

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

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chairman Kevin Hudson Dave Levandoski
Absent:	Bill Moore
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 FEBRUARY 15, 2018:

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

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Hudson, Levandoski.

Nay: 0.

Absent: Moore.

2. The appeal of Lisa and Scott Pisarski, property address 156 West Main Street, for the following variance:

- **Sec. 32-9(a)(17)(e) – Student home.** – A student home shall be occupied by no more than three persons. The application requests to have a four-person unrelated occupancy at 156 West Main Street. A one-person variance is required.

Ms. Campanelli read a letter of support from James Carroll, 152 West Main Street, into the record. Mr. Bilodeau reminded the Board that previous City Solicitor Bruce Herron had opined that appeals such as this were to be categorized as area variances. The applicant would need to meet the Kwik Check test for the Board to approve this variance.

Lisa Pisarski, 156 West Main Street, was sworn in. Ms. Pisarski informed the Board that for many years prior to Ms. Pisarski making 156 West Main Street her family's home, it was a run-down rental property. She and her ex-husband had bought the house in 1986 and she had lived there ever since. The house had been in very poor condition but she had loved being near the students and University community. They had enjoyed a real community with neighboring young families. Ms. Pisarski shared that she had raised her 4 children in the

home, as well as her husband's 2 children. She stated that within the last 6 years, all the other families had sold their homes. All the homes had become rental properties, leaving Ms. Pisarski and her family the only family on the block. In the past, she had dealt with occasional bouts of disruptive student rentals but in the last 5 years, Ms. Pisarski said she had been contending constantly with rogue fraternities hosting parties with hundreds of attendees. She had worked closely with the Newark Police Department to improve the quality of life on her street and she was grateful for their dedication and interventions. Ms. Pisarski shared that things had changed on March 19, 2016, when she witnessed from her porch a man falling to his death at 153 West Main Street. She shared that the event haunted her to the point of making it difficult to walk by the location.

Ms. Pisarski stated that, with her children's blessing and encouragement, they had decided to move away from West Main Street. Ms. Pisarski advised she had been an active citizen of Newark for many years. She understood concerns regarding reckless precedent-setting judgements. However, Ms. Pisarski felt that in the case of changing her property from 3 to 4 tenants, she did not think it would set a precedent. She explained that 80% of the properties on the 100-block of West Main Street were rentals. 30% of the rentals were zoned for 8 or more tenants. Another 30% were permitted 4 tenants. Ms. Pisarski pointed out that though it could not be proven, she knew that more than 75% of the rental properties on her street held well over 4 students per property.

Ms. Pisarski reviewed the Kwik Checks.

1. *The nature of the zone in which the property is located* – RD, which permitted this type of use. The request did not seek to change that.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – The vast majority of the homes were student rentals, the majority of which held 4 or more student occupants.
3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – Ms. Pisarski felt that the addition of 1 student to 1 home would have no impact on surrounding properties. She referenced the letter of support from James Carroll, 152 West Main Street. Ms. Pisarski explained that her home shared a driveway with Mr. Carroll's. She had thought it was important that Mr. Carroll documented that he had no problem with this request. She noted that his house was currently unoccupied and being renovated. It was intended to be a rental property.
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* – Ms. Pisarski said that there were only 2 houses on the street, other than hers, that were owner-occupied. As there were no families left on the block and continually disruptive nighttime behaviors, the chances of a family wishing to purchase Ms. Pisarski's home seemed nonexistent.

Due to the changes on the street with rogue fraternity houses overtaking previously quiet rentals or family-homes, Ms. Pisarski's home had been devalued when looking at comparable nearby family residential properties. She explained that in order to secure a financial investment on the house and continued financial obligations, the only alternative was to convert the house to a rental property. In order to properly maintain the property, renting to 3 people would require a per tenant rent that exceeded what the market allowed. Ms. Pisarski hoped for students to have a finer student rental experience and stated they would have a local landlord who would carefully vet tenants and closely monitor the property. Ms. Pisarski described the home. She stated it was far larger than necessary for 4 students. However, she was not asking for a larger increase

than 3 to 4. There were 3 bedrooms on the 2nd floor and 1 bedroom on the 1st floor. There was a living room, dining room, family room, kitchen and 1.5 baths. She noted there was also a large parking area behind the house that would easily accommodate 4 cars.

Mr. Hudson asked if Ms. Pisarski wished to own it or sell it. Ms. Pisarski said they were planning to own and rent it. She wanted to be the one to decide who would live in the house. Ms. Pisarski stressed that she had respect for many owners of rental properties on the street who were very particular about who they rented to. She had only had problems with 2 specific properties. She felt the vast majority of the people on campus were good people. She could not sell the house for what it was worth or enough to buy a family-home in Newark. Ms. Pisarski said that if she tried to rent to 3 tenants, the rent would be too high. Ms. Pisarski was familiar with the leases in Newark and what a responsible landlord was expected to provide. She understood that financial hardship was not sufficient but she felt that she had conveyed the non-financial hardships that were involved. Ms. Pisarski referred to a list she had printed of homes on the block. The houses directly across the street, 151 and 153 West Main Street, were zoned for 8 and 10 tenants. These properties were grandfathered in. 140 and 146 West Main Street were considered apartments and allowed 12 or more students. She felt it was not excessive for her to ask for 4 tenants. Mr. Hudson asked if all the other houses were grandfathered in. Ms. Pisarski said they were.

Mr. Bergstrom asked if it was Ms. Pisarski's testimony that it was economically impossible to make this a rental home with only 3 tenants. Ms. Pisarski said that her daughter had rented a home in Newark and she had seen what the rent was. She thought there was no way they could cover expenses to rent her home with only 3 tenants. Mr. Levandoski recalled that Mr. Carroll's home was unoccupied and being renovated to be a rental property. He asked how many tenants Mr. Carroll was allowed. Ms. Pisarski believed his was zoned for 3 tenants. She had checked with Code Enforcement but Mr. Carroll did not have an active rental permit. Mr. Levandoski asked whether there were sprinklers in the home. Ms. Pisarski said there were not. She had done a renovation on the 3rd floor that would be locked off from renters. She stated there was more than enough room for 4 tenants without the 3rd floor. Mr. Levandoski asked Mr. Fortner whether the homes that were listed as 4 tenants had ever been 3 tenant homes that had gotten variances. Mr. Fortner did not think any had gotten variances.

Mr. Fortner gave a brief overview of the student home ordinance. He said that the purpose of the ordinance was to protect single-family neighborhoods and to not concentrate student rentals in certain areas. In many locations in the City, if there was a single-family rental property, the homes within approximately 500 feet would not be able to get another student rental permit. A student home was defined as 3 students. When Council created this legislation in the late 1990's, they exempted about 40 streets which were listed in the zoning code. One of those streets was West Main Street east of Hillside Road, where Ms. Pisarski lived. On exempted streets, the City did not regulate student rentals from non-student rentals. When the law was created, people that were already allowed 4 tenants got to keep that designation. Any new rentals should be 3 tenants under the ordinance. Mr. Fortner said the problem was that the properties that were grandfathered in or had different tenant allowances were next door to new rentals which was confusing to landlords and tenants. There was legislation being considered by the Planning Commission in May 2018 that would likely go to Council in June or July. According to this new legislation, all rental homes on exempt streets would be 4. The logic behind it was that these places were already high rental areas and where the City anticipated student growth.

Ms. Pisarski recalled that she had been part of the decision to switch from 4 to 3 tenants on her block. She

had a previous landlord that rented out one house to 7 students and another to 8. Ms. Pisarski had come before Council at that time and asked for help. Council had chosen to change the zoning to 3. Ms. Pisarski pointed out that she had said at the time that she appreciated the sentiment but this was not the issue. She had been more concerned about enforcing the 4-tenant policy.

Mr. Hudson asked what Ms. Pisarski was estimating the rent should be. Ms. Pisarski answered that she would have to rent the house at \$600 per student to cover the mortgage and ancillary expenses. For comparison, Ms. Pisarski advised that her daughter was renting a nice house in Newark and was paying \$360 per month. Ms. Pisarski wanted to be able to properly maintain the house for them. She felt that they would not be able to find tenants that would pay \$600-700 per month. She also felt the house was too big for only 3 tenants. Ms. Pisarski pointed out that sometimes tenants would sneak in additional people to try to cut expenses. She did not want that to happen. Mr. Hudson thought that Ms. Pisarski seemed like a responsible landlord. He wondered what would happen when she sold the house. Ms. Pisarski was not sure how to answer that. She would like to sell it to a responsible person when that day came.

Mr. Bergstrom asked whether Ms. Pisarski had been aware of what the Planning Commission was considering. Ms. Pisarski answered she was not. Mr. Bergstrom asked if there was any reason she could not wait. Ms. Pisarski said that if this variance was approved, she could afford to rent the house. Now would be the ideal time for her to start trying to fill the house for the fall. If they waited until June or July, there was no time to prep the home for the academic year which meant they were locked in for another year. Ms. Pisarski also pointed out that she wanted to stay in Newark and that this was the time of year that houses were going up for sale.

Mr. Bergstrom pointed out that this house was surrounded by houses with a maximum tenant allowance of 3. He wondered how many of those 4 houses would come before the Board looking to add another tenant. Mr. Levandoski noted that the one being renovated next door would likely come to the Board. Mr. Bergstrom worried this may be a domino effect. Ms. Pisarski understood that there were other houses that were only allowed 3 tenants but pointed out that those directly across the street were allowed 10 or more. Mr. Levandoski asked Mr. Fortner how quickly it would go into effect if the decision were made to change the total allowed number of tenants from 3 to 4. Mr. Fortner said that if Council approved it, it would be an immediate change unless they designated otherwise.

Mr. Bergstrom opened the floor to public comment.

Jean White, District 1, was sworn in. Ms. White thought the presentation by the applicant served to show what happened when streets became all student rentals. She felt there was a tipping point beyond which it became very difficult for the street. Ms. White was saddened by this, especially in this area of Newark. Ms. White noted that the Code had been reviewed and changed to allow only 3 unrelated students. She felt the reasons for that change were the very things Ms. Pisarski had talked about. She understood that it was being considered to change certain streets to 4 tenants. Ms. White recalled that she had attended Planning Commission meetings and that the Planning Commissioners had wanted to see a listing of homes that allowed 3 tenants versus 4 tenants. Ms. White pointed out this could not be easily found on a map. Ms. White was opposed to going from 3 to 4 prematurely before this issue was decided by Planning Commission and Council. She argued that the Board of Adjustment should not grant this. Ms. White asked the applicant whether Mr. Carroll had a rental permit. Mr. Fortner said that Mr. Carroll's home would only be allowed 3 tenants. Ms. White thought it would be better to wait and see how this issue went before Planning Commission and

Council.

Ms. Pisarski understood what Ms. White had said. Ms. Pisarski asked whether it would impact the Board's decision if her house was between 151 and 153 West Main Street which were zoned for more tenants. Ms. Pisarski did not see how it was balanced or reasonable that decades ago all these properties were grandfathered in. It did not make sense to her that Newark had said they wanted families to stay but then granted rental permits to every house where a family moved out. Ms. Pisarski stressed that if she could stay living in the home she would. She said there was financial hardship but the financial hardship was a result of basically being driven out of the home.

Mr. Bergstrom felt that the Board of Adjustment should not be trying to influence the Planning Commission's processes. Mr. Bilodeau advised that the Board needed to forget about the Planning Commission and try to discover whether the Kwik Check standard had been met. Mr. Bilodeau thought that the key question may be whether there was unnecessary hardship or exceptional practical difficulty. It seemed to Mr. Bilodeau that this was not simply economic. He did not think that the applicant was trying to make more money as a landlord. He stated it was economic in that she could not sell the house but for a loss. He noted that was not what she wanted to do; she would be forced to move because of the situation.

Mr. Hudson reviewed the Kwik Checks.

1. *The nature of the zone in which the property is located* – Residential zoning.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Majority rental homes on the street with 2 owner-occupied 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. Hudson did not think it would seriously affect the neighboring properties and 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. Hudson shared that he was having a hard time meeting that exception. Mr. Hudson felt that every house allowed 3 tenants would come to the Board of Adjustment requesting a 4th. This was a total of 6 extra people on the street. He felt the landlords would be paying close attention to this hearing for every other 3-tenant house or any property that was not economically viable.

Mr. Bergstrom recalled the only testimony they had heard was that a 3-tenant rental did not support the house financially. Mr. Bergstrom suggested the Board heed Mr. Bilodeau's advice and ignore the current legislative state when making a consideration. Mr. Levandoski agreed with Mr. Hudson's analysis of Kwik Check questions 1-3. On the 4th question, he was grappling with this as well. Mr. Levandoski was trying to examine the numbers but there were many unknown factors. Mr. Levandoski believed there was a hardship. He thought it could be a justification to increase the tenants from 3 to 4 in this case because of the hardship she had gone through personally.

Mr. Hudson asked whether the issues considered for this hardship should run with the land or whether they could consider personal situations. Mr. Bilodeau said they could take into account the extraneous factors when considering hardship. Mr. Bilodeau said that the applicant mortgage situation was not part of the equation but he did think that the situation as described, including witnessing someone fall to their death, was an argument for hardship. He felt that a hardship argument could be made about how things had

developed around Ms. Pisarski to force her to this position. Mr. Bergstrom felt that Ms. Pisarski had explained her hardship well and, in the absence of any rebuttal, he thought the Board should approve it. Mr. Hudson pointed out that if that was the case, there would be no complaint from streets that were all landlords. Mr. Bergstrom noted there were people on this street that were owner-occupants and they did not come to the hearing. Mr. Hudson's concern with an economic hardship was that it could be applied to any house that was having trouble with expenses. Mr. Bergstrom noted the testimony was that she could not sell the house or make enough from 3 tenants. Mr. Bergstrom thought they could base the hardship on that. Mr. Bergstrom wondered what alternative there was other than to say Ms. Pisarski needed to wait until this came before the Planning Commission.

Mr. Levandoski stated that when he came to this meeting, he had not been planning to approve this request. However, after hearing the testimony and the hardship that Ms. Pisarski had experienced, he would vote to approve this request. Mr. Hudson asked whether part of Mr. Levandoski considerations for Kwik Check question 4 was the specific, personal trauma related. Mr. Levandoski said he was considering that along with the squeezing out of all the families in the area. Mr. Hudson felt he could support the motion as long as everyone took into account the personal and specific trauma and issues.

MOTION BY MR. LEVANDOSKI, SECONDED BY MR. MOORE: TO APPROVE THE VARIANCE AS REQUESTED.

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Hudson, Levandoski.

Nay: 0.

Absent: Moore.

3. The meeting was adjourned at 8:03 p.m.

Sarah Campanelli
Secretary