

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
FEBRUARY 15, 2018**

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chairman Dave Levandoski Bill Moore
Absent:	Kevin Hudson Jim McKelvey
Staff:	Paul Bilodeau, 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 JANUARY 18, 2018:

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

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Levandoski, Moore.

Nay: 0.

Absent: Hudson, McKelvey.

2. The appeal of David and Jody Pettoruto, property address 605 Nemours Lane, for the following variance:

- **Sec. 32-9(c)(6) – Rear yards** – Except as specified in Article XVI, Section 32-56.2(e)(1), (2), (3) of this chapter, a rear yard shall be provided on every lot and shall be as follows:
 - b. RT – 40 feet.** The applicant's plan indicates the deck structure is set back from the rear (west) lot line at 30 feet and requires a 10-foot setback variance.

David Pettoruto, 605 Nemours Lane, was sworn in. Mr. Pettoruto explained that he had hired a contractor to make the initial application but had found that he needed a variance for the setbacks on the property. Mr. Pettoruto entered 2 letters of support written by neighbors into the record. He advised that the letters were from his next-door neighbor and another neighbor that lived a few doors down. He had also spoken to another neighbor who had supported the project but did not write a letter. Mr. Pettoruto noted that both neighbors who had written letters could see the rear yard of the Pettoruto's home. Mr. Pettoruto noted that his rear yard was mostly concealed. The property did not back up to other homes. It backed up to the City of Newark-owned water tower. There was a tree line that covered that view.

Mr. Pettoruto advised there was an existing deck that had been installed shortly after the Pettoruto's moved in 19 years ago. They had obtained a permit from the City to build that deck. He stated this proposed deck

was approximately 3 feet deeper than the existing deck. Mr. Pettoruto and his wife felt that the proposed deck was a very nice structure that would add value to the home. He added that the shingles would match the roof and other materials would match the home.

Mr. Bilodeau explained the Kwik Check standard for an area variance. Mr. Bergstrom asked how Mr. Pettoruto would describe the zone in which the area was located. Mr. Pettoruto described it as residential backing up to a public use parcel. Mr. Bergstrom asked if it was correct that there were no neighbors to the rear of the property. Mr. Pettoruto said that was correct. Mr. Bergstrom asked if the uses of the neighboring properties were for single-family homes. Mr. Pettoruto said that was correct. He noted that behind his property was some City of Newark common ground maintained by the City and the water tower. Mr. Bergstrom asked Mr. Pettoruto whether removing this restriction would seriously affect his neighbors. Mr. Pettoruto answered that the neighbors were accepting of this project. The neighbors had looked at the plans and thought they looked good. Mr. Bergstrom asked whether removing the restriction would seriously affect their properties or uses. Mr. Pettoruto responded it would not. Mr. Bergstrom asked Mr. Pettoruto to describe his unnecessary hardship or exceptional difficulty in relation to efforts to make normal improvements on his property if the restriction were not removed. Mr. Pettoruto stated he would not be able to move along with the project. He shared that the existing deck was old and was not cedar. He felt it was an eyesore as compared to the new project.

Mr. Bergstrom asked whether Mr. Pettoruto planned to screen the new deck. Mr. Pettoruto said that most of it would be screened in and the rest would be a side deck. Mr. Bergstrom asked what the screening was for. Mr. Pettoruto answered that it was to protect them from bugs. Mr. Pettoruto noted that his family did not use the deck as much as they wanted to due to allergies. He hoped the screens would help keep out some of the pollen.

Mr. Moore asked how large the existing deck was. Mr. Pettoruto answered that it was 18 x 20 with an additional small part. It was not a square shape but rather had 45-degree angles. Mr. Pettoruto explained that the proposed deck was square. Mr. Moore asked if there was an issue with putting the screened in porch on the existing footprint. Mr. Pettoruto explained that the existing wood had to be ripped out. The contractor had thought it would be best to start new with new footers and a new roof. In doing so, the footers did not line up with squaring off the structure as opposed to having it on angles. Mr. Moore noted that this was listed as a 10-foot variance but Mr. Pettoruto had said the structure would only be 3 feet deeper than the existing deck. Mr. Fortner answered it was a 10-foot variance. He explained that an open-air deck was not counted toward a rear yard setback. This would be an enclosed deck which would increase it. Mr. Pettoruto clarified that the enclosed roof was only going 3 feet further than the existing deck line.

Mr. Levandoski asked what percentage of the new deck would be enclosed. Mr. Pettoruto estimated it would be 60-65%. Mr. Levandoski asked if the existing deck was about 18 years old. Mr. Pettoruto thought it was built around April 1999. Mr. Levandoski asked whether Mr. Pettoruto was looking to upgrade from a safety standpoint as well. Mr. Pettoruto said that was correct. Mr. Levandoski asked if the existing posts were treated lumber. Mr. Pettoruto answered that the posts were pressure treated lumber and not composite. Mr. Levandoski asked whether the support posts went into the ground or were on concrete. Mr. Pettoruto believed they went into the ground.

There was no public comment.

Mr. Bergstrom asked for clarification that the uncovered 40% of the deck did not require a variance. Mr. Fortner said that was correct. Mr. Bergstrom thought this was a unique land use with City of Newark land behind the property.

Mr. Levandoski reviewed the Kwik Checks.

1. *The nature of the zone in which the property is located* – RT, residential.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Residential community. This house abutted to a City of Newark parcel which was operated and maintained for the water tower.
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 noted there were 2 supporting letters. Based on proximity, he did not feel this would have a negative effect on the neighboring properties or their uses.
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 recalled that part of the deck would be enclosed with a screen porch. He understood that the property backed up to the woods and could likely be marshy during certain times of the year. This could lead to an accumulation of mosquitoes and other bugs. He felt that allowing the applicant to enclose the deck would enable them to use the property more for their enjoyment.

Mr. Levandoski felt this was a minor variance. He would be in favor of granting this variance to allow the construction of this deck.

Mr. Moore shared that he had been troubled when he first saw the application due to the size of the footprint. Based on the Kwik Checks from Mr. Levandoski and the fact that there were no rear neighbors, Mr. Moore felt that this should be approved.

Mr. Bergstrom agreed with the previous comments. Mr. Bergstrom was glad to see that the neighbors were in support of what Mr. Pettoruto was proposing. He thought this was a well thought out presentation. Mr. Bergstrom asked whether the applicant would have a difficulty in the Board placing a time restriction on the start date of the project. Mr. Pettoruto said that was fine. He hoped that the contractor would be able to start within 1-2 months.

MOTION BY MR. LEVANDOSKI, SECONDED BY MR. MOORE: TO APPROVE THE VARIANCE WITH THE STIPULATION THAT THE PROJECT BE STARTED WITHIN 6 MONTHS.

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Levandoski, Moore.

Nay: 0.

Absent: Hudson, McKelvey.

3. The appeal of Matthew and Megan Cohen, property address 7 Bridgeview Court, for the following variance:

- **Sec. 32-9(c)(6) – Rear yard** – Except as specified in Article XVI, Section 32-56.2(e)(1), (2), (3) of this chapter, a rear yard shall be provided on every lot and shall be as follows:
 - a. **RH – 50 feet.** The applicant's plan indicates the deck structure is set back from the rear (north) lot line at 40 feet and requires a 10-foot setback variance.

Megan Cohen, 7 Bridgeview Court, was sworn in. Ms. Cohen stated she was requesting a variance to build an enclosed deck. This would be a screened in porch to replace an existing deck structure. It would go out an additional 3 feet from the current structure. She explained that the current structure was original to the

house which was built in 1993. The deck was in disrepair. She was working with a company to have it torn down and a new one built. Ms. Cohen advised her home was at the end of a cul-de-sac and the property line did back up to another home, though there was a thick line of trees and a steep hill dividing them. She stated her home looked over the neighbor's roof. She did not think the new deck would be a disturbance to her neighbors.

Ms. Cohen shared that she was making this request because the current deck structure was old and in disrepair. She wanted an enclosed structure to protect their family from insects. Ms. Cohen said that all neighboring properties were single-family homes. Mr. Bergstrom asked what Ms. Cohen thought would happen if the relevant restriction was removed. Ms. Cohen felt that there would be no impact on the neighbors behind their home. She advised that the neighbors to the right would be able to see the structure but they were in favor of the structure as they were family members. Mr. Bergstrom asked whether they had submitted a letter of support. Ms. Cohen answered they had not. Mr. Bergstrom asked if she had spoken to all her neighbors. Ms. Cohen said she had and they had all been in support. Ms. Cohen noted one of the houses in the cul-de-sac was unoccupied and the home immediately to the left of her was also mostly unoccupied. She did speak to those homeowners who were in support of the structure.

Mr. Bergstrom asked what would happen if the variance were not granted. Ms. Cohen said it would make it very difficult to proceed with the project. She shared that she was requesting this variance because she wanted to have livable space in which to spend time outdoors. Mr. Bergstrom asked how much of the deck would be covered. Ms. Cohen answered it would be around 65%. The open deck would be a landing for a grill and would be much smaller.

Mr. Moore asked whether Ms. Cohen had considered maintaining the existing footprint. He asked what the reason was not to use the existing footprint. Ms. Cohen said that the existing structure was unsafe. She stated the existing footprint was uneven in layout and was not very useable as a dining area. Ms. Cohen wanted the dining area to be enclosed and making it larger would enable that. Mr. Moore noted this was also only going out 3 feet further than the existing structure and only needed a variance because of the roof line. Mr. Fortner agreed that was correct. Mr. Moore also noted that a corner lot would not need a variance. Mr. Fortner clarified that this was not a corner lot. It was irregularly shaped though. Mr. Moore felt it was similar in nature to a corner lot and had a unique shape. Mr. Moore asked whether this project was being done by a construction company. Ms. Cohen said that was correct. Mr. Moore asked when they hoped to start the project. Ms. Cohen responded that they were hoping to start in March. Mr. Moore asked what the alternative was if this variance was not granted. Ms. Cohen answered that she and her husband would have to go back to the drawing board. They had not discussed other options. Mr. Bergstrom felt that this was a reasonable project on an irregularly shaped lot.

There was no public comment.

Mr. Moore reviewed the Kwik Checks.

1. *The nature of the zone in which the property is located* – RH, single-family detached homes.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Single-family homes, residential.
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 felt that based on the evidence presented, the neighbors were in favor and thought it would add to the overall character of the area. The homes behind the house were on a hill with a tree line and as such would not be able to see the structure.
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 thought this was a minor variance. He felt that the lot was unique as a cul-de-sac lot with many angles. He understood it was not a corner lot but he felt the uniqueness of the cul-de-sac made it very similar. Mr. Moore felt that it would be an improvement and the overall character of the vicinity would be improved.

Mr. Moore shared that he would vote to grant this variance. Mr. Levandoski agreed with Mr. Moore's analysis. Mr. Levandoski would also be in favor of approving the variance. Mr. Bergstrom agreed with the Kwik check analysis as well.

MOTION BY MR. MOORE, SECONDED BY MR. LEVANDOSKI: TO APPROVE THE VARIANCE WITH THE CONDITION THAT CONSTRUCTION BE STARTED WITHIN 6 MONTHS.

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Levandoski, Moore.

Nay: 0.

Absent: Hudson, McKelvey.

4. The meeting was adjourned at 7:45 p.m.

Sarah Campanelli
Secretary