

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
OCTOBER 18, 2018**

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chairman Chris Rogers Dave Levandoski Bill Moore
Absent:	Kevin Hudson
Staff:	Paul Bilodeau, City Solicitor Mike Fortner, Planner Tara Schiano, Deputy City Secretary Whitney Coleman Potts, Administrative Professional

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

1. APPROVAL OF MINUTES FROM MEETING HELD AUGUST 16, 2018:

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

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Levandoski, Moore, Rogers

Nay: 0.

Absent: Hudson.

2. The appeal of Long Wang, property address 125 King William Street, 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 one off-street parking space and is requesting a variance of one off-street parking space.

Ms. Potts read the facts of the case for the record.

Mr. Bergstrom asked if there was anyone present to speak in favor of this application.

David Wang, son of the applicant was present to speak on behalf of the applicant due to a language barrier. Mr. Wang was sworn-in. He listed his personal address as 107 Halloween Run, Newark, Delaware, 19702. Mr. Wang said he lived in the City for 18 year and was a graduate of the University of Delaware with a Bachelor of Science in Engineering & Biochemistry and a minor in Japanese. Mr. Wang said he currently helped his father manage his

rental units. He expressed that it was necessary for him to assist his father since many family members due to many family obligations. He stated he wanted to request a variance for a rental permit at 125 King William Street. The family's intent when they purchased the property was to use it as a rental. Mr. Wang said the family owned several rental units in the City of Newark and noted all other units had rental permits. He believed his family always followed the rules.

Mr. Wang stated the purchase of the property was an unexpected opportunity that was presented by a family friend. Mr. Wang said the realtor who sold the property was a friend of his father and the property was a short sale. He said the property had been vacant for four to five years and the realtor convinced his father it was a good purchase and the unit would be able to be rented. Mr. Wang reiterated the fact his family trusted the realtor and emphasized their belief that they would be able to obtain a rental permit for the property. He described the property as a 3-bedroom, 2.5 bath. Mr. Wang believed the realtor told him that the HOA fees were lower than they turned out to be; specifically, she gave the family the indication that the HOA fees were \$180.00 per month. Mr. Wang stated they believed \$180.00 was an acceptable amount for HOA fees per month for a rental unit. He claimed the realtor was in a rush and pushed his father towards the purchase of the property. As a result, Mr. Wang said they did not research the property very well and bought it quickly. After they purchased the house, he stated they found out they would be unable to obtain a rental permit since there was only one parking space permitted. He stated they were not able to sell the property and added his father did not want to choose another real estate agent due to the prior bad experience. Mr. Wang said a "for sale by owner" sign was placed outside the property for over a year and stated that more than 40 people had responded to the sign and viewed the house. Mr. Wang said the HOA fees were greater than \$180.00 per month and approximately double that amount.

Mr. Wang told the board they primarily rented the property to graduate students from China that only stayed for two to three years and occasionally rented for five years if they were working towards their PhD. He believed that his renters would not bother to buy a car. Mr. Wang said the students who rented his property were very quiet and did not bother the community. He believed it was a good idea for the property to receive a rental permit. Mr. Bergstrom asked Mr. Wang if he had any additional information to present. Mr. Wang stated that he did not have additional information at this time.

Mr. Bergstrom asked if there was anyone else from the audience that wanted to speak in favor of the application. There were no additional comments in favor of the application.

Mr. Bergstrom opened the discussion to questions from the board.

Mr. Levandoski asked the applicant to provide the number of houses that were in the development. Mr. Wang said there were 114 houses in the neighborhood. Mr. Levandoski asked how many parking spaces were in the neighborhood. Mr. Wang believed there were 177 parking spaces. Mr. Levandoski asked Mr. Wang how he would describe the current parking situation. Mr. Wang said he had been in the neighborhood and observed that the parking was very loose. He believed there were not many cars that parked in a row and stated that his neighbor used to have two cars. When the neighbor moved to Washington D.C., there were two empty parking spaces next to Mr. Wang's property. Mr. Wang said parking spaces were always empty on weekends and nights; specifically, there were not many cars that parked in the area. He reiterated that it was not crowded and there was no issue with obtaining parking.

Mr. Moore asked Mr. Wang if he knew how many rental units were in Williamsburg Village. Mr. Wang said he was not sure but believed there were four rental units. Mr. Moore asked when the applicant purchased the property. Mr. Wang said the property was purchased on January 20, 2017. Mr. Moore reiterated Mr. Wang's

statement that they owned other rental properties in the City and mentioned the family had rented properties for some time. Mr. Wang confirmed same. Mr. Moore asked the applicant if he was aware of the problems surrounding parking and rental use when he purchased the property. Mr. Wang stated that he was not aware of the problem because he had never experienced them before. He told Mr. Moore that most of the homes they purchased already had rental permits, were grandfathered, or the seller had already applied for the rental permit. He reiterated his prior claim that they had no idea there was a single parking space requirement. Mr. Wang reminded the board that he previously stated his father went to great lengths to get the house and stated that he had to withdraw two of his 401k plans early to make the purchase.

Mr. Rogers confirmed the property was a condominium and the applicant owned the unit. Mr. Wang confirmed this. Mr. Rogers asked if the applicant's father owned one parking space. Mr. Wang confirmed that his father owned one parking space. Mr. Wang said the parking spaces were numbered. Mr. Rogers asked who owned the other non-designated parking spaces. Mr. Wang stated that the non-designated parking spaces were for guest parking. Mr. Rogers expressed that he believed the condominium association would be the owner of the community parking spaces. Mr. Bilodeau agreed and stated that there was someone in the audience from the condominium association that would be able to answer those questions.

David Zerbato, Attorney for the Williamsburg Village Homeowners Association (HOA) was sworn in. He said he was opposed to the proposal and confirmed Mr. Wang's statement of 177 parking spaces in Williamsburg Village and 114 individual units. He said each unit had one designated parking space and the balance of the spaces was owned by the HOA and used for overflow parking. Mr. Zerbato stated this type of variance request had been brought before the board previously and the standard required was substantial as far as what the appellant had to show. Mr. Zerbato believed there was a history of parking issues as well as congestion. Furthermore, it was his opinion this was one of the reasons the statute and ordinance were revised in the early 1990's requiring a minimum of two spaces per rental unit for the granting of a rental permit. Mr. Zerbato did not believe the applicant met the standard; despite the assertion the applicant was unable to sell the property and he believes the evidence did not show a reasonable return could not be achieved if it was used for its intended purpose. Furthermore, Mr. Zerbato did not believe the applicant's situation was unique and believed there were no additional circumstances that warranted the variance.

Mr. Zerbato said the presenter indicated they purchased the house despite having prior history and knowledge of the rental community. He believed the applicant failed to research the matter properly to understand the parking restrictions for the unit and neighborhood. He reiterated since the early 1990's, this community has been or was intended to be an owner-occupied community. While there were existing rental permits in the community, he reminded the board they were grandfathered in the early 1990's when the initial ordinance was amended. Mr. Zerbato reiterated the real issue was the parking itself and expressed the applicant had acknowledged the one space per unit is an issue. He stated there were 63 extra spaces for overflow and guest parking indicating that 228 parking spaces would be required if every unit were to have two spaces. Because there were not 228 parking spaces, he requested the appeal be denied based on the facts presented, the applicant's failure to meet the standard for hardship, and the precedent as set forth from the board's prior decision.

Mr. Bergstrom thanked Mr. Zerbato and asked if members of the board had additional questions. Mr. Rogers asked if staff could verify there were only four other rental units in Williamsburg Village that were grandfathered. Mr. Fortner said he could verify there were legally grandfathered rental units in Williamsburg Village before the ordinance change; however, he did not know the exact number. Mr. Zerbato believed the presenter mentioned four rental permits and stated he did not know how many current permits were in Williamsburg Village.

Mr. Levandoski asked if there was information in the condominium by-laws indicating how guest parking is used.

Mr. Zerbato said the by-laws specifically referenced one parking space per unit and stated guest parking was first come first serve. Oftentimes, unit owners would utilize guest spaces if they had multiple vehicles even though it was not designated.

Mr. Bergstrom asked if there was anyone else from the audience who wished to speak regarding the application.

Victor Hudson, president of the HOA for Williamsburg Village, was sworn in. He said the applicant failed to mention he rented the property prior to getting a rental permit. Mr. Hudson stated to his knowledge, the applicant rented the property through Airbnb for quite some time and noted the property was listed on the website. He said the applicant had a small fire in the property and was told the HOA would not cover the expenses and [the applicant] would be required to take care of it themselves.

There were no further questions from the board at that time.

Jean White, District 1, was sworn in. She stated she believed the situation was a case of buyer beware; specifically, she believed that someone who was going to buy a property needed to perform their due diligence. Ms. White believed the applicant should have contacted the condominium association for information and believes the owner/applicant should have gone to the City of Newark to understand the rules regarding the property. First, she questioned whether the applicant went to the Planning Department to find out if there were any specific rules regarding what was required to make the property a rental unit. Secondly, she asked if the applicant had considered lowering the price to help with the sale of the property. Ms. White mentioned she was aware of a situation where the seller successfully sold the property after lowering the price; moreover, she believed the applicant should attempt that method. Ms. White believed there might be interested buyers who would like to be owner-occupants. She believed if the price were significantly lowered, the applicant might be able to sell the property to such an interested party at the proper price.

A member of the audience said he had a general question. Mr. Bilodeau asked the individual to approach the microphone. The individual said it was not a statement and was just a question. He asked if the request was to have an additional spot or to waive the requirement of a second spot. Mr. Bergstrom said the record reflected that the request was to waive the requirement of a second spot. He reiterated additional spots could not be created. The individual thanked Mr. Bergstrom for the clarification. *(Secretary's note: the individual was not sworn in or required to be sworn in by the Chair).*

Mr. Bergstrom asked Ms. Potts to read any correspondence for the record. Ms. Potts read the letter of opposition from Randall Rado for the record. She reported there were no additional letters of opposition or support for the application. Mr. Bergstrom invited the applicant to provide additional comments.

Mr. Wang said that he could not find any information on the Williamsburg HOA before they purchased the house. He stated during settlement on the property with the lawyer, he only received two pages of the settlement sheet. Mr. Wang said he did not receive a welcome packet and was not able to find any information regarding the HOA or anyone that could help answer his questions. Mr. Wang stated he was aware of the details related to the specific payment of HOA fees. He said he eventually looked online and found a form providing information regarding the HOA office. Mr. Wang believed Goldberg Realty Associates was listed as the management firm; however, he claimed he was unsuccessful in his multiple attempts to contact them. Eventually he was able to reach Goldberg Realty Associates and he was told how much the family owed in HOA fees. Mr. Wang reiterated his family was in a loss situation after the purchase of the property. He said he spoke to Code Enforcement in

2017 and they informed him since he did not fill out the rental unit application he was rejected. Mr. Wang said he filled out the application three different times and claimed Code Enforcement lost the applications in their system. He stated all their savings were depleted and said his entire family was tied to the house and they needed to rent it out. Mr. Wang reiterated that Code Enforcement already warned him about his prior rental application issue and said that it would not happen again.

Mr. Wang said the highest price he found to sell the property was \$110,000 which was lower than the purchase price. He said the maximum price someone showed him was \$50,000 and he said it was expensive to run the place. Mr. Wang said that the HOA fees were \$326 per month which equaled \$3,912 per year. He reiterated that it was necessary to pay the Real Estate taxes which amounted to roughly \$1,500 per year. Mr. Wang said that it ultimately cost his family \$5,412 to run the unit and reiterated that his family could not wait to sell the property. He said his family lost money every month on the property. Mr. Wang added the house was not in good condition when they purchased it. He said it cost over \$6,000 to fix the plumbing and this did not include the electrical wires that needed to be replaced due to the fire. Mr. Wang said the damage from the fire was extensive and stated the fire was caused by a space heater used by a renter. He said everything had been fixed to meet Code Enforcement standards. Mr. Wang believes his family was taken advantage of by the real estate agent.

Mr. Moore asked if the applicant currently rented the property on Airbnb and said that was an issue. Mr. Wang reiterated that his family had no choice but to rent the property on Airbnb and claimed Code Enforcement did not give them any help. Mr. Wang said Code Enforcement was not helpful and did not return his calls. Mr. Wang said this hearing was the last attempt to get a rental permit and stated that they would have to sell the house if the board decided against it.

Mr. Rogers asked if the applicant listed the house with another realtor. Mr. Wang said they attempted to list the house before the fire and they were not successful. He said the unit was condemned for six months after the fire until the necessary repairs were made.

Mr. Bergstrom asked if the applicant had a Certificate of Occupancy for the unit. Mr. Fortner said that they had a Certificate of Occupancy. Mr. Wang said everything in the unit was fixed and the property was not condemned.

Mr. Moore asked Mr. Bilodeau if the permit stayed with the property if it were granted. Mr. Bilodeau confirmed same. Mr. Wang thought the permit could be canceled if the owner of the house failed to pay the permit for a year. He said the property was purchased through a short sale. Mr. Wang said that he would remove the permit with Code Enforcement when he sold the property.

Mr. Bergstrom opened the discussion to additional public comment.

Steven Hudson, resident of 114 West Mill Station, was sworn in. Mr. Hudson stated that he was a landlord in 2002 for three properties in Williamsburg Village. Mr. Hudson said he attended the BOA hearing a few months ago for the same proposal in Williamsburg Village. He mentioned that as Mr. Zerbato previously stated, there were approximately 177 parking spots. He stated only approximately 15 out of 25 rental permits are active and the rest of the units are owner occupied. He stated that he believed four residents that lived there had rental permits. He said the main reason he sold the properties was due to the parking issues. He said all of the rental permits currently in existence were grandfathered in the early 1990's. He said he believed all the previous issues from the 1990's would start to back up again if the permits were allowed. He said that the permits are for four persons per unit. Technically, although he only had one parking spot, he could have four people in the unit with vehicles. He stated with 114 units, by the time you add up the 4 spots that the tenants may need to park and guests coming in, there would not be enough parking spots. He advised the board to take a hard look at this

issue, as he considers it to open up a resolved issue is not a wise thing to do.

Mr. Hudson said the applicant should take issue with the realtor and suggested he sue the real estate agency. He said that in a condominium association, the individual should receive a Delaware Uniform Commercial Ownership Interest Act (DUCOIA) and there was no reason to not understand what was going on. Mr. Hudson agrees and reiterated the parking was an issue and a total nightmare. He told the board that he sold his last property in Williamsburg Village and noted there had been ten to twelve properties sold in the last year. Mr. Hudson strongly believed the applicant would be able to sell the property; however, he acknowledged that there was not a huge profit to be made.

There were no further questions from the board. Mr. Bergstrom closed the public portion of the discussion for internal debate. Mr. Moore stated that he would review the Kwik Checks. Mr. Zerbato said he believed the Kwik Check factors did not apply given that it was not an area variance. Mr. Bilodeau stated that the Kwik Checks were necessary since the area variance standard was applied.

Mr. Moore reviewed the Kwik Checks.

1. *The nature of the zone in which the property is located* – Williamsburg Village is zoned RM (residential single family) and he mentioned the grandfathered units.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Single family homes and a residential area. Mr. Moore stated the character of the neighborhood and locality was not a rental community. Specifically, the area was a single family owner-occupied.
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 said the removal of such restrictions would have an adverse effect on the neighboring property and uses. He said the record reflected granting these types of variances would set the precedent for others to request same. He believed the spirit of the ordinance was to stop issues mentioned during the discussion. Mr. Moore stated he believed granting the permit for one applicant would lead to additional requests from everyone in the community of Williamsburg Village. Furthermore, he believed it would exacerbate the present parking difficulties.
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.* Based on testimony, Mr. Moore stated the owner was in a difficult situation that was partly his own doing. Also, he reiterated that the applicant stated he was not aware of the lack of the rental permit requirements. Mr. Moore said the case was somewhat of a buyer beware situation. It was his opinion that the harm to the applicant (if the variance was denied) was not greater than the probable effect it would have on the neighboring properties if the variance was granted. As such, Mr. Moore did not approve the variance request and stated that he would deny it.

Mr. Levandoski concurred with Mr. Moore's statements and agreed with his conclusions. Additionally, he wanted to add he did not believe the applicant exhausted all remedies by placing the house on the market with a licensed realtor and the applicant did not get a reputable market evaluation. Mr. Levandoski said it was not possible to ascertain whether there would be a hardship from not being able to sell the house because the suggested protocol was not followed by going through a licensed realtor. Therefore, Mr. Levandoski was opposed the applicant's request.

Mr. Rogers concurred with the statements of Messrs. Moore and Levandoski regarding the Kwik Check Factors and added the mitigation measures offered by the applicant were not sufficient (i.e. renting to Chinese students

and that they would not have cars). Additionally, the applicant's mitigation measures were unenforceable and would be out of the realm of the City to enforce same. Therefore, Mr. Rogers concurred with the previous statements from the board and was opposed to the applicant's request.

Mr. Bergstrom concurred with the board members' statements and said he was not convinced that the applicant had a true hardship. While he understood the applicant's plight, he believed it was due in part to the buyer beware aspect as mentioned earlier on the record. Mr. Bergstrom announced his opposition to the applicant's request. He and asked the board for a motion.

MOTION BY MR. MOORE, SECONDED BY MR. LEVANDOSKI: THAT THE VARIANCE REQUEST BE DENIED.

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Levandoski, Moore, Rogers

Nay: 0.

Absent: Hudson.

3. The appeal of William & Laura Haines, property address 735 Harvard Lane, for the following variance:

- **Sec. 32-9 (c)(6)c – Rear yards** – A rear yard shall be provided on every lot and shall be 30 feet on an interior lot in the RS zone. The Plan shows a rear yard of 19.2 feet, requiring a variance of 10.8 feet.

Mr. Potts read the facts of the case for the record. Mr. Bergstrom asked if there was anyone to speak in favor of the application.

William "Billy" Haines, 735 Harvard Lane, was sworn in. Mr. Haines reported he hoped to construct a porch on the rear of their property. He believed the porch was within the character of the neighborhood as far as the style and size therein. Mr. Haines said the lot was a corner lot and that it was skewed; therefore, there was not a lot of room to do much. He stated he was requesting a 10.8-foot variance to build the porch. Mr. Haines said his neighbor supported the project and announced he brought a letter of support with him from the next-door neighbor; specifically, the neighbor whose property shared the applicant's property. Ms. Potts read the letter of support from Ms. Beth Boose, 403 Vassar Drive into the record.

Mr. Bergstrom said it was a corner lot and that the board typically grappled with the interpretation as it related to side-yards.

Mr. Moore said it appeared that the applicant wanted to add onto an existing unscreened porch. Mr. Haines stated that they were essentially bumping out a wall in the kitchen and dining room to make it slightly larger with the screened-in porch coming off the dining room. He said there was no existing porch at the moment. Mr. Moore asked the applicant for the reason that he wanted a screened in porch. Mr. Haines said his wife wanted the screened in porch. Mr. Moore asked if the applicant had trouble with mosquitos. Mr. Haines confirmed that they had trouble with mosquitos and mentioned that this was part of the reason that he wanted a screened in porch. Mr. Moore asked if Harvard Lane was close to Downes Elementary School. Mr. Haines said it was close to Casho Mill Road and that his property was on the Corner of Harvard Lane and Vassar Road.

Mr. Rogers asked for clarification regarding the site-plan and said the current plan revealed a rear-yard of about 19.2 feet. There was discussion at the table regarding the size of the rear-yard. Mr. Haines said that that from the furthest part of the porch to the property line there was a 30-foot requirement. Mr. Fortner said the site plan

he had showed a rear-yard of 19.21 feet and it was the farthest part of the porch to the property line. Mr. Fortner passed along his site-plan with his drawings for the board. He reiterated that the variance was required because it was a roofed porch as opposed to strictly a patio. Mr. Rogers asked if other neighbors had similar porches. Mr. Haines confirmed same and stated that most of the neighbors made improvements to their properties since the houses were built in the 1960's. Mr. Rogers asked for clarification regarding which neighbor sent the support letter. Mr. Haines reiterated that the neighbor who supported the application shared the property line and the address was 403 Vassar Drive.

Mr. Moore stated that if the applicant's proposal did not include a roof that the proposal would not be presented or required to come before the board. Mr. Fortner confirmed same. Mr. Levandoski asked the applicant if he gave any thought to widening the porch. Mr. Haines said they considered the idea but decided against it since they did not want to cover up a window and did not have enough space due to the 30-foot requirement. He reiterated the limitations of the 30-foot requirement and stated that he believed the porch would not be usable under those conditions. Mr. Moore said the board had previously seen requests similar to the applicant's case and stated that he did not have any further questions.

Mr. Rogers asked for the approximate dimension of the addition for the porch if it were built to Code; specifically, he questioned how wide the porch would be. Mr. Haines said the width would not be an issue and that 14 feet was as wide as it could go. Mr. Rogers asked for the approximate dimensions of the porch's depth. Mr. Haines said it would be 10 feet, 14' x 10', which did not feel was adequate to put a table on. Mr. Rogers said he did not have further questions.

Mr. Bergstrom asked if there was anyone else in the room that wished to comment for or against the application. Bearing that there were no further comments or additional letters for or against the application, Mr. Bergstrom closed the public portion of the discussion and asked a board member to run through the Kwik Checks. Mr. Moore stated that he would be glad to go through the Kwik Checks for this case.

Mr. Moore reviewed the Kwik Checks:

1. *The nature of the zone in which the property is located* – The nature of the zone in which the property is located is zoned RS, residential housing.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Mr. Moore said the character of the immediate vicinity was single-family homes and reiterated that it was a residential area.
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 did not believe the removal of the restriction would seriously affect the neighboring properties. Additionally, he stated the record reflected that one of the neighbors (Beth Boose, 403 Vassar Drive) supported the request. As noted, it was an oddly shaped corner lot.
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.* As he noted earlier, Mr. Moore stated the property was an oddly shaped corner lot. The owner was looking to improve the property value with a screened-in porch that would protect him from mosquitos etc.

In Mr. Moore's opinion, the restriction created an exceptional practical difficulty in this situation. Moreover, the difficulty as it related to the making of normal improvements. As such, he believed the screened-in porch would be an improvement in the area and he would vote to approve the variance.

Mr. Levandoski agreed with Mr. Moore's comments and stated that he had nothing else to add; therefore, he was in support of the applicant's request.

Mr. Rogers concurred with Messrs. Moore and Levandoski and had nothing to add and said he was in support of the applicant's request.

Mr. Bergstrom stated he would concur with his learned colleagues and added the one point that swayed him greatly was the letter of support from the immediate adjacent neighbor. He said that no one in the community would know more about any hardship that might exist better than the effected neighbor. With that, Mr. Bergstrom stated that he would vote in support of the applicant's request. He asked if there was a board member that would like to make a motion.

Mr. Levandoski asked if the motion should include a stipulation regarding when the applicant's work should be completed or when it should start. Mr. Bergstrom concurred with Mr. Levandoski and described the stipulation as a very good thing. He asked Mr. Moore if he wanted to make the motion and asked if the applicant was ready to start within six-months. Mr. Haines announced that he was ready to start work in six months.

MOTION BY MR. MOORE, SECONDED BY MR. LEVANDOSKI: TO GRANT THE VARIANCE AND THAT CONSTRUCTION OF THE PORCH BE STARTED WITHIN SIX MONTHS.

Mr. Bergstrom asked if there were any additional points for discussion; otherwise, he stated that he would move on to the next case. Mr. Rogers asked what the six-month stipulation was utilized for; moreover, he said he was new to the board. Mr. Bergstrom told Mr. Rogers that it was necessary to put a start time to a variance, otherwise the variance would be in limbo and that it was not the goal. Mr. Rogers stated that if construction did not start within six-months of the variance than it would disappear. Mr. Bergstrom confirmed same.

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Levandoski, Moore, Rogers

Nay: 0.

Absent: Hudson.

Mr. Bergstrom told the applicant that the motion was unanimously approved and asked him to remember the stipulation that was placed upon him. He reiterated that the applicant had six-months to begin work on the project and asked him to obtain his permit in a timely fashion.

There was discussion at the table regarding a break. Mr. Bergstrom announced there would be a recess for ten minutes.

(Secretary's note: the meeting resumed at 8:38 p.m. There was a question regarding the recording system and it was determined that there was no issue with the recording device)

4. The appeal of Randall J. Myers, property address 67-69 New London Road, for the following variances:

- **Sec. 32-11(c)(1) – Minimum lot area** – The minimum lot area for any other permitted use, together with accessory buildings, shall be 6,250 square feet. The Plan shows 2,352 square feet for Lot #1, requiring a

variance of 3,898 square feet. The Plan shows 2,308 square feet for Lot #2, requiring a variance of 3,942 square feet.

- **Sec. 32-11(c)(3) – Minimum lot width** – The minimum width of a lot shall be 50 feet. The Plan shows a width of 15.84 feet for Lot #1, requiring a variance of 34.16 feet. The Plan shows a width of 15.50 feet for Lot #2, requiring a variance of 34.50 feet.
- **Sec. 32-11(c)(5) – Building setback lines** – Each story or part of a building exclusive of cornices and uncovered steps and uncovered porches, shall be set back from the line of the street on which the building fronts by at least minimum distance of 15 feet. The Plan shows a building setback of 6.16 feet for Lot #1, requiring a variance of 8.84 feet. The Plan shows a building setback of 6.14 feet for Lot #2, requiring a variance of 8.86 feet.
- **Sec. 32-11(c)(7)c – Side yards** – In an RM district, two side yards shall be provided on every lot. In the case of a building more than two and one-half stories in height, each side yard shall be not less than one-third the height of the building. The Plan shows a side yard of 1.84 feet for Lot #1, requiring a variance of 9.86 feet. The Plan shows a side yard of 1.72 feet for Lot #2, requiring a variance of 9.98 feet.

Ms. Potts read the facts of the case into the record. Mr. Bergstrom asked if there was anyone present in the audience that wished to speak in favor of the application.

Stephen Kessler, attorney for the applicant was sworn in. He announced that he was a Delaware Attorney with the Danneman firm. He said he had a PowerPoint presentation. Mr. Kessler stated the applicant appeared before the board several months ago and said the applicant “went back to the drawing board” and decided to pursue a minor subdivision application with the City. He said the subdivision application consisted of taking the existing lot, dividing it in half, and creating two separate tax parcels on either side of the proposed building. Mr. Kessler added he would run through the presentation quickly and go through the Kwik Check standards; specifically, regarding how the applicant believed the application fits into those requirements. Mr. Kessler announced that Julian Pellegrini, engineer for the project from the Pelsa Company, was in attendance and would be able to answer questions. Additionally, Mr. Kessler said Randy Myers and Mrs. Myers were in attendance.

Mr. Kessler said he would run over the current site conditions for the benefit of the board. He referenced the site as displayed on the PowerPoint presentation and stated the property was close the corner on Hillside Road and New London Road. Mr. Kessler displayed an overview of the property and pointed out an additional adjacent property on the corner that Mr. Myers also owned. Although the adjacent property was not on the agenda for the evening, Mr. Kessler believed it was important to note that Mr. Myers owned the property for the record. He described the subject parcel [67-69 New London Road] as an “oddly-shaped” lot and stated that this fact was well-known before the proposal for its subdivision. Mr. Kessler displayed an image of the existing structure that depicted the front porch and its close proximity to New London Road. He said the current building was over 100 years old and believed the title research revealed the date on the property to be around 1900. Mr. Kessler reiterated the fact that Mr. Myers owned the property on the corner of the intersection of Hillside and New London Road. He showed a PowerPoint image of the outside of the property and described it as a fairly unremarkable single-family structure. Mr. Myers displayed a close-up shot of the plan for the property and informed the board that they were proposing a new building. Mr. Kessler displayed the current structure and the relation to the newly proposed building that would sit right on a lot line. He stated Lot #1 and Lot #2 would be created and a parking area would be in back of the new building.

Mr. Kessler said the current parking area was a driveway and noted it was difficult for people to leave the area with their vehicle. People were required to back their cars out of the driveway onto Hillside Road, bearing in mind the intersection was very close in proximity. He said the proposal called for a couple of new curb cuts, a

new entrance, and a one-way exit onto Hillside Road. Mr. Kessler believed the proposal would provide safer controls for exiting and entering the property. Regarding the surrounding properties, there were a number of duplex-type properties with lot line divided multi-family dwellings. He pointed out a structure he described as almost identical to the proposed property and displayed the property through a map on the PowerPoint. Mr. Kessler announced there were several multi-family dwellings of similar size on smaller lots; specifically, properties on Lincoln Street. He said the proposed property was surrounded by similar properties and noted the front yard setback requirement was 15 feet. However, Mr. Kessler stated he would provide a map that showed properties in the vicinity that had setbacks that were much less than 15 feet; noting they were not in compliance with the City's front setback requirement. He displayed this area on the PowerPoint for the record and noted the surrounding properties were in violation of the 15-foot front setback. On another slide, he highlighted Lot #57 and Lot #56 and showed they were located down the street as one moved away from Hillside Road.

Mr. Bergstrom asked Mr. Kessler to go back to the previous slide with Lot #57 and Lot #56 and asked him to indicate where the proposed property was in relation to same. Mr. Kessler expressed that it might be hard to see, and Mr. Bergstrom said it appeared to be in the direction of Deer Park Tavern. Mr. Kessler agreed and said he wanted to provide an example of what the floorplans were proposed to look like. He stated the floor plans were identical to each other and they were opposite sides of the party wall. Mr. Kessler reiterated the fact that they were two separate tax parcels. He displayed the floorplan on the PowerPoint presentation including the living room, dining room, bath, and kitchen. Mr. Kessler said the second floor had two bedrooms on either side. In addition, each side had a laundry and bathroom facility on the second floor. Mr. Kessler said the third floor had two more bedrooms across from each other and were separated with a bathroom. He pointed out the location of the stairwells and reiterated the two sides were separate. Mr. Kessler displayed an external view of the property and noted it was an architect's rendering.

Mr. Kessler stated he would review the *Kwik Checks*. He believed the exceptional practical difficulty for the property was obvious as the lot sizes and shapes were highly irregular; therefore, it was difficult for them to fit into the minimum lot area, minimum lot width, and building setback lines and side-yard requirements.

Mr. Kessler reviewed the *Kwik Checks*:

1. *The nature of the zone in which the property is located* – He described the nature of the property as high density; specifically, there were a lot of rental properties close together and the area was residential in nature.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Mr. Kessler reiterated the property was in a residential district. He stated it was consistent with every other use in the immediate vicinity and the variance would not change that nature in any way. Mr. Kessler believed the variance would make the property appear the same as its surroundings.
3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses.* - Mr. Kessler stated he believed the proposed property would help the neighboring properties in terms of traffic. He believed the current entrances and exits from the site to be dangerous. Mr. Kessler believed the proposal as part of the plan would make things much safer in terms of entrances and exits. In addition to neighboring properties, he stated he believed having a brand-new building on the block would go a long way from an architectural and aesthetic standpoint and the new architecture might encourage others in the surrounding vicinity to fix up neighboring properties.
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. Kessler articulated the belief that the proposal was within the bounds of normal improvements by a landowner who was entitled to pursue a subdivision under the City Code.

Mr. Kessler believed the proposal was good for the City and hoped the proposed one-way exit and entrance would make the intersection of Hillside Road and New London Road safer. He reiterated prior statements regarding the safety of vehicles that travelled down Hillside Road and added that the proposal would increase vehicle safety in that area. Mr. Kessler believed the creation of additional parking spaces at the site would have a positive impact to the effect that it would keep additional vehicles off of the street. As previously mentioned, Mr. Kessler reiterated the newly constructed residence would positively impact the architectural aesthetics of the block that he believed needed to be updated. Additionally, Mr. Kessler stated the project would generate additional tax revenue for the City; moreover, brand new housing would be added to an area that was already high density. The property was within walking distance of the University rather than driving distance. Mr. Kessler reiterated that the target of the project was student housing with the added benefit of close proximity to UD. Ultimately, he believed the project was in line with Newark's goal of promoting a walkable City. Mr. Kessler displayed the PowerPoint slide that depicted the developer's plan and informed the board that he, Mr. Pellegrini, and Mr. Myers would answer questions.

Mr. Bergstrom opened discussion to questions from the table.

Mr. Bilodeau stated that he reviewed the application and it appeared the applicant proposed two alternatives. Mr. Kessler said Mr. Bilodeau might be referring to the old application. Mr. Bilodeau told Mr. Kessler that he was referring to the application dated September 26th, 2018. Mr. Kessler said that was the old application. Mr. Bilodeau expressed that he did not believe there was more than one application and asked Mr. Kessler if the one alternative was proposed. Mr. Kessler confirmed that one alternative was proposed. Mr. Moore followed up to Mr. Bilodeau's comment and reminded the applicant that the project was discussed at the last BOA meeting on August 16th, 2018 and the minutes from that meeting had been approved at the current meeting. He asked Mr. Kessler to go back to the slide that depicted the actual structure. Mr. Kessler asked if Mr. Moore was referring to the architectural slide and he confirmed. Mr. Moore clarified that he was referring to the slide with the floor plan. Mr. Kessler displayed the slide and Mr. Moore asked him if the structure was a duplex. Mr. Kessler stated the structure was a semi-detached single-family dwelling. Mr. Kessler showed Mr. Moore where the lot line was located in the middle. The drawing depicted each side as a separate property and separate tax parcel. Mr. Moore reiterated the issue from the BOA meeting on August 16th was the definition of a duplex.

Mr. Kessler clarified that the applicant was seeking an interpretation of the definition at the last meeting and it was completely different than what was being requested at the present meeting. Mr. Moore told Mr. Kessler the decision from the August 16th meeting denied the applicant's request. He asked Mr. Kessler if the applicant's plan as presented at the current meeting was not a duplex and that the dwellings were two separate buildings. Mr. Kessler confirmed that the buildings were two fee-simple buildings on each side. Mr. Moore asked Mr. Kessler if the dwellings were two-single family homes. Mr. Kessler reiterated the dwellings were two single-family, semi-detached homes. Mr. Kessler stated the definition was listed in City Code. Mr. Moore deferred to Mr. Fortner and asked if single family, semi-detached homes were permitted in RM district. Mr. Fortner confirmed that single-family, semi-detached homes were permitted in RM district. Mr. Kessler pointed out the adjacent property and stated that if the subdivision were approved, they would enter into a cross-access easement agreement between all of the three lots. He reiterated the fact of common ownership between the three lots. Mr. Moore asked Mr. Kessler to repeat his statement for clarification. Mr. Kessler reiterated that Mr. Myers would own all three lots if the subdivision was approved (Lot #1, Lot #2, Lot #3). He emphasized Lot #3 was the corner lot and reiterated the idea was to create a cross-access easement between all three of the parcels. Mr.

Kessler stated people would be able to access parking spots for the properties. Mr. Bergstrom asked if the cross-access easement would be created through the subdivision. Mr. Kessler confirmed the subdivision would allow cross-access easement between the properties.

Mr. Moore asked what the applicant's plans were in regard to the corner lot; specifically, if he had future development plans. Mr. Kessler said he was not aware of any plans for the corner lot at the moment; however, he stated the corner lot was in better condition than Lot #1 and Lot #2. He reiterated the need for cross-access between the three lots. Mr. Moore stated many of the applicant's variances were not minimal in nature; therefore, he emphasized the fact that the Kwik Check standard was not liberal in nature and reminded everyone the stringent standards set forth in the Kwik Checks and the variances could not be significant. Mr. Moore asked Mr. Kessler how he would argue that point and convince him of the proposal while following the Kwik Checks. Mr. Kessler said he believed what needed to be looked at in this situation was the amount of hardship. Because of the size of the lots, Mr. Kessler stated there was no other way or approach. Furthermore, he reminded Mr. Moore the method at the last BOA meeting failed. Mr. Kessler reiterated the creation of a minor subdivision would significantly reduce the size of the current lot by dividing it in half. Mr. Kessler said the hardship in this instance was the size of the lot; moreover, he argued that the hardship far outweighed any particular aspect of the Kwik Checks. He believed the proposal fit in well with the other aspects of the Kwik Check requirements.

Mr. Kessler understood the variances in some cases were large and stated the applicant's property was not the only property that looked like it in the vicinity. He said there were many properties similar to resembling the proposed structure and emphasized the front setback depicted on the architectural rendering. Mr. Kessler pulled up the slide displaying the street view and showed other properties having similar setbacks to the one proposed and he described the setbacks on the other properties as right-up against the street. According to Mr. Kessler, the current building was already non-compliant with the Code since it was right up against the lot line. Additionally, Mr. Kessler said the existing property was right up against New London Road in the front. He reiterated the existing building was not compliant with the zoning requirements in the Code. Mr. Kessler argued the hardship was extreme because of the size of the lots. Mr. Moore had no further questions.

Mr. Kessler described the existing structure as "fairly in nature with the neighboring homes". He asked Mr. Kessler to describe the neighboring homes (i.e. how many stories, approximate square footage etc.) Mr. Kessler said he believed the plan showed surrounding lots and was not sure if Mr. Pellegrini had the square footage listed. Mr. Levandoski asked Mr. Kessler if he had the number of stories for the neighboring properties that were located up and down the street. Mr. Kessler and Mr. Pellegrini stated that they did not have the number of stories for neighboring properties listed on the site-plan. Mr. Kessler believed that it could be observed if one looked up and down the street that the property would not stick out relative to the others along the street. Mr. Levandoski stated the proposal had increased from two to three stories. Mr. Kessler confirmed the proposal called for three stories; however, the third story was not a box three story. Mr. Moore asked Mr. Kessler to go back to the slide showing a view of the street and asked about the accuracy. Mr. Kessler stated he was not sure how accurate the rendering was. Mr. Levandoski stated that in theory there might be a two story that appeared higher than a three story. Mr. Kessler said that besides the setback issue experienced before, he did not believe the current proposal appeared far off the previous one.

Mr. Bilodeau asked Mr. Kessler if he envisioned the proposal as a condominium-type set-up. Mr. Kessler said the current dwelling was under common ownership and did not believe there would be a plan to submit it under DUCIOA. Mr. Kessler said with a lot line down the middle, the properties could be conveyed separately. He said something would be added to the deed regarding shared expenses or easements if one side would be conveyed over the other. Mr. Kessler reiterated there were no plans to submit it to any type of condominium regime at the moment. Mr. Levandoski asked Mr. Kessler how many renters were in the current home; additionally, he

asked how many renters could occupy the dwelling in theory. Mr. Kessler stated there were currently no renters at the site; however, he said there were four bedrooms in the current building.

Mr. Myers asked to speak and was sworn in. He stated he was the homeowner of the property. Mr. Levandoski asked Mr. Myers what the maximum number of renters could be for the home in its current state. Mr. Myers said that four people were the maximum number of renters for the existing structure. Mr. Levandoski asked Mr. Myers what the maximum number of renters for the newly proposed home would be. Mr. Myers stated that eight renters would be allowed in the newly proposed structure.

Mr. Levandoski asked Mr. Fortner if the increase from four to eight renters would alter the home's density and noted there was a note referring to the Comprehensive Plan stating the area was currently low-density and the plan was to make the area high density. Mr. Fortner confirmed the area was currently low-density according to the Comprehensive Plan; moreover, he mentioned the reason it was listed as low-density was since it was a single-family house on a single lot. Therefore, low-density was listed as 11 units per acre. With the change from low-density to high-density, the area would increase to 20-units per acre. Mr. Fortner said a Comprehensive Plan amendment was needed for this change. Mr. Kessler stated this was not the applicant's last step in the process. Mr. Myers told Mr. Levandoski he was proposing eight beds in one tenth of an acre that equates to 80 beds in an acre. He listed the following properties as a comparison:

- Rupp Farm, 84.2 beds per acre.
- 36 Benny Street, 93.8 beds per acre.
- 178 South Chapel Street, 84.7 beds per acre.

Mr. Myers said those properties were just some of the other projects that had been approved by the City and were already built. He stated he believes he was hindered by the lot size; however, he believed his request to put in 8 beds was not far off from what had already been done in the City. Mr. Bergstrom stated he had one question for Mr. Kessler or Mr. Fortner and asked how the other projects were predominately approved (i.e. were they given variances for height etc.). Mr. Fortner said there were a number of ways the projects were approved. He reminded the board that the Campus Walk homes (by Mr. Mayhew) on New London Road obtained many variances. Mr. Fortner stated other projects went through the process of site-plan approval. He said one difference between the applicant's project and Campus Walk was that [Campus Walk] were apartments; therefore, they were classified as apartments in the Code. Mr. Fortner said renting apartments was different from renting a single-family house such as Myers property. He said Mr. Myers' would essentially have two single-family houses and he would be allowed four tenants for each single-family house. Mr. Fortner emphasized apartments did not have the same type of regulations; therefore, there could be six bedrooms or more. Mr. Fortner stated Mr. Myers was attempting to make a comparison between his property (single-family homes) and apartments. He reiterated the fact that single family-homes had a cap of four bedrooms per home and stated the applicant would not be able to have more than four tenants per single family home unless the law was changed.

Mr. Kessler interjected and added there were no more than four tenants per house in the proposal. Mr. Levandoski stated he had a similar question and asked if garden apartments were permitted in an RM zone. He asked if there was a reason garden apartment were not listed by the applicant. Mr. Kessler stated the applicant previously tried to classify the proposal as a garden apartment; however, it was determined that the proposal did not fit squarely into the definition of garden apartment per City Code. He told Mr. Levandoski a change in the Code would be required. Mr. Myers said three units were required for the property to be classified as a garden apartment and reiterated his property only had room for two. Mr. Myers said this was part of the reason for the last BOA meeting on August 16th. Mr. Levandoski said he understood and articulated that he wanted to hear Mr.

Myers announce that and understand it. Mr. Kessler reiterated the fact that the project did not fit into the definition of garden apartment per City Code and they were unable to get an interpretation at the previous meeting on August 16th.

Mr. Levandoski asked if duplexes were permitted. Mr. Fortner confirmed duplexes were not permitted and listed in the Zoning Code; therefore, he reiterated the applicant's prior attempt to list the project as a garden apartment with two units as opposed to three. Mr. Kessler confirmed Mr. Fortner's statement and stated the applicant previously tried to reduce the requirement for garden apartments to two. Mr. Bergstrom asked Mr. Rogers for his thoughts regarding same. Mr. Rogers said he believed it was odd that duplexes were not permitted. He asked if the Comprehensive Plan needed to be amended. Mr. Kessler confirmed the Comprehensive Plan would need to be amended and the applicant would be required to go in front of the Planning Commission. There was conversation at the table regarding the amendment process. Mr. Fortner stated the Comprehensive Plan needed to be amended since the density for the proposed structure would be greater than 11 units per acre. Mr. Rogers questioned why a special exception would be considered from a procedural standpoint before the overarching planning document (Comprehensive Plan) was amended; moreover, he believed the Comprehensive Plan amendment should come first. Mr. Moore stated he had the same question as he thought about the project. Mr. Moore asked what needed to come first from a procedural standpoint; specifically, he questioned why the variance was being requested currently and asked for clarification on the protocol.

Mr. Kessler said he could let Council or Mr. Fortner address that question and stated he had previously been involved in applications he described as being vastly out of order; moreover, where things were done at different times. He said State approvals would be still be required before subdivision approval and variances were granted in the applicant's case. Mr. Kessler reiterated the BOA approval was just one piece of the process required for the applicant to reach subdivision approval; moreover, he expressed it would be necessary for the applicant to go before the other departments in the City before final approval. Mr. Kessler said they needed to go before the Planning Commission for the Comprehensive Plan amendment and stated he believed the project would need to come before Council. He reiterated if variances were granted and the rest of the subdivision process did not happen, the project ultimately would not be approved. In other words, Mr. Kessler reiterated the BOA meeting was not the last stop for the applicant and proposal. Mr. Rogers asked if Hillside Road was a state-maintained highway and he asked if an entrance permit was required. Mr. Kessler confirmed Hillside Road was a state-maintained road. He informed the table that Mr. Pellegrino would speak regarding DelDOT.

Mr. Pellegrini, engineer for the Pelsa Company was sworn in. Mr. Rogers said he believed the premise of the project was dependent on another entrance point for Hillside Road. While he thought it made sense, Mr. Rogers asked if the applicant had applied for the entrance permit. Mr. Pellegrini stated the applicant had applied for the entrance permit and stated what was reflected on the PowerPoint presentation was what DelDOT required and he believed it to be safer than the current entrance and exit point. Mr. Pellegrini stated he and Mr. Myers had an initial meeting with DelDOT and made an initial submission. He said the received comments from DelDOT and stated they were in the process of addressing them. Mr. Pellegrini indicated the comments mainly surrounded the sidewalks and were being addressed and would be resubmitted in the next week. Mr. Bergstrom said he wanted to make it clear for the record that both properties were owned by the applicant and there was no reason the entrances could not be built in the exact parking configuration. Mr. Pellegrini said he believed that was a correct statement.

Mr. Rogers asked for the slide to be displayed depicting the other semi-detached houses in the vicinity. Mr. Kessler went back to the slide and said the picture depicted the setbacks and not the other semi-detached homes in the vicinity. Mr. Kessler said the purpose of the slide was to highlight and draw attention to the overview of the two lots. He reiterated the area depicted by the overview could be classified as two very skinny lots with a

building in the middle of the lot line. Mr. Rogers asked what the lot lines and setbacks were in the architect's rendering. Mr. Pellegrini stated he believed his field notes from when he did the original survey might provide the requested information. Mr. Rogers asked for clarification regarding Lot #55 and Lot #57 and the corresponding addresses. Mr. Pellegrini asked Mr. Kessler to display the slide that depicted Lot #55 and Lot #57. Mr. Kessler announced he would be able to show a street view of the area on Google maps if it was desired. He said it was essentially a duplex; however, he understood the word duplex did not exist according to City Code. Mr. Kessler said a duplex was essentially the type of building being proposed and reiterated he would be able to provide a street view of same on Google maps. Mr. Pellegrini asked Mr. Kessler to go back to the parcel view on the PowerPoint presentation. Mr. Kessler displayed the parcel view and Mr. Pellegrini stated he believed he was asked to provide the front-yard setback for the lot.

Mr. Pellegrini believed the first lot was Lot #57 and had a front yard setback of 11.1 feet from the foundation of the house to the face of the curb. The next lot, Lot #56, had a front yard setback of 10.9 feet from the foundation of the house to the face of the curb. He clarified that Lot #56 had a front yard setback of 10.9 feet from the foundation wall of the house to the face of the curb. Mr. Rogers said he asked about the side yards. Mr. Pellegrini stated that he did not measure the side yards. Mr. Rogers asked if the lot widths were measured. Mr. Pellegrini said the lot widths were not listed but believed they were displayed on the parcel view slide. Mr. Rogers asked if parcel view was offered to provide the indication there was another semi-detached dwelling similar to the one proposed in the immediate vicinity. Mr. Kessler agreed and said there was a similar semi-detached house with a comparable lot size in the immediate vicinity. He reiterated the lots were similar and were not exact; however, they were alike because they were narrow. He clarified his statement by saying that Lot #57 was similar to the proposed property and that Lot #55 was slightly less narrow than Lot #57. Mr. Kessler said that if he were to show a street view, it would reflect the likenesses between the lots.

Mr. Rogers reiterated that the street view would not provide the ability to show the measurement for the lot lines or widths. Mr. Kessler said the intent was to demonstrate the lot line running up the middle of the building. Mr. Rogers stated that it was an issue of use and therefore permitted by right; therefore, he stated it was not necessary for Mr. Kessler to demonstrate that it was semi-detached since it was by-right. Mr. Kessler stated that there were essentially 0 side-yard setbacks as between Lot #55 and Lot #57. He reiterated the intent was to go off the fact that the proposal was for two semi-detached, single-family properties with a lot line running up the middle. Mr. Rogers said Lot #56 looked about as wide as the proposed area that would be divided in half. Mr. Kessler said it may well be; however, he emphasized that Lot #57 was a very narrow lot. Mr. Rogers asked if the board members were to consider the lots individually from a procedural standpoint; specifically, if one agreed with the front setback test but disagreed with the lot width. Mr. Rogers asked if the board was to make Kwik Check decisions on each factor individually or as a whole. Mr. Bergstrom stated that he believed it was up to the board and asked Mr. Bilodeau for confirmation. Mr. Bilodeau said it would be up to the board as to how they wanted to proceed. Mr. Moore informed Mr. Rogers that the board had done it both ways; specifically, he clarified that the Kwik Checks could be completed as a whole or individually.

Mr. Rogers asked to what extent the City could control the developer's architectural renderings. He asked what the process would be going forward if the project was approved; moreover, he asked if the board could set conditions (i.e. that the project must look like the architectural renderings). He questioned if the developer could build to the effect of what was permitted in City Code. Mr. Fortner said he would defer to Mr. Bilodeau and stated with site-plan approval, the applicant would turn in renderings by which they would substantially conform. He stated most projects require the project substantially conform to the architect's renderings. Mr. Fortner said the system was often complicated and with renderings such as the one presented by Mr. Pellegrini, it was hard to determine the requirements. Ultimately, Mr. Fortner said more details were needed and stated a more detailed rendering was needed. Mr. Rogers said it appeared the way the proposed structure was set back

ameliorated the front setback variance; therefore, he questioned how the board would know that the structure would-be built-in accordance with the Code. Mr. Fortner reiterated that the architect's rendering was not necessarily indicative of the actual scale of the building. Mr. Kessler agreed with Mr. Fortner and stated he believed the board should ignore the front setbacks as displayed in the architectural rendering. He stated for whatever reason, the architect did not render the front setback correctly. Mr. Rogers said it appeared from the discussion that the board did not have any control over architectural design. Mr. Levandoski and Mr. Bergstrom confirmed that the Board of Adjustment did not have control over architectural design. Mr. Pellegrini added that the board of Adjustment did not have control over architectural design as a condition of granting the variance. Mr. Bilodeau confirmed same.

Mr. Rogers asked how many parking spaces were proposed for the site. Mr. Pellegrini said there were a total of 10 parking spaces proposed. Mr. Rogers asked how that was in compliance with the zone. Mr. Pellegrini said they were required to have nine parking spaces and the plan showed ten. Mr. Rogers said Mr. Kessler repeatedly mentioned the hardship resulting from the lot line and believed that it was clearly self-imposed. He asked how the board was to clearly weigh a hardship that was clearly self-imposed such as the creation of a lot line by the applicant that resulted in extremely narrow lots. Mr. Bilodeau said that it was a good question and that it was obviously the applicant's decision to subdivide the parcel and develop it the way that it was portrayed. He reiterated the fact that the hardship was created by the applicant's subdivision of the parcel which ultimately resulted in the applicant's need for the requested variances. Mr. Bilodeau said the Board would need to weigh the hardship based on the fact that the applicant decided to make the changes in order to make the best use out of their property; moreover, he stated the Board needed to weight that fact in consideration with the dimensions of the lot. Mr. Kessler stated for the record that the last application did not involve throwing a lot line in the middle and also had a number of variances that would have been required.

While the size of the proposal's variances was greater than before, Mr. Kessler reiterated that the previous application had a laundry list of variances. Mr. Pellegrini believed that some of the previous variances were similar if not the same as the current proposal. Mr. Kessler said he would submit that the lot line does not necessarily add significantly more to the variances than what was previously requested at the last BOA meeting; therefore, he argued that the hardship was not self-created. Mr. Kessler reiterated his earlier statement that he believed it was the case of a landowner seeking to make the highest and best use of the property in accordance with the Code. As a result, he expressed that there were four variances required. Mr. Kessler reiterated his argument to the effect that the proposed dwelling was not out of character with other properties that were in the vicinity; moreover, he believed that the project fit squarely into the Kwik Check requirements. Mr. Rogers told Mr. Kessler that it did not appear that he provided any evidence of lot sizes; specifically, as were related to 2,352 square feet or 3,898 square feet. Mr. Kessler showed the Board four properties on Lincoln Drive and stated that they were .04 acres; moreover, he said the properties were described as townhouses and were in a row. He stated that each building was touching the other and that they were on smaller sites than the applicant's site. Mr. Rogers asked where the Lincoln Drive homes were in relation to the applicant's site. Mr. Kessler said the homes were located on Lincoln Drive and he believed they were in walking distance to the applicant's site. Mr. Myers reminded the Board that the properties on Lincoln Drive were close to Elkton Road and Park Place Apartments in the area of Thorn Lane. Mr. Levandoski stated the area was not even close the vicinity of the applicant's site. Mr. Kessler said they were not in the immediate vicinity of the applicant's site; however, he reiterated his belief that they were in a zoning district that had the same area requirements as the applicant's zoning district.

Mr. Rogers asked for clarification regarding the property's location on Elkton Road. Mr. Myers reiterated the Lincoln Drive apartments were located in the area of Park Place and Thorn Lane. Mr. Rogers asked if the property was in the direction or heading towards Elkton, Maryland. Mr. Myers confirmed same. Mr. Kessler said that under

Kwik Check requirements, the requirement was to show hardship that was specific regarding the exception practical difficulty. He reiterated the exceptional practical difficulty on the applicant's site was the size of the two lots and the fact that they were unable to fit into the plan without seeking the requested variances. Mr. Kessler reiterated that the Kwik Check standard, aside from the fact that its exceptional practical difficulty to the applicant's particular site, the rest of the elements for the standard of review dealt with the following: the nature of the zone in which the property lies, the character of the immediate vicinity and the uses therein, and the proposal would have no serious effect on neighboring properties. He reiterated his earlier statement that the improvements requested were considered normal improvements by a landowner. Mr. Kessler stated that he wanted to bring the focus back to where it was supposed to be for the evening's decision (i.e. the Kwik Check standard).

Mr. Levandoski said he had additional questions. He stated that the application mentioned the surrounding neighborhood and he asked Mr. Kessler what he considered the surrounding neighborhood to be. Mr. Kessler believed if Mr. Levandoski were to drive through the neighborhood in that vicinity that he would consider it to be walkable. Additionally, he said he would consider the area to be high-density even though it was not classified as such in the Comprehensive Plan. Mr. Kessler announced he lived in a neighborhood that was a little more spread out; therefore, it might be considered high-density from his perspective. He stated he did not believe the area was as dense as an inner-city; however, the area did not look like a suburb. Mr. Kessler described the houses in the area as close together and were sometimes touching. He reiterated there were a lot of people on foot and stated it was busy and the area was highly trafficked. Mr. Levandoski said he would describe a neighborhood in terms of what was in proximity to the proposed house; specifically, in terms of the five or ten houses on either side. Mr. Kessler agreed with Mr. Levandoski and said he would characterize the surrounding area in the same manner. Mr. Levandoski read the last sentence in the application for the record, "if the restrictions are not removed, there will be undue hardship on the applicant to make normal improvements to the property consistent with the neighboring or surrounding neighborhoods." Mr. Levandoski said the surrounding neighborhood was essentially what was currently in place; therefore, he stated he believed the applicant was attempting to build a much grander structure than what currently existed. He believed the applicant's statement implied that he wanted to be able to meet the needs or requirements of what was currently in place.

Mr. Pellegrini added that even if the existing dwelling was fixed up, the applicant would still need the variances that were applied for. Mr. Levandoski asked for clarification regarding the possibility for the applicant to demolish the current structure and build in the same footprint. Mr. Fortner said the footprint was pre-existing and that within a year of destroying the current structure, the applicant would be able to build on that footprint and it would be a single-family house. Mr. Fortner said it appeared the applicant was looking to subdivide and create two houses. Mr. Bilodeau said if the applicant knocked down the existing house and built another one in the same footprint, the variances would not be necessary. Mr. Fortner confirmed this statement and added the new structure built in that manner would be grandfathered in. Mr. Pellegrini acknowledged Mr. Bilodeau's statement that variances would not be required if the applicant built in the same footprint; however, he said there would still be infringement on the Code's requirements for setbacks. Mr. Bergstrom suggested the applicant needed to come up with a maintenance agreement with the owners of the adjacent property. He believed the information in the proposal was not sufficient; furthermore, he did not believe there was enough room for pumpjacks or other maintenance or emergency equipment on the side of Lot #1. Mr. Pellegrini asked Mr. Bergstrom for clarification regarding access and pumpjacks. Mr. Bergstrom said that to build and maintain a building with less than a two-foot space between the adjacent property and Lot #1 was not a good idea. He reiterated the concern was whether or not they would grant the variance for the side yard of 1.84 feet.

Mr. Moore said that he believed the point of the applicant's argument was they claimed the variances were required to remain competitive. He summarized the applicant's hardship was created by the need to remain

competitive as a result of the area limitations; therefore, the applicant was requesting the aforementioned variances. Mr. Kessler said the area's limitations were not the sole reason and clarified economic hardship could not be the sole reason for hardship. He reiterated the appeal was an individual seeking to subdivide a lot into two in order to create two separate fee-simple properties. Mr. Kessler added it was the applicant's intent to adhere to Code to the best of his ability; moreover, the applicant was requesting variances for items that necessitated same.

Mr. Bergstrom asked if there was a requirement in the applicant's district for open space. Mr. Pellegrini believed the requirement for open space in the applicant's district applied to structures that were considered apartments or garden apartments and did not apply to semi-attached dwellings. Mr. Bergstrom asked Mr. Fortner for additional information regarding open space. Mr. Fortner said there was no requirement for open space but there was a lot coverage requirement. Mr. Bergstrom asked if the lot coverage requirement included or excluded the parking area. Mr. Fortner said the lot coverage requirement area included all areas for parking and single-family houses. He clarified the area included the house and there were certain areas dedicated to parking.

Mr. Bergstrom said if the applicant needed a variance, this instance might be the time. Mr. Pellegrini stated City Code listed the area regulations for semi-detached dwellings specified the building; however, parking, paving and other impervious surfaces were not mentioned. Mr. Pellegrini announced that he was looking at a copy of the City Code and could read it aloud if needed. He told the board he reviewed that section of the Code before the meeting and emphasized impervious surfaces and parking was not mentioned under the area regulations for semi-detached dwellings. Mr. Bergstrom questioned how the berm and runoff would be addressed. Mr. Pellegrini said stormwater issues would be addressed and follow the construction plans. In the past, Mr. Pellegrini stated certain situations occurred where they did not have to do stormwater. Conversely, he said there were situations where the City said, "Even though you [applicant] do not meet the requirements or limitations to do stormwater, we are still going to make you do it." In that instance, there was an issue downstream and it was decided that measures (i.e. permeable pavers) needed to be taken to mitigate the effects of the runoff. Mr. Pellegrini said the applicant had not been given any direction or indication these measures would be required for this project. He informed the board the issue would be addressed and handled when they got to that point.

Mr. Moore asked what was currently in the back of the area lot. Mr. Pellegrini said the area currently contained gravel and a few tree stumps. Mr. Moore asked if there were any fully-grown trees. Mr. Pellegrini stated he did not recollect the area had any fully-grown trees. Mr. Levandoski believed Mr. Pellegrini was correct and stated he did not observe any fully-grown trees when he recently drove by the area. Mr. Moore said he had a question for Messrs. Bilodeau, Kessler, and Fortner regarding the applicant's steps if the variance requests were denied; specifically, he asked if the applicant would go to the Planning Department and ask for changes. He wanted to know the process in the event that the Planning Department overruled the applicant's request. Mr. Kessler said the applicant would be required to sit down and evaluate the project if they were denied; furthermore, Mr. Kessler said he could not accurately say what would happen. Mr. Moore stated he was interested in the applicant's next steps from a procedural standpoint. He asked why the applicant did not consult the Planning Department first before appealing to the BOA. Mr. Kessler said without any of the major pieces of the subdivision application, the project would obviously fail. He reiterated the need for variances and stated the project would not be able to progress to the next part of the subdivision process if they [variances] were not granted. Mr. Kessler informed Mr. Moore that they would proceed to the next part of the subdivision process if the variances were granted.

Mr. Kessler said Mr. Fortner could provide additional information on the process and announced there were a series of reviews and other departments that would be required to evaluate same. He referenced the hotel project (Candlewood Suites) and stated if DelDOT approval was not granted, the variance request would be

moot, and the plan would not have been pursued. Mr. Kessler said the hotel project was similar to the applicant's project from a procedural standpoint. Mr. Myers asked Mr. Fortner if he could confirm the Planning Department had put forth a proposal to the Planning Department to make the site area high-density. Mr. Kessler clarified Mr. Myers meant to ask if the Planning Commission had put forth a proposal to the Planning Department to make the area high-density. Mr. Fortner informed Mr. Myers there was not a current proposal from the Planning Commission at this time. He stated the area was under review by the Planning Commission; however, a specific proposal had not been made at this time. Mr. Bilodeau asked Mr. Fortner if the area would go under site-plan review. Mr. Fortner said he believed the plan was by-right in terms of zoning. He stated he was not sure what discretion Council would have to deny a subdivision. Mr. Fortner said Council could decide not to approve the Comprehensive Plan amendment; however, he reiterated the applicant's plan was by-right in terms of zoning. From a zoning point of view, Mr. Fortner believed the applicant would have all the variances. Mr. Fortner reiterated he did not know on what basis Council could turn the subdivision agreement down.

Mr. Fortner announced there was a site-plan approval and stated it was another type of process which many applicants had utilized. He stated site-plan approval allows for different deviations from the Code for good design (i.e. made sense for the neighborhood, energy efficient house) that showed the applicant going above and beyond. If site-plan approval was granted, the applicant would be permitted to make deviations from the Code. Mr. Kessler expressed the Code allowed what was being proposed for this site. He reiterated the proposal was for two-single family, semi-detached dwellings with a lot line in the center; therefore, he stated the proposal was permitted in the Code. Mr. Kessler said he understood other City departments would be required to review the proposal and asked Mr. Fortner for information regarding the subdivision process. Mr. Fortner reminded Mr. Kessler the subdivision process would require review by all of the City's departments. He said the proposal would go through Public Works for stormwater review and they followed State law and were strict; therefore, all stormwater would be managed on-site. Additionally, the Electric Department would be included in the process. Mr. Fortner reiterated a thorough review of the subdivision process and project would be conducted by all the City's departments. Mr. Kessler clarified that if it was determined the stormwater did not meet the City's standards, the application would stop. Mr. Bilodeau informed Mr. Kessler a building permit would not be granted if the project stopped and did not meet City standards.

Mr. Bilodeau referenced the stipulation placed on the previous case (Mr. Haines) and reiterated the board ruled that construction needed to begin within six-months to start construction on his property. If construction did not begin within six-months, the variances would be revoked, and the project would not be able to be completed. Mr. Bilodeau asked Messrs. Kessler and Myers how much time they would need to begin construction if the variances were granted. Mr. Kessler announced this question would be answered by Messrs. Pellegrini and Myers. Mr. Pellegrini said he believed he and Mr. Myers would want construction to start tomorrow; however, his experience on multiple projects indicated that the process would be eight months to a year before a shovel could be put in the ground. Mr. Pellegrini believed eight months to a year was a realistic approach and stated there would be additional time required to address comments and coordinate efforts for the whole project. He clarified the eight months to a year time-frame applied if the project was simple; however, if additional environmental concerns developed, the time-frame would be closer to the one-year mark.

Mr. Rogers asked if the applicant had trouble renting the unit in its current state. Mr. Myers reiterated the unit was not currently rented as it was dilapidated condition. Mr. Rogers asked if the unit was unoccupied and Mr. Kessler confirmed same. Mr. Kessler reiterated the prior questions regarding parking and entrances and stated that if the property were left as is, there was a very small driveway that was [maybe] big enough for one car on the side. He stated there were one or two cars on the side, the entrances and exits were not likely to be changed. In other words, Mr. Kessler believes the improvements to the parking (i.e. the lot and one entrance in and exit point) would not be made if the variances were not granted and the plan was not approved. He reiterated there

would be no reason to make changes to the current parking situation if the subdivision agreement and variances were not granted. Mr. Bergstrom asked Mr. Kessler if he knew how far away the adjacent property was from the site-area. Mr. Pellegrini said he was not able to speak to the adjacent structure. Mr. Pellegrini asked Mr. Bergstrom if his question was in reference to the property Mr. Myers' owned. Mr. Bergstrom clarified he was not referring to the adjacent property owned by Mr. Myers; moreover, he was interested in the adjacent property not owned by the applicant. Mr. Pellegrini apologized and said he did not have the information regarding the adjacent property in question.

Mr. Rogers asked for clarification regarding the exceptional practical difficulty if the current dwelling was dilapidated and uninhabitable; specifically, he asked why the applicant found it difficult to rebuild within the same footprint or rebuilding and not requiring the amount and nature of the variances requested. Mr. Myers believed all his proposed improvements came at great expense. He stated since it was an RM district, which he understood that it [RM district] was built for the purpose to house multiple people, he was under the impression that 67-69 New London Road address meant he had two lots. Mr. Myers said the County tax parcel showed 67-69 New London Road as two lots when he purchased the property; however, he found out he was wrong a year and a half later. Mr. Rogers asked what Mr. Myers' practical difficulty was to rebuild within the same footprint or rebuilding and not requiring the amount and nature of the variances requested. Mr. Myers said his practical difficulty would be if the subdivision did not happen and the variance were not approved, he would tear the house down. He stated another house would be built in its place and he would rent it out to four people. Mr. Myers said two parking spots would be allowed in that case and said the people on the side at 71 New London Road would continue to be required to back out onto Hillside Road. He told the board that he would not have the money generated from two units to facilitate all the improvements.

Mr. Rogers said the exceptional practical difficulty would be the parking situation and would remain the same. Mr. Myers confirmed this and stated he considered the current parking to be unsafe. While he would be able to put four people in the home, he reiterated there would only be room for two cars if the subdivision and variances were not approved. Mr. Myers said New London Road did not have a lot of room for extra parking; furthermore, he believed his proposal was not out of character with the neighboring properties. He referred to Mr. Mayhew's properties, specifically Campus Walk, as monstrosities. Mr. Myers said because his property backed out to Hillside Road which was wider and ultimately, he knew the real determination was money. He stated in order to do these improvements, he needed to be able to build the two sets of [single-family, semi-detached homes]. Mr. Myers said he was a layman and did not understand the zoning and described it as a different world. He did not understand the problem with his proposal since he believed that other developers were "piling on" homes. Mr. Myers believed the City had identified a need for student housing. Mr. Kessler clarified the exceptional practical difficulty standard needed to be weighed against the landowner's desire to make normal improvements during the course of developing a property or building on a property. He said the exceptional practical difficulty was weighed as an exceptional practical difficulty in light of the landowner's desire to make normal improvements to the property. Mr. Kessler believed a balanced approach was needed to review the exceptional practical difficulty standards.

Mr. Rogers reiterated his prior question regarding the exceptional practical difficulty to the effect that the property was improved in a normal way that did not require the requested variances. Mr. Kessler said he would submit that the course of normal improvements would be to tear down a dilapidated building and build something slightly larger than the existing footprint. He said the proposed structure was only 20% larger than the current structure. Mr. Levandoski stated he went back to the application which stated the proposal was to make it consistent with the surrounding community and neighborhood. He said the applicant would be able to make a new structure consistent with the surrounding community and neighborhood; however, the proposed structure was larger and grander than the surrounding community. Mr. Kessler interjected and said while the

proposed building was larger, he did not believe it was grander. Mr. Levandoski said the proposal increased to three stories as compared to two. Mr. Kessler said he did not deny that three stories were proposed; however, he believed the proposed structure fit within the height requirements and did not require a variance. Mr. Fortner said it appeared the applicant was not requesting a height variance. Mr. Levandoski understood a height variance was not being requested; however, he said the application mentioned the proposed structure would be consistent with the surrounding community or neighborhood.

Mr. Kessler believed consistent with the surroundings meant the structure that would be built was similar to other properties. He did not consider height to be a concern or issue and reiterated the proposal fit within the height requirements. He said he interpreted the meaning of consistent with surroundings as being similar to other properties that looked the proposed in the area. While he acknowledged the structure would look new on the block where other houses were old, he believed Mr. Myers was not proposing anything that did not fit within the area surroundings from an architectural standpoint. Mr. Kessler announced the architect worked hard to make sure the proposed structure would not stick out like a sore thumb. Mr. Bergstrom questioned why the proposed dwelling could not be moved closer to the other existing house to allow for four feet on the side of the adjacent property owned that was not owned by Mr. Myers. Mr. Bergstrom said he believed the corner lot Mr. Myers' owned would eventually be redeveloped. He asked Mr. Myers if the current structure had windows on the side and Mr. Myers confirmed there were no windows located there. Since there were no windows on the side, Mr. Bergstrom thought the structure may be suitable for an attachment. Mr. Bergstrom believed the harm to the neighborhood was due to the fact that the adjacent house was never displayed; specifically, he told Mr. Kessler that the board had not been provided with the footprint for same.

Mr. Bergstrom told Mr. Kessler he was not comfortable with allowing the variances if there was not at least three feet one property and the other. He believed the house should be able to have a window on the side. Mr. Myers said there was a driveway to the east of the property. Mr. Bergstrom told Mr. Myers this was not apparent from the information as presented. Mr. Pellegrini said the neighbor's driveway was located to the south of the house and indicated there was a note on the plan indicating same (i.e. a shared black-top driveway to the south of the proposed building). Mr. Levandoski asked what would happen to the shared driveway in light of the proposal. Mr. Kessler added the lot line moved up through the center of the shared driveway. Mr. Bergstrom asked if removing the shared driveway restricted the neighbor's access. He reiterated there was a significant amount of additional information he would need regarding the neighboring property in order to grant or consider any variances. Mr. Pellegrini informed Mr. Bergstrom the applicant had attempted to contact the owner of the neighboring property to try to use the access he currently had to Hillside Road and he had documentation (i.e. certified mail) to prove same. He stated that the original intent was to utilize the neighbor's access point on Hillside Road so that the following measures would not be required regarding parking. Mr. Pellegrini reiterated that expense that Mr. Myers would incur as a result of the proposed parking improvements and project. He stated that it would be ideal to share the current access of the shared driveway and that it would be ADA compliant; however, he reiterated that they were unable to make successful contact with the neighbor.

Mr. Myers said that if it would make the board feel better, he would be willing to move the proposal closer to his property at 71 New London Road and put in a 3-foot side-yard; however, he expressed that the same variances for yards and other issues would be required. Mr. Kessler displayed the PowerPoint slide that depicted the street view. Mr. Myers said the neighboring property had a rear entrance off of Hillside Road and a driveway next to it. Mr. Bergstrom asked Mr. Bilodeau if the board was permitted to grant a continuance for this hearing. Mr. Bilodeau said he believed there was a certain time-limit for the continuance and said the hearing could be continued for another session. Mr. Bergstrom proposed that a continuance would be a good idea and he reiterated the possibility for Mr. Myers to move the proposed structure closer to 71 New London Road. Mr. Myers asked Mr. Bergstrom if he wanted the proposed structure to be moved three feet closer to his property

at New London Road. Mr. Bergstrom said he did not believe the variance could be granted that evening since they were not able to ensure that the surrounding neighborhood or properties would not be adversely affected. He announced that the information regarding the impact to the neighboring properties—specifically if it was adverse—needed to be given to the board and provided for the record before a decision could be made. Mr. Bergstrom said an updated drawing needed to be provided that accurately displayed the neighboring properties. He told Mr. Myers that he believed he asked the applicant for the exact specifications regarding the line of the front setback at the last BOA meeting. While he stated the parcel view showed where the building bulk was, it did not really provide the information needed for front setbacks. Mr. Bergstrom said that this type of information was needed and proposed that the lack of information provided made it impossible for him to go forward with the hearing on the case that evening.

Mr. Kessler believed the front setbacks were displayed. Mr. Bergstrom stated that he was referring to the front setbacks of the rest of the lots on the street. He reiterated that more information was required before he would be comfortable to make a decision. Mr. Bergstrom said he needed all information to be reflected on the drawing and reiterated that the information as presented was a lot to swallow. Mr. Myers said he understood Mr. Bergstrom's concerns. Mr. Moore asked Mr. Myers if he spoke to the owner of the adjacent property. Mr. Myers said that the owner called him one time when he was out on a firetruck; however, he stated she did not pick up any of his phone calls since. Mr. Rogers asked if there was a formal easement associated with the common driveway. Mr. Kessler said he was not aware of that easement and explained that it was part of the deed and was not a separate document. He said the information was listed in the deed together with cross-access of the shared driveway. Mr. Kessler said the title report showed the lot line travelling up the middle of the shared driveway. Mr. Moore stated that it appeared the owner on the left of the proposed property would be losing half of their driveway. Mr. Myers denied that statement and said the owner would have a full eight feet and that they had a rear entrance off of Hillside Road. Mr. Levandoski reiterated that the board did not know that since the plan and drawings did not reflect that information. Mr. Myers agreed and said the board did not know the information since they could not see it.

Mr. Myers understood the concern and said that he would have the drawings updated. Mr. Bergstrom said the board blasted through two nights on the applicant's proposal and expressed that the board members volunteered their time. He stated that he was not opposed to coming back again for the applicant; however, he reiterated the need for the applicant to provide the requested information for the next hearing. Mr. Rogers agreed and stated that the applicant did not provide enough information regarding the character of the immediate vicinity. While he believed the applicant spoke about the lots on New London Road had similar setbacks and some lots were semi-detached, he reiterated there was not enough information provided to quantify the information associated with same. Mr. Rogers questioned the potential for the common driveway to be negatively impacted and reiterated the need for additional information. He also said he wanted information from City Staff regarding the nature of the Comprehensive Plan amendment. Mr. Bergstrom agreed and said that he did not believe that duplexes were not allowed according to the Code. Mr. Bergstrom believed that a duplex could not be configured in the area due to the small size on the lot; moreover, he said a decent mortgage could not be obtained if the building was very small. Mr. Myers reiterated the fact that duplexes were not permitted in the City Code. Mr. Bergstrom agreed and expressed that there were a bunch of considerations for the applicant and board to take a crack at. He said Mr. Pellegrini and Mr. Kessler needed to provide the information requested and reiterated that he was willing to grant a continuance and come back for another meeting. A member of the public asked if they could speak and Mr. Bergstrom announced that the public would be permitted to speak at the appropriate time.

Mr. Levandoski agreed that a continuance should be granted in order for the applicant to provide an accurate rendering in the drawing; specifically, the neighboring properties should be shown on each side. Mr. Levandoski

reiterated the idea that the applicant might consider moving the property closer to 71 New London Road and expressed that it would allow increased ease in maintenance.

Mr. Bergstrom said that the potential to add additional structures on the right side of the property could be addressed in the future; however, he reiterated his prior statements regarding the updated plans and concerns. He expressed that the issues and questions from the board needed to be addressed and presented at the next meeting before a decision could be made. Mr. Kessler asked if the issue was related to the size of the variances. Mr. Bergstrom said the issue was due to the size of the variances and the fact that Mr. Myers needed to justify why the proposed building was necessary; specifically, he questioned the configuration of the property. He told Mr. Kessler the density for the adjacent area needed to be addressed and that the Comprehensive Plan needed to be discussed with Staff. Mr. Bergstrom said the applicant needed to come back to the BOA within a certain timeframe. There was discussion at the table regarding the exact timeframe that the applicant needed to come back to the BOA. Mr. Bergstrom suggested that the applicant come back within 90 days or three months; however, he said there needed to be sufficient time for the applicant to get work done and be scheduled on the agenda. Mr. Kessler asked Mr. Bilodeau what type of notice was required since he said the same variances were being requested. Mr. Bilodeau said that the Planning Commission allowed for a decision to be tabled for 30 days; therefore, he said he came up with the 30 day suggestion for the BOA. Since the notice requirements were not going to change, Mr. Bilodeau said he saw no reason that additional time or continuance could not be given.

Mr. Kessler said it was necessary to ask Msers. Myers and Pellegrini how long it would take if information was added to the plan. Mr. Pellegrini said that if it was not already located and they had to locate the other house (i.e. getting a survey crew assembled and out the area), he believed it could be done within a week and that it could be quickly added to the plan. Ms. Potts suggested that the applicant intended to submit the information for the next meeting that it would be profitable to provide the board with sufficient time to review the new plans. She reiterated that Mr. Bergstrom stated there had been multiple meetings on this application and that it was important to be respectful of the board's time. Mr. Kessler agreed. Mr. Levandoski asked Mr. Kessler if he had any further information to share at the moment. Mr. Kessler said he did not have additional information at the moment.

Mr. Bergstrom asked if there was anyone in the audience that wished to speak regarding 67-69 New London Road.

Jean White, District 1, was sworn in. She said she was strongly opposed to granting the variances to this applicant for the desired project. Ms. White believed there were too many variances being requested for the property. She said the property should be 6,250 square feet and that it was actually much less than that number. Ms. White stated that dividing the lot in two would require a variance of 3,898 square feet for Lot #1 with a variance of 3,942 square feet for Lot #2. Ms. White believed that the variances were large; likewise, the minimum lot width required a variance of 34.16 feet for Lot #1 and a variance of 34.50 feet for Lot #2. She stated that the building setback lines were well known and that she would not read them aloud. Ms. White expressed that the side yards were infinitesimal at 1.72 feet for Lot #2 and 1.84 for Lot #1. She reiterated that the variances requested were too much; in addition, she did not believe there was an exceptional practical difficulty. Ms. White thought the applicant could either build on to the current house, adding a fourth bedroom and a bathroom; conversely, she stated he could demolish the entire house and build within the current footprint. She reiterated her belief that it would be appropriate to build on the current footprint. Ms. White believed the applicant should rebuild on the current footprint to the effect that it would not create an exceptional practical difficulty that necessitated the need to build two semi-detached buildings. She believed the applicant tremendously exaggerated the exceptional practical difficulty. Ms. White said the applicant owned the property and should determine whether or not he wanted to add on the current structure or demolish and rebuild within its current footprint.

Ms. White did not agree with the applicant's statement that the proposed dwelling would not impact or burden the surrounding property; moreover, she stated that putting extra cars would make traffic worse. She stated the plan showed six bedrooms (two in the basement, two on the second floor, and two on the third) and mentioned that the applicant did not discuss this fact. According to Ms. White, the blueprint showed six bedrooms as opposed to four. Ms. White said that all of the cars coming in from Hillside Road was not a good idea and emphasized the busy nature of that street. She believed the applicant needed to keep the driveway that allowed access in and out from New London Road. Ms. White said that New London Road was one way from the Deer Park Tavern through Cleveland Avenue and believed it made sense for the applicant to have an entrance and exit point on New London Road. She believed that it made sense for the applicant to have two different way into the property. Ms. White said she had personal knowledge of the road conditions in that area and believed that an entrance and exit point were necessary on New London Road. She did not see a reason that the developer could not put an entrance and exit in two different places.

Ms. White believed that the plan as presented had additional impervious surface. While she understood there was not a requirement for the amount of open space and impervious surfaces, she believed that the creation of the additional parking as proposed would increase the impervious surface by 72% and decreased the open space by 38%. If the applicant added onto the house (and was not more than a cubicle content of 20%), she believed the current footprint could be maintained. Ms. White reiterated that she did not believe the applicant faced undue hardship or met the requirements for an exceptional practical difficulty. She believed that developers typically try to build as many units or apartments as possible. Ms. White reiterated that she did not believe the applicant had an exceptional practical difficulty even as described by the statements of the developer and Ms. Kessler. She thanked the board for listening to her comments.

Mr. Levandoski asked for clarification regarding the amount of renters for the proposed area. Mr. Kessler said there were eight renters in the proposed area. Based on the plan, Mr. Levandoski stated there were twelve bedrooms and asked if the basement was taken out. Mr. Kessler confirmed that the basement would be taken out. Mr. Levandoski informed Mr. Kessler the drawing and plan needed to be updated to reflect that change. Mr. Kessler expressed that Mr. Pellegrini would update the plan and drawing to reflect same.

Mr. Bergstrom asked if there were any additional comments from the audience; otherwise, he wanted to entertain a motion from the applicant. Mr. Kessler stated that he would make the motion on behalf of the applicant. Mr. Kessler respectfully requested to be able to provide more information as requested by the board, update some of the information contained in the plans and have the engineer provide the additional information as requested; to have the opportunity to come back and present the information as proposed in 30 days with the stipulation that the information be provided well enough in advance for the board to be able to review and adequately digest the initial information.

Mr. Bergstrom said he was not committed to the 30-day timeframe unless it was written down somewhere that specified it was the correct timeframe. Mr. Bilodeau announced that he was not sure if the 30-day timeframe was written down.

MOTION BY MR. ROGERS, SECONDED BY MR. LEVANDOSKI: TO TABLE THE APPLICATION PENDING ADDITIONAL INFORMATION TO BE PROVIDED ON THE CHARACTER OF THE IMMEDIATE VICINITY, MORE INFORMATION PROVIDED ON THE IMPACT TO THE ADJACENT PROPERTY; SPECIFICALLY, ON THE DRIVEWAY EASEMENT AND MORE INFORMATION PROVIDED FROM THE STAFF REGARDING THE NATURE OF THE COMPREHENSIVE PLAN AND THE ADDITIONAL INFORMATION AS MENTIONED BY THE APPLICANT'S REPRESENTATIVE.

MOTION PASSED. VOTE: 3 to 1.

Aye: Bergstrom, Levandoski, Rogers

Nay: Moore.

Absent: Hudson.

5. The meeting was adjourned at 10:05 p.m.

Whitney Coleman Potts, Paralegal
Administrative Professional
City Secretary's Office

/wcp