CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
APRIL 19, 2018

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chairman Kevin Hudson Dave Levandoski
Absent:	Bill Moore
Staff:	Paul Bilodeau, City Solicitor Tom Fruehstorfer, Planner Sarah Campanelli, Secretary

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

1. APPROVAL OF MINUTES FROM MEETING HELD MARCH 15, 2018:

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

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Hudson, Levandoski.
Nay: 0.
Absent: Moore.

2. The appeal of Michael and Amala Fahey, property address 15 Prospect Avenue, for the following variance:

- **Sec. 32-10(c)(2) – Area Regulations. –** *Maximum lot coverage*. The maximum lot coverage for any building, exclusive of accessory buildings, shall be 25%. The applicant's plan indicates that the lot coverage with the proposed addition would be 27.5%. This requires a 2.5% variance for lot coverage.

Michael Fahey, 15 Prospect Avenue, was sworn in. He came to Newark in 1971 and has resided on Prospect Avenue since 1984 or 1985. He shared he has done previous contract work for others and it had always been a dream of his wife and his to do this small addition. They been in a bedroom that was about seven and a half by twelve for a very long time. Mr. Bergstrom made the applicant aware that the Board would base their decision according to the Kwik Check rules. Mr. Fahey stated his lot was about 3700 square feet. He believed the Code was written for lots that were around 6000 square feet. Mr. Hudson thought Mr. Fahey's lot was likely grandfathered in. Mr. Fahey felt that the percentage he was asking for on his lot compared to homes built more modern was minimal. Mr. Fahey was requesting to build a 15-foot addition off the rear of his home. Currently they have a deck and beam there. This proposed addition would neatly meet up with that beam. He stated that if they were held to the Code, it would not make the addition cost effective. Mr. Bilodeau asked Mr. Fahey the nature of the zone in which the property is located. He asked if it was a residential area. Mr. Fahey replied yes. Mr. Bilodeau referred to Mr. Fahey's application where Mr. Fahey stated that he would bring the home up to the standard already existing in the neighborhood. Mr. Bilodeau explained that Mr. Fahey needed to consider the character of the immediate vicinity in the neighborhood. He asked if other homes had similarities. Mr. Fahey replied that his home was half of a duplex which meant they were unique on the street, but next door to him was owned by Matt Dutt who had put up a very large home which he assumed the Board had to have approved. Mr. Fahey's addition would not be dwarfing anything; it would just be a two-story fifteen-foot addition with new siding all around it which would improve the home. Mr. Bilodeau proceeded to ask Mr. Fahey whether, if he were approved for this addition, it would in any way affect his neighbors. Mr. Fahey did not feel that it would because the home next door was put up in the last two years and was much bigger in size. Mr. Hudson examined a photo of Mr. Dutt's property and noted that it looked as though he had the back paved for parking whereas Mr. Fahey did not. Mr. Fahey said that was correct. Mr. Fahey explained that it was 10 feet from the house to the property line and the porch was 5 feet so there was no room in the back for parking. Mr. Bilodeau asked Mr. Fahey whether, if they did not grant the variance, there were any other hardships that he would have to endure other than not having a bigger bedroom. Mr. Fahey replied no, but it would be financially tough going to nine feet instead of the fifteen feet he wished to be approved.

Mr. Hudson commended Mr. Fahey for being one of the few homeowner properties/occupants in that area and his willingness to live out the rest of his years in this property. He proceeded to ask him how having the cramped room in his home would affect him for the future living there. Mr. Fahey stated that the quality of life would be diminished. Mr. Fahey specified that their kitchen space was 7 feet by 14 feet. Mr. Bergstrom asked Mr. Fahey whether he spoke with any of his neighbors regarding this addition. Mr. Fahey said that he did speak to Mr. Dutt about his proposal and Mr. Dutt was on board with it. Mr. Fahey noted that Mr. Dutt also owned the home on the other side of the wall as Mr. Fahey. Mr. Fahey added that he had never had an issue with Mr. Dutt's student tenants. He had also spoken to other immediate neighbors, including a neighbor only named as Tom who seemed to not care one way or another. Another neighbor located down the street from him, Ms. Marne Ryan, emailed regarding his proposal and wished him good luck. Mr. Bergstrom felt there was consensus in the neighborhood in support of Mr. Fahey. Mr. Levandoski asked Mr. Fahey whether he would be able to age in place as he got older the way the house currently was. He hoped to remain spry and be able to age in place. Mr. Fahey intended to turn a downstairs powder room into a full bathroom as part of the addition.

Mr. Hudson reviewed the *Kwik Checks*.

1. *The nature of the zone in which the property is located* – Residential area with only a few homeowner occupants.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Many rentals with college student tenants. 2 or 3 homeowner-occupied single-family homes or townhomes.
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 this would affect any other properties. As stated, there was a much bigger home immediately next door to Mr. Fahey with a paved backyard for parking. The neighbors seemed to be in favor of the project.
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 recalled that Mr. Fahey had said that he wanted to live out his days at this home. He felt that not having this variance would have an impact on Mr. Fahey and his wife's quality of life. He also noted that it seemed like a nominal request. The current lot coverage was 25% and this variance would only increase it to 27.5%. This was only a 2.5% change in coverage.

Given the Kwik Check analysis, Mr. Hudson would be in favor of approving the variance.

Mr. Bergstrom opened the floor to public comment.

Gunter Shaffer, 110 Ridge Road, Maryland was sworn in. Mr. Shaffer was a friend of Mr. Fahey who spoke on his behalf regarding his proposal. Mr. Shaffer stated that Mr. Fahey's proposal would not change the nature of the neighborhood and would not have an adverse effect on the neighbors' quality of life, as it was not different in size from what was already there. Through a quick study he had found six buildings in the area that were over two thousand square feet in comparison to what Mr. Fahey was proposing, which was roughly fifteen hundred square feet. Mr. Shaffer concluded his comments by saying the proposal was not oversized in any type of way and Mr. Fahey wanted to live out the rest of his year in a place that was comfortable, and it was not asking for a lot.

Mr. Levandoski wholeheartedly agreed with Mr. Hudson's Kwik Check analysis. Mr. Levandoski added that he was glad the applicant had gone to various neighbors that owned homes on Prospect and that those neighbors were in favor or had no problems. Mr. Levandoski would also be in favor of granting the variance. Mr. Bergstrom agreed with his learned colleagues that this seemed to be a minimal request especially compared to other homes in the neighborhood.

MOTION BY MR. HUDSON, SECONDED BY MR. LEVANDOSKI: TO APPROVE THE VARIANCE AS REQUESTED WITH RESTRICTIONS TO START CONSTRUCTION WITHIN SIX MONTHS.

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Hudson, Levandoski.
Nay: 0.
Absent: Moore.

3. **The appeal of Jay Freebery, property address 300 Socum Court, for the following variance:**

- **Sec. 32-60(a)(1) – Sign Standards for Residential Zoning Districts. –** *Identification.* Maximum number of one. Maximum area of 20 square feet. Maximum height of six feet. The applicant is requesting two additional temporary identification wall signs that are 64 square feet in area and eight feet in height placed 12 feet from the ground for a total of 20 feet. The following variances are required:
  - Two variances for two additional signs;
  - Two variances of 44 square feet each for the area of each sign; and
  - Two variances of twelve feet each for the height of each sign.

Ryan Boll, 1405 Foulk Road, Wilmington, DE was sworn in. Mr. Boll shared that the property was not for sale but for lease. Advertising this had been challenging according to the feedback he had received. Mr. Boll wanted temporary additional signs for a period of 2 to 3 months on the north and south façade of the building along South Main Street.

Mr. Hudson interjected with a question to Mr. Bilodeau~~,~~ He asked whether it was correct that any variance they gave was not temporary. Mr. Bilodeau replied the application requested temporary signs for 2 to 3 months. Mr. Hudson asked whether any variances given ran with the land. Mr. Bilodeau stated that the Code did discuss temporary signs. Mr. Hudson wanted to make sure the Board could grant what the applicant was asking for. Mr. Boll reiterated his proposal was for temporary purposes. The signage would be attached to the side of the building, not on the actual portion of the structure along South Main Street but either the north or south end of the building. The property was sandwiched between two business/commercial use properties. He described that there was a vacant parcel zoned BC (business commercial) south of his property. On the north side of the structure, there was a gas station. Across the street was a BB-zoned mixed-use property with signage across all structures. Directly behind the property were rentals. He felt that any impact on adjacent properties was very minimal. He hoped the approval of the signs caused more exposure, and improved operations for him to maintain the building at full occupancy.

The chair opened the floor to questions from the Board.

Mr. Hudson asked what the current occupancy rate was. Mr. Boll said about 80%. There were 4 units left to be leased over the coming months. Mr. Hudson asked how long they had been open. Mr. Boll corrected that current occupancy was 100% but he was looking for next leasing cycle occupancy which was the current challenge. Mr. Hudson asked if it was correct that they had 80% occupancy for the next leasing cycle. Mr. Boll said that was correct. Mr. Bilodeau asked what the current identification sign said. Mr. Boll said it read South Main Commons with a telephone number and he did not recall what else the sign had on it. Mr. Boll distributed an image of the current sign. Mr. Bergstrom asked if this would be a one-shot deal with intentions of being resolved to not require this large of signage. Mr. Boll said that would be correct.

Mr. Hudson asked Mr. Boll if he said that the direct competition had better sign advertisements. Mr. Boll replied they did. Mr. Levandoski asked how many years this property had been open for leasing and if they were at 100% capacity the entire time. Mr. Boll said it had been open 3 years during which the occupancy had fluctuated. He knew it had not always been 100% but he did not have the specifics at the time. Mr. Levandoski asked what would happen in the future if they were not at 100% and could not put up signs. Mr. Boll said that this year, marketing efforts did not get initiated in time which set back the timelines. He felt this was a short-term stopgap that would enable the management to add additional exposure. He hoped this would be impactful in alleviating some questions for people who drove past the property and did not know whether the units were for sale. The company had gotten feedback that it appeared the units were for sale. This would help convey that the units were for lease. The future goal was to have a permanent monument signage up as was approved initially but which had not happened to date. Mr. Boll felt this would alleviate the need for this temporary signage, in addition to extra marketing efforts they would be working on next year to not end up in the current situation. Mr. Hudson asked for clarification that permanent signage would be going up eventually. Mr. Boll believed there was a more permanent monument signage for the location of the current signage. Mr. Hudson asked where that was. Mr. Boll said it was on Murray Road.

Mr. Bilodeau stated there were different categories of signs in the Code. There was a category for temporary signs that could go on the fence, wall or ground that required the approval of the City Manager or his designee. Mr. Bilodeau asked what the length of time would be for a temporary sign. Mr. Fruehstorfer said a temporary sign was not to exceed 14 days. It was definition 34. Mr. Bilodeau asked whether the applicant wanted for only 3 months of this year. Mr. Boll said that was correct. Mr. Levandoski asked when Mr. Boll would plan to post the signs if he was given approval for 2 or 3 months. Mr. Boll said it would be as soon as possible. Mr. Hudson asked what the occupancy rate was at this time last year for the coming cycle. Mr. Boll answered it was roughly 95%. They had been in a better position last year this time than they were this year.

Mr. Hudson asked how not getting the desired occupancy rate would affect the business. Mr. Boll wanted to ensure that they were able to lease up the property and continue to operate it efficiently. This would continue to drive tax revenue. He wanted to make sure the leasing revenue allowed him to maintain and operate the building. Without the desired occupancy rate, it put undue financial stress on overall operations. With that came additional complications with expenses on the property. Mr. Hudson asked if the monumental sign going up would help to alleviate this problem next year. Mr. Boll said that was correct in addition to alternative marketing initiatives and other steps management was taking to ensure that this time next year they were not in the same position. Mr. Hudson asked who the different competitors were that were referenced in the application. Mr. Boll stated there was a number of other rental communities on South Main Street including Rittenhouse Station, The Lofts at Rittenhouse and Amstel Square. Mr. Levandoski asked whether the competitors hung similar types of signs from their properties. Mr. Boll answered there were very similar signs on those properties. That had been the impetus for coming and asking for leniency understanding that the zoning was different for surrounding properties. That allowed those properties to do some alternative signage to ensure maximum marketing exposure. With the current zoning of Mr. Boll's property, it was a challenge to properly convey that the community was for rent. Mr. Boll did not have any pictures of their signs.

Mr. Hudson asked Mr. Fruehstorfer if the Lofts at Rittenhouse were zoned differently. Mr. Fruehstorfer stated the Lofts were BB. Mr. Levandoski clarified that they would be permitted to have signs. Mr. Fruehstorfer advised depending on the amount of frontage, the minimum was 75 square feet. Mr. Hudson asked Mr. Boll what his property was zoned. Mr. Boll stated it was zoned RM. He reiterated that the property was sandwiched between BC, commercial use and other rental properties. Mr. Boll realized the zoning posed a challenge which was why the consideration was temporary. Mr. Levandoski asked how quickly Mr. Boll would move forward with the installation of the monumental signs. Mr. Boll said that took a bit more time to finalize design, but it could be done during the summer.

The Chair opened the floor to public comment.

Jean White, District 1, was sworn in. Ms. White expressed she did drive past the location twice and had reservations about the application. She summarized that the request was for signs for a limited amount of time. The reason being given was that the applicant wanted to get noticed by potential customers in order to compete with neighboring rental units. She had not seen this kind of argument before. Ms. White had turned on Murray Road from Peach Road to get to the entrance of the property. She had not seen an identification sign. She saw that to the left of where the occupants drove in to their apartments, there was a sign that said, "South Main Commons Luxury 4-bedroom Townhomes" and the telephone number and website. The sign stated they were now leasing for the next school year. She felt this was not an identification sign but was an advertisement sign. Ms. White had also seen a banner. She said that the colors on the banner did not make it stand out. She also felt there was room to add contact information. Ms. White asked if the banner was allowed. Ms. White noted that the property was not really sandwiched anymore because the lot next to the property was vacant. Ms. White also noted that rental properties advertised not only through signs, but through the internet. Ms. White was not necessarily against this request, but she was confused.

Mr. Fruehstorfer commented on Code definitions as opposed to what people felt were common sense. Mr. Fruehstorfer explained that the Code said an advertising sign was for business offered elsewhere than upon the premise. He stated that the advertisement sign that Ms. White referred to was not an advertising sign according to the Code. It was actually a business sign which was defined as a sign directing attention to a business, commodity, service or entertainment conducted, sold or offered upon the same premises. Mr. Bergstrom asked whether the current sign was compliant. Mr. Hudson asked if the sign was still posted. Mr. Boll believed it was. It was his intention to have it removed and replaced with the temporary signage. Mr. Fruehstorfer thought that the sign was likely not allowed and should have had a permit to go up. It was likely considered a real estate sign. Mr. Fruehstorfer asked if it had a permit. Mr. Boll was unsure. Mr. Bilodeau asked for clarification that the way the zoning was set up the property was allowed one identification sign. Mr. Fruehstorfer said that was his understanding. Mr. Bilodeau noted according to the picture provided by the applicant, there was one sign under a tree with some information. He asked if that was the identification sign. Mr. Fruehstorfer would call that a business sign. Mr. Bergstrom asked if there was an address on the front of the building. Mr. Boll said that each unit had its own identifier. Mr. Bergstrom asked if emergency services that were not from Newark could find the building easily. Mr. Boll believed they could. Mr. Fruehstorfer had not heard complaints. Mr. Bergstrom believed that the Code said there needed to be large numbers on the building. Mr. Fruehstorfer said there was a street sign for Socom Court and each unit had a number.

Mr. Hudson asked if the picture provided was to scale. Mr. Boll said it was not. Mr. Levandoski asked what information the applicant proposed to put on the pedestal sign. Mr. Boll said it would be the name of the community, addresses and contact information. Mr. Levandoski asked if that then became the one permitted sign for the property. Mr. Fruehstorfer clarified that this sign was in the subdivision plans and was approved as part of that process. He thought they would also be able to have an identification sign in addition to that. The identification sign just indicated the use and address, not telephone number or email address. Mr. Fruehstorfer stated that identification signs were defined as "a sign other than a bulletin board sign or nameplate sign indicating the name of a permitted use, the name and address of a building, or the name of the management thereof." Mr. Fruehstorfer noted that the residential zoning allowed that sign to be larger than in the business districts.

Mr. Boll thanked Ms. White for her feedback and addressed her concerns about marketing. Mr. Boll recalled that Ms. White had mentioned internet marketing. Mr. Boll said that people often had difficulty contacting them if they were interested. He felt that having their name on a sign enabled people to be able to search and find the company.

Mr. Bilodeau stated that the Kwik Check analysis would need to be applied here though it may be a difficult test in this case. Mr. Bergstrom agreed that this was an area variance. Mr. Bilodeau advised that if the Board was considering granting this variance, they should say specifically the dates for which the variance was granted. He advised they be very specific on when the signs could go up and when they needed to come down. He summarized that this variance would allow 2 additional identification signs in addition to the one identification sign that already was there. Mr. Bilodeau highly recommended being very specific about dates in 2018 and not moving forward. Mr. Hudson asked for confirmation that there was already one identification sign. Mr. Bilodeau said that was correct and showed Mr. Hudson on the image provided. Mr. Levandoski asked if the "Now Leasing" sign was not a legal sign. Mr. Fruehstorfer did not know. Mr. Bergstrom asked whether apartments had the right to put up a "For Rent" sign. Mr. Bilodeau believed they did. Mr. Bergstrom thought this could not be regulated. Mr. Hudson thought commerce signs could be regulated.

Mr. Hudson reviewed the *Kwik Checks*.

1. *The nature of the zone in which the property is located* – Mixture of RM, BB. Other uses surrounding the property included a gas station, other rental properties and residential properties that Mr. Hudson believed were also mostly rentals.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Same as above.
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 this would seriously affect the neighboring properties and uses if this was a limited time, one-shot event for the 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* – Mr. Hudson had heard that the occupancy rate for the next cycle was a little lower than it had previously been which was causing worry.

Mr. Hudson was on the fence. He was leaning toward agreeing to grant the variance based on 2 factors. The first was that the monumental sign was coming soon. The second was that the Lofts at Rittenhouse were zoned separately and able to have larger signs. That tipped him toward approving this as a temporary one-time thing. Mr. Fruehstorfer clarified that for a real estate sign, a permit was not required but there was a maximum height of 5 feet. This meant that the current real estate sign was higher than it was supposed to be but did not require a permit. The top of the sign could not be more than 5 feet from the ground.

Mr. Levandoski agreed this was a difficult request. He agreed with what Mr. Hudson had said. He would be willing to grant the variance if the applicant would allow putting timelines on the variance as suggested by the City Solicitor. He also wanted to see if the applicant would be willing to work with the City of Newark to ensure that any and all signs that remained were in compliance with City Code. This included the "Now Leasing" sign. Mr. Bergstrom noted that was a matter of enforcement by the Code Enforcement Division. Mr. Levandoski agreed but he wanted to see if there was good will to remove any non-compliant signs. Mr. Bilodeau suggested that Mr. Boll contact Code Enforcement and check about the signs before putting them up. Mr. Levandoski suggested a 75-day limitation on the temporary signs. Mr. Fruehstorfer added that the Code Enforcement Manager was comfortable with this sign meeting the definition of an identification sign. He believed this answered Mr. Bilodeau's question. Mr. Bergstrom agreed with the Kwik Check analysis and the 75-day limitation. Mr. Hudson asked the applicant if mid-July was fine as a date to take down the signs. Mr. Boll was fine with that.

MOTION BY MR. HUDSON, SECONDED BY MR. LEVANDOSKI: TO APPROVE THE TEMPORARY ONLY VARIANCE WITH THE STIPULATION THAT THE SIGNS BEING GRANTED VARIANCES MUST COME DOWN BY END OF DAY JULY 13, 2018. THE VARIANCE BEING GRANTED IS FOR TWO SIGNS THAT ARE EACH 64 SQUARE FEET WITH A MAXIMUM HEIGHT OF 20 FEET.

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Hudson, Levandoski.
Nay: 0.
Absent: Moore.

3. The meeting was adjourned at 8:09 p.m.

Sarah Campanelli
Secretary

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