meeting to order at 7:00 p.m.

1. APPROVAL OF MINUTES FROM MEETING HELD OCTOBER 19, 2017:

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

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Levandoski, Moore, McKelvey.

Nay: 0.

Absent: Hudson.

2. The appeal of Abhi Shah, property address 205 Madison Drive, for the following variance:

- **Sec. 32-47(j) – Existing single family type rental dwelling** – Two off-street parking spaces shall be required per unit for every nonowner occupant, one-family and/or two-family dwelling type structure converted for the taking of boarders and roomers as permitted in this chapter and requiring rental permits as specified in Chapter 17, Housing and Property Maintenance, Code of the City of Newark, Delaware. The applicant has 1 off-street parking space and is requesting a variance of 1 off-street parking space.

Mr. Shah advised that Code Enforcement had come out and informed him that the driveway was 6 inches too narrow. He stated that he and his wife had been able to fit 2 cars in the back without an issue. There was also off-street parking available. Mr. Shah pointed out that a similar variance had been granted for 125 Madison Drive with similar circumstances. Mr. Shah had provided a plot plan. Mr. Levandoski asked whether this house had ever had a garage. Mr. Shah said it did not. Mr. Moore asked whether Mr. Shah lived there or whether he planned to rent the property. Mr. Shah answered that he planned to rent the property. Mr. Fortner wished to clarify that Dickey Park was not public parking. He stated that the variance should not be granted on the basis that residents could park in the public park. Mr. Bergstrom noted that the lot was 16 feet wide. He asked how wide parking spaces should be. Mr. Fortner thought they should be 9 feet.

Mr. Moore asked whether the applicant thought he could rent this property and fit 2 cars. Mr. Shah said that

was correct and he had been able to fit 2 cars in the driveway. Mr. Moore asked what Mr. Shah was requesting tonight. Mr. Bergstrom explained that Mr. Shah could not get a rental license without 2 off-street parking spaces. Mr. Fortner said that Mr. Shah technically only had 1 off-street parking space; he needed a variance of 1 space. Mr. Bergstrom noted that the property was 16 feet wide but each parking space was supposed to be 9 feet wide. He felt that perhaps cars were larger when the Code was written, but now 2 cars would likely fit there. Mr. McKelvey asked whether Mr. Shah had gathered any information from his neighbors. Mr. Shah answered he had not spoken to the neighbors. He reiterated that there was plenty of parking on the street in front of the house.

Ms. Campanelli read a letter of support into the record that had been emailed to Councilman Chris Hamilton from Bruce Harvey. Mr. Moore asked whether this would be a use variance or an area variance. He recalled that he had asked this same question at the last meeting with a similar situation. Mr. Moore was concerned that if the Board granted this variance, they may as well grant them all. Eventually, he felt they would all come in asking for the same variance. He wondered whether granting all of these would be adding more traffic, cars and congestion to the whole area. Mr. Herron responded that he had the same answer as last time. This request did not fall within the traditional definition of either an area variance or a use variance. It was more akin to an area variance. A use variance was generally an application that sought to use the property for a manner which was not permitted under the Code. That was not the case in this situation so the Board should use the Kwik Check standard. Mr. Bergstrom pointed out they were essentially reducing the size of a parking space slightly. They had heard testimony that Mr. Shah was able to fit 2 vehicles in this space. Mr. Bergstrom believed that 2 small cars would easily fit in the space. Mr. Bergstrom did not think they were entirely getting rid of the mandate for 2 spaces, they were just saying there would be 2 tight spaces.

There was no public comment.

Mr. Levandoski reviewed the Kwik Checks.

1. *The nature of the zone in which the property is located* – RR, which was primary residential with some rental units.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – residential area, primarily townhomes. There was a nearby park.
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 did not think the removal would seriously affect neighboring properties and uses. He noted they had already heard that most homes were using the driveways for 2 cars. The current owner could fit 2 cars side by side. With the nature of the area, Mr. Levandoski did not think granting this variance would have a negative impact to the area.
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 stated that if the variance were not granted, Mr. Shah would not be able to rent this property. Mr. Levandoski thought that would be undue hardship because Mr. Shah did not live at the property.

Mr. Levandoski would place 2 restrictions on granting this variance. The first would be that parking spaces in Dickey Park could not be used by residents for off-street parking. The second would be that the driveway could not be used for storage. The driveway had to be used for the parking of 2 vehicles.

Mr. McKelvey agreed with Mr. Levandoski's Kwik Check analysis. He felt that if the restriction were removed, it would not seriously affect the neighboring properties. He noted this street did have a lot of rentals. Mr. McKelvey noted that the owner had already figured out how to park 2 vehicles on the property. He thought this was the perfect example of trying to help a person and make a common-sense

decision.

Mr. Moore thought this was a tough question. He understood that they did not want to leave a property vacant. He felt that this reached his threshold of granting a variance. Mr. Moore asked if the Board could put the restrictions suggested by Mr. Levandoski on a rental property. Mr. Herron was not sure that the restrictions were necessary. He pointed out that parking in Dickey Park was already prohibited. He thought the other restriction was reasonable.

Mr. Bergstrom felt this request was reasonable. He felt that the City should look at the size of the spaces themselves to see if this requirement of 9 feet in the Code was a necessity for these lots. Mr. Bergstrom agreed with the analysis of his colleagues and believed this variance should be approved.

MOTION BY MR. MCKELVEY, SECONDED BY MR. MOORE: TO APPROVE THE VARIANCE WITH THE RESTRICTION THAT PARKING SPACES ONLY BE USED FOR PARKING VEHICLES AND NOT BE USED FOR STORAGE.

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Levandoski, Moore, McKelvey.

Nay: 0.

Absent: Hudson.

3. The meeting was adjourned at 7:49 p.m.

Sarah Campanelli
Secretary