

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
February 21, 2019**

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chairman Chris Rogers Kevin Hudson Bill Moore
Staff:	Paul Bilodeau, City Solicitor Mike Fortner, Planner Whitney Coleman Potts, Administrative Professional, Paralegal

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

1. APPROVAL OF MINUTES FROM MEETING HELD DECEMBER 6, 2018:

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

MOTION PASSED. VOTE: 4 to 0.

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

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

- 2. The appeal of Kevin Mayhew, property addresses 38 & 40 Corbit Street, for the following variances:**
- **Sec. 32-10(c)(1) – Minimum lot area** – Except as specified in Article XVI, Section 32-56.2(a) of this chapter, the minimum lot area for any dwelling or permitted nonresidential use, together with the accessory buildings, shall be 6,250 square feet for a semidetached single-family use.
 - 38 Corbit Street – The proposed plan shows a lot area of 3,042 square feet, which requires a variance of 3,208 square feet.
 - 40 Corbit Street – The proposed plan shows 3,042 square feet, which requires a variance of 3,208 square feet.
 - **Sec. 32-10(c)(2) – Maximum lot coverage** – The maximum lot coverage for any building, accessory buildings, and manmade improvements on the ground surface which are more impervious than the natural surface and which are used for parking and driveways, but not including swimming pools, patios, terraces, outdoor grills, and similar facilities not intended for parking shall be 50%.
 - 38 Corbit Street – The proposed plan shows a lot coverage of 62%, requiring a variance of 12%.
 - 40 Corbit Street – The proposed plan shows a lot coverage of 56%, requiring a variance of 6%.

- **Sec. 32-10(c)(3) – Minimum lot width** – Except as specified in Article XVI, Section 32-56.2(b) of this chapter, the minimum lot width for a lot shall be 50 feet.
 - 38 Corbit Street – The proposed plan shows a lot width of 25.37 feet, requiring a variance of 24.63 feet.
 - 40 Corbit Street – The proposed plan shows a lot width of 25.37 feet, requiring a variance of 24.63 feet.

Ms. Potts noted the agenda was posted on February 8, 2019 and direct mail notices were mailed the same day. A revised agenda was posted on February 19, 2019 which removed the original request for 34 Corbit Street from the plan.

Mr. Bergstrom asked if anyone present who would like to speak in favor of the application.

John Tracey from Young Conaway Stargatt & Taylor, said he was present to speak on behalf of the owner of the properties, Terry Lane Investments. Additionally, Alan Hill, Hillcrest Associates and Crystal Hayman-Simms [an equitable owner in the property] were also in attendance. Mr. Tracey addressed the one change in the application, the lot coverage variance for 34 Corbit Street. He stated the request had been removed as the property was no longer part of the application. In addition to the removal of 34 Corbit Street, another modification was made to the original application. The applicant originally sought a 12% variance for 38 Corbit Street and a 6% variance for 40 Corbit Street on lot coverage, which was revised. The new variance requested went to a 56% variance as opposed to a 62% variance for the 38 Corbit Street parcel; thereby making the variance request for 40 Corbit Street unnecessary.

Mr. Hudson requested clarification to be clear about the modification to the application by stating again that 40 Corbit Street no longer needed a variance request and 38 Corbit Street was now requiring 56%. Mr. Tracey confirmed this and noted he would further elaborate on the changes as he proceeded with the application.

Mr. Tracey stated of the remaining variances requested, five related variances were associated with the plan to convert the property from the current use as a single-family home to a semi-detached use for student rentals. He further stated student rentals were a dominate use in the area. Located behind the proposed project were projects previously approved by the Board of Adjustment, namely Campus Walk I and the recently approved Campus Walk II projects. The applicant's property was zoned RD in which semi-detached homes have been designated as a permitted use. The Code names it as such, "the Semi-detached District" and Code defines both semi-detached and duplex uses. However, he noted in previous conversations, Code Enforcement said there has not been a provision made to permit duplexes. Furthermore, a neighboring property has a duplex occupying the property [next to 38 & 40 Corbit Street]. Mr. Tracey explained the difference was that semi-detached homes have a "party wall" between them and essentially the structure straddles a property line so that each side occupies its own lot. Duplexes were defined as two dwelling units on one lot with no separate classification for the property. There were several semi-detached and duplexes homes in the area and in the RD district throughout the City. Historically, on the property there were two homes in either a duplex or semi-detached fashion.

Mr. Tracey distributed to the Board the 1941 deed (Exhibit A) for the property noting where the deed conveyed two parcels and the second referenced "houses" and not "house". Mr. Tracey noted to the Board that the 1973

deed (Exhibit B) listed two addresses for the property [38 & 40 Corbit Street]. The exhibits were used to show there had previously been two houses on the existing property at one time.

Mr. Hudson requested clarification on how the property was currently occupied and which type of housing was permitted for the current zoning (i.e. semi-detached versus duplex). Mr. Tracey stated there was currently a single home on the property and zoning RD permits semi-detached homes. Through the applicant's research, duplexes were defined in the Code but not as a permitted use in any district. Mr. Tracey explained the difference between the two:

- Semi-detached is a dwelling designed for and occupied by a single family having one party wall and one side yard permitted on the zoning lot.
- Duplex is a detached dwelling designed for and occupied by two families living together independently of each other.

Mr. Hudson reiterated that duplexes were defined but noted they were not a permitted use in RD. Mr. Tracey said it was not a permitted use in any district as the applicant had researched to see if they could request to rezone the property and it could not be done as they were not a permitted use in any district or zone.

Mr. Rogers requested for the property to be pointed out on the map presented. Mr. Hudson asked if this property had a "quite title" and if the process was completed. Mr. Tracey explained that the 34 Corbit Street, which was no longer part of the application, had the "quite title" process and he was not a part of the action. (Quite title - a lawsuit brought in a court having jurisdiction over property disputes, in order to establish a party's title to real property, or personal property having a title, of against anyone and everyone, and thus "quite" any challenges or claims to the title)

Mr. Rogers asked if the applicant's research found other semi-detached units in the neighborhood. Mr. Tracey stated that he would address this during his presentation later.

Mr. Tracey stated that the proposal would entail demolition of the existing single-family home and replacement with a subdivided property followed by the construction of a semi-detached home on two lots. Mr. Hudson asked if the single-family home was to be replaced by a duplex or a semi-detached home. Mr. Tracey explained it would be subdivided into two lots with half a house on each lot or an individual dwelling on each lot to give the appearance from a street view to show two separate entrances for two separate lots. To remain consistent with the definition of a semi-detached home there would be a "party wall" between the two and a property line to run under the "party wall".

Mr. Hudson asked if the semi-detached home had only one family to occupy the home. Mr. Tracey stated one family would be in each unit. He stated if a line was going down the middle of the lot, one attached dwelling unit with one unit on one lot and one unit on the other lot. Mr. Hudson stated he was confused as to why duplexes were part of the discussion. Mr. Tracey stated he would explain a little later as there was currently a duplex located on a neighboring lot and it was considered a duplex because there was no lot line. Mr. Tracey reiterated that duplexes were a defined use in the Code, but no zoning district permits the use. He said the applicant cannot convert the proposed home into a duplex because the Code does not permit it, the Code only permits semi-detached. To ensure the understanding of the definitions, Mr. Hudson repeated Mr. Tracey, the semi-detached

required the lot to be split into two. Mr. Tracey stated a semi-detached required the lot subdivision line in the parcel which would be the difference since duplexes and semi-detached appear the same from a street view.

Mr. Tracey said the project would be consistent in terms of design with Campus Walk I which consists of a row of townhomes and Campus Walk II extending from Campus Walk I. The same design was used and implemented for Campus Walk I and would contain the required safety features including sprinklers which were required by the City. Also included would be a total of eight off street parking spaces as Corbit Street does not allow street parking. No relief was being sought for occupancy limitations or height variances. Mr. Tracey stated he wanted to address those types of requests as he was going to hand out some decisions in which the Board of Adjustment had approved. Originally there were six variances and now the request has been reduced to five. The lot width within this district was 50 feet. The project would divide the lot which was close to that number into two lots each roughly being 25 feet in width. The required lot area for the district was 6,250 feet with this lot being slightly below that number. The applicant had requested a variance that divided the existing lot into two. The lot coverage relief was removed for the one lot and reduced for the other. Since the applicant also owns the lots behind the lot [38 & 40 Corbit Street] they would extend parking onto those lots because they would not be in danger of violating the coverage requirements. The additional parking would be covered by easements. Mr. Tracey stated the applicant was seeking relief from area variances which were subject to the Kwik Check Factors analysis. Mr. Tracey went through the four parts of the Kwik Check Factors:

1. *The nature of the zone in which the property is located* – Mr. Tracey stated the property was in a RD zoning district which by its name is known as the “Semi-detached District”; Semi-detached homes were permitted use and therefore what the applicant has sought to do was not an unreasonable request.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Mr. Tracey stated that the majority of the homes on Corbit Street and around the property particularly to the East were all student rentals; the higher density uses were behind the proposed project property in Campus Walk I and Campus Walk II which had a variety of townhouses with either four/five/six bedrooms. The proposal before the Board of Adjustment fits into that dynamic as it was proposed to use the architecture that has already been implemented in the new communities. Mr. Tracey showed the slide which identified duplexes and semidetached homes and included lot widths for those parcels to show that semidetached homes would not be out of character. There was 4-plex across the street which was four units on one property. They also had the lot areas and the lot width available on the slide shown. Semidetached homes would not be out of character as duplexes since they look the same at the street but having a different zoning classification.

Mr. Rogers stated the issue was not the fact that the applicant had proposed a home being semidetached because it was a permitted use and wanted to know if there were more lot widths and lot sizes similarly to the proposal. Mr. Tracey stated the lot width sizes were all consistent with or smaller than the proposed project. He pointed out the lot with the 4-plex which had a lot size of 40 feet. That would be four lots within 40 feet not each one being 40 feet wide. The townhomes were 13 feet and the duplexes were 40 feet for both units on one lot. So, if it was compared to the proposal, both lots would be smaller than the proposal and have a reduced width. Mr. Hudson explained that the number for the proposed project in comparison to 34 Corbit Street next to the proposed parcel. Mr. Hudson pointed out that the area of the properties used for comparison were in a historical part of the City and

he questioned if the 50 feet lot zoning requirements were established after the lots were already created. Mr. Tracey stated he was unsure. Mr. Hudson thought it was an unfair comparison since those lots pre-dated what the City decided.

Mr. Tracey stated in *Nollan v. California Coastal Comm'n* (Secretary's note: Golf Course Assoc, LLC and Tool Bros., Inc. v. New Castle County, New Castle County Department of Land Use, and New Castle County Board of Adjustment) which was a Board of Adjustment appeal where one of the ideas of hardship was the fact that properties were developed before the code was in place and yet the proposals were consistent with what the code had outlined. Mr. Tracey said to make the argument where Prospect Avenue about three blocks from the proposed project location where this board granted variance in the past for semidetached housing. Mr. Hudson thought that the previous decisions did not have precedence. Mr. Tracey felt that the Board of Adjustment was not bound by them, but they should not ignore them as they had similar arguments with similar factual circumstances being considered in terms of evaluating whether in the same circumstances lot width or lot coverage and those types of variances would be relevant. The point he was trying to make was it would be hard to find a lot that fits code requirements. However, looking at Prospect Avenue all the lots were between 40 to 50 feet wide, subdividing them for the purposes to create a semidetached lot with one unit on either side of the lot line. The widths vary between 22 feet up to 28 feet with the lot areas longer and as narrow as the proposed project.

Mr. Tracey presented the Board of Adjustment meeting minutes from August 16, 2012 (Exhibit C) and July 16, 2015 (Exhibit D) to be put on the record. This was to support the current request because between the three appeals, they all requested similar relief in terms of lot width, lot coverage and lot area [45 Prospect Avenue (Exhibit C) and 3 Prospect Avenue (Exhibit D)]. He stated that this all went with the point he had made previously that the lots the code allows cannot be found in the RD zone. Mr. Tracey felt that zoning regulations were dropped like a blanket over an area and individual parcels are not looked at to see if they fit; and in this instance a zoning code which calls for an permits semidetached homes but does not have classifications in current terms of lot width, lot area and lot coverage that fit within what would typically be seen in a semidetached home. He explained that what was approved for Prospect Avenue and East Cleveland have a similar layout and surrounding the proposed project property.

Mr. Hudson asked of the lot width conformed to the code. Mr. Tracey believed it to be one foot over. Mr. Rogers asked for clarification as to if it was the current Board of Adjustment whom gave approved variances for newer semidetached to be built on Prospect Avenue. Mr. Tracey stated yes, 3 Prospect Avenue (Exhibit D) and 45 Prospect Ave (Exhibit C). Between the two examples the approved variances allowed one parcel to create two semidetached homes which would be four units and the other parcel could create one semidetached home which would be two units. Mr. Rogers stated that he agreed with the description of lot sizes and lot width for semidetached, but it seemed to not be intended use for this area. He questioned if there was a preamble to the district which could help provide insight as to purpose and intent of the RD district. Mr. Tracey did not believe there was a preamble at least in terms of what was in the code.

Mr. Tracey stated the section was Section 32-10 titled RD Districts (one-family semidetached residential)

which the first permitted use listed was for a one family semidetached dwelling. Mr. Rogers questioned if that meant with a 50 feet lot width. Mr. Tracey stated that was the only lot width listed. The code applied to lots as a whole, it does not breakdown different lot width for semidetached and primary just addresses one setback versus two side setbacks. There just seems to be a one bulk standard for everything. Mr. Rogers asked if the code gives the same minimum lot width and lot size for both detached and semidetached. Mr. Tracey stated correct and added that the code does not distinguish between the two.

3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – Mr. Tracey believed the answer no since the area was already a focal point for student housing. Replacing an aging home with a new structure up to current codes and from a fire safety standpoint and providing all of the off-street parking which would be consistent with the design of the new homes in the area. In his opinion those could not be considered negatively impacting the surrounding properties. He pointed out again that the neighboring property and across the street to see multiple dwelling units on a single parcel as either a duplex or a quadplex. He quoted *Kwik Check Factors* “the removal of this old home in favor of a semidetached home” consistent with what you see, would not have a serious impact on the neighboring properties which of course *Kwik Check Factors* does not just look at impact but a serious impact on adjoining 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. Tracey stated the incentive for owners to redevelop the older property, to balance the cost associate with complying with the architectural standards and the current codes with a need to offset those cost by being able to use the property in a reasonable manner through permitted uses under the code. In this instance the proposed project falls under a permitted use in the district, what the applicant has come up against was that there was a “one size fits all” in the district for every type of residential dwelling whether it was detached, semidetached or otherwise. It has been a struggled to find semidetached homes on 100 feet lots with 1,200 square feet of lot area which was what would be needed to comply with two semidetached homes.

Mr. Hudson questioned was that not what zoning was in general; otherwise the alternative would be “spot zoning” to change by each property individually. Mr. Tracey stated the Board of Adjustment exists because “spot zoning” does not exist; for an applicant to come to the Board with a proposal for a permitted use that cannot fit the property for a variety of different reasons. The Board of Adjustment dealt with those cases because the Board would not be adjusting the zoning in the sense to adjust permitted uses allowable on a property that would be why the standards for a use variance versus the standards for an area variance, they are different and much stricter in the area of use variance. As an example, a use variance economic improvement was not something that can be looked at it is in an area variance. If a project complies with the code in a use variance it that forecloses the approval of a variance, but it does not foreclose an applicant from getting a variance in an area variance context. “Self-created” hardship may have kept an applicant from getting an approval in the context of a use variance or in the statutory language as an example the statutory language for Sussex County it has it written in the statute but all the case law governing municipal and New Castle County variances, “self-created” hardship does not prevent an applicant from seeking a variance. Knowledge of the zoning of

the restrictions before buying a property does not prevent an applicant from seeking a variance. Zoning looks at an area probably reaches its conclusion generally what was seen from a 20,000 foot view of what the uses would be and establishes it and then in a boarder context in larger projects rezoning maybe sought but there exists a 4 unit home on a RM lot, a duplex on an RM lot and some semidetached both in this area then in boarder areas around the proposed project property. Semidetached homes can consistently be seen with lot areas far less than 6,250 square feet and lot width a lot less than 50 feet. Mr. Moore several questions regarding the plan of the demolition to the replacement home being a semidetached as well as who would rent the home, at what rental compacity would be and what were the economics of the situation.

Mr. Tracey reiterated that the applicant had proposed to demolish a single-family home on a primarily student rental street, build a semidetached home which would be for students while not exceeding the permitted capacity which for this street would be three students per unit. Mr. Hudson questioned how many students were permitted in the single-family home and Mr. Tracey's response was three. Mr. Hudson then stated that with this project would increase the number of students on the property to six and Mr. Tracey stated correct, the permitted level would be three students in each unit. To remain consistent and to find a balance with existing improvements in the area, such as City requirements of fire prevention, parking and architecture, there must be a counter balance in terms of a cost neutral benefit. Mr. Hudson stated that he had a fire suppression system in his home and found it difficult to see how that would be a hardship and he did not get any extra benefit out of it. Mr. Tracey explained that it worked into the whole argument that if a property was improved it would have to be improved to today's codes.

Mr. Hill explained that the fire suppression was not a hardship it was a benefit to able to build a new property. Mr. Hudson stated then it should not be factored into the economics. Mr. Tracey responded it factors into the whole analysis, the applicant would have to spend money to build a new home for student rentals because it was on a student rental street. The home could be left as a student rental as a single-family home not do anything to it continues in perpetuity or a decision could be made to make permitted improvements according to the zoning district of the property. Improvements which would be consistent with the surrounding properties and area in the RD zoning district. Mr. Tracey stated most of the improvements could be done within the confines of the code such as suppling the parking and meet the setback but what could not be met in this instance were items he does not think any semidetached home constructed under the code could meet because he does not feel that those lots exist so the applicant has to come to the Board of Adjustment for relief. From the time of the first advertainment, the applicant was able to revise out the parking layout to eliminate the variance for one parcel and reduce the variance by 50% for the other parcel. The applicant cannot make the lot any bigger or wider by taking land from any place, so they must operate within the confines the code.

Mr. Hudson stated originally there was a variance for 36 & 34 Corbit Street. Mr. Hill stated they were there for 38 & 40 Corbit Street and the original application had variances for the lot on the corner, but that lot was no longer part of the project. Mr. Bergstrom had Mr. Hill come up to be sworn in since he was going on the record. Mr. Hudson asked if 36 & 34 Street had the same beneficial owners as 38 & 40 Corbit Street. Mr. Tracey state no they were different owners. Mr. Hudson asked how the variance. Mr. Tracey stated originally there was going to be a project to combine both lots and then

the owner of that lot [36 & 34 Corbit Street] elected not to proceed the decision was unrelated to the variance requests.

Mr. Moore asked what the difference was between demolishing a single-family home to replace it with another single-family home with the intent to rent to three students. Mr. Tracey explained that the cost analysis does not show a cost benefit to that plan. The amount of money to demolish the home and build a new home for three people with all the added items does not justify the expense. The proposed plan allowed more of a rental income stream to offset the cost spent to construct the home was the make or break on the whole thing. Mr. Moore questioned what would justify the expense as in what length of term because to him, the life of the property would become an economic net. Mr. Tracey agreed but the point would be to try and get to the economic net as quickly as possible.

Mr. Moore stated then it was more of a matter of timing. Mr. Tracey stated it was a matter of timing and expense. If someone was sinking all the costs at the outset it must be justified. Or rent the existing house to three people and not make any changes. Mr. Tracey showed an aerial view of Campus Walk I and Campus Walk II to illustrate how all the properties would appear and how the applicant had made their project blend in with the existing Campus Walk I and the future Campus Walk II. Mr. Moore asked if these suggestions were taken to City Council or the Planning Commission. Mr. Tracey stated the applicant went straight to the Board of Adjustment because the applicant was not seeking to rezone the property; what they wanted to accomplish was a permitted use in the zoning district.

Mr. Hudson stated that it was not actually permitted. Mr. Moore added that it was not consistent with the code. Mr. Tracey stated nothing presented to the Board of Adjustment was consistent with the code, applicants appeared in front of the Board of Adjustment for relief from the code as others had before which reinforces the argument that lots cannot be found that fit the code. Mr. Rogers asked if that could be said for everywhere in Newark. Mr. Tracey stated moving further out from the core of the City, which he has not viewed every subdivision on different areas, but he thought that further out to the single-family zoning district the guess would be that a lot more lots that comply with the zoning than the lots near the proposed project. The term "piano keys" lots and some lots can be viewed to be over property lines, which was part of the nature when trying to retrofit or create new development within older areas. Mr. Tracey pointed out again how there existed across the street from the property [38 & 40 Corbit Street] a 4-plex on a single lot and next to the property there was a duplex on a single lot. Different types of development in different areas with different amounts could be found, but there would always be a need for variances to make things work in the older areas. Mr. Tracey cited *Nollan* case again which he did not provide to the Board of Adjustment, he just cited the case.

Mr. Moore stated his interpretation was that it would not be feasible to build a single-family unit because from an economic stand point because the applicant wants to see the benefit sooner versus later. Mr. Tracey stated the economic considerations were not a negative as far as the Board was concerned for area variances. Case law states it may be in the same context of economic considerations and cannot be considered by the Board. In a use variance, Mr. Tracey believed cases could be found which suggest that the Board could not exclusively rely on economics, or that economics were not something to be considered; but could be considered when an area variance was

being sought. Mr. Moore stated he understood.

Mr. Fortner addressed Mr. Bergstrom to clarify where he felt there might be a little confusion, in the zoning district RD, single family houses and semi-detached were just another form of single-family homes with two walls attached. They do exist particular in Scotch Pine, a subdivision called Evergreen and some other areas which have been new developments and developers have chosen to build those types of houses. Some were done under site plan approval to get some deviations done but it would still be a single-family house. Being that the area for the proposed project was an older area it was zoned for single family houses and the lot was still a little small for a single family which needs 6,250 square foot minimum lot size. The lot was just under by 6,084. Mr. Fortner explained that the applicant was trying to take a single-family house and put two units on a single-family house lot.

Mr. Hudson wanted to address the economic decision, Mr. Tracey was citing case law. Mr. Hudson stated while reviewing the ***Kwik Check Factors***, it states it could be considered, but also that the practical difficult would be present whether the request for dimensional change was minimal. The applicant has requested 25 feet when 50 feet was required. Mr. Hudson questioned if Mr. Tracey felt that the request was minimal; where Mr. Tracey responded in this context yes. Mr. Tracey explained that that were several cases in which “minimal” was not a mathematical quotient. Minimal depends on the facts of the case and the impact on the community. Again, citing the *Nollan* case, a reduction in permitted parking from 48 to 25 parking spots was requested. Council and Civil Organizations of Brandywine Hundred v. New Castle County Board of Adjustment stood for the proposition that “...the Court concludes as a result of whether a change is minimal depends on the circumstances of the case and that the Board was in the best position to make such a determination...”. Compared to the *Nollan* case the language was similar. Mr. Hudson asked if Mr. Tracey had submitted any of the cases he was citing with the application.

Mr. Tracey stated he did not but could provide the copy he had. He stated he did not want to provide unnecessary copies of cases because he did not know what the particular issues were going to be. Mr. Tracey added that with the *Nollan* case the County argued that the Board improperly applied the law because of the decision was not a minimal reduction and the Court there stated that was not how minimal was to be construed. He believed that minimally in context should be evaluated by the impact of the community rather than purely the mathematical calculation as suggested by the Department of Land Use. Mr. Tracey continued to explain that minimal was not a math number, minimal was a by-product of what would be particular application on those around it, as in the decisions he did provide outlined the requested relief was similar to the applicants and in the context of student rental areas where the minimal argument was raised for the same reasons in which Mr. Hudson just spoke about and in those cases, those boards found that it was not minimal but the case laws shows that when the Code says 20 feet, the project may ask for 10 feet that would be too much, minimal was really much broader looked at than something than just that. Mr. Hudson stated the only other issue with that was that the practical difficulty was supposed to be exceptional but to him this request seems routine. Mr. Tracey stated exceptional was a balancing test, exceptional practical difficulty comes down to balancing the harm to the applicant if the variance was denied verses the harm to the community if the variance would be granted. In this instance Mr. Tracey believed the balance tips even if only slightly in the favor of the applicant because there would not be any harm to the community by what was proposed. Mr. Bergstrom stated as Mr. Tracey trailed off from the fourth quick check wanted to know if Mr. Tracey had

contacted members of the community and get their input. Mr. Tracey explained that the next-door neighbor was part of it but because of a business decision it was no longer part of the project. The equitable owner of the property at 38 & 40 Corbit Street and the applicant owned a large amount of property behind the proposed project as well as property on Wilson Street. As a part of the community the applicant does not object and there were mostly student homes on Corbit Street.

Mr. Moore asked when the applicant purchased the property or had an ownership in the property. Mr. Tracey stated the equitable owner was in attendance and thought she could answer the question better than he because he was not part of the closing but thought it was within the last year. Mr. Moore asked if at the time of the purchase was Mr. Tracey was aware that variations would be required with the demolition and construction. Mr. Tracey confirmed this was the case, but that would not prohibit the applicant from seeking relief. In *Leariokis v. New Castle County Board of Adjustment* among others it addresses the fact that knowing the zoning the restrictions does not prohibit an applicant from seeking relief. In a use variance it could be an absolute prohibition but that was not the issue in this discussion. Mr. Tracey believed there to be another case where it was a prerequisite but he would need a moment to find it; however, if it was a prerequisite to apply for a variance no one would be able to seek a variance because in theory a person should know what the zoning regulations at the time of the purchase of a property and if that was barred being able to seek relief the Board of Adjustment would not need to exist.

Mr. Bergstrom asked why the applicant did not go for a plan approval or to City Council since the applicant used Campus Walk as a model for the proposed project. Mr. Tracey stated the applicant did not to extend it out all the way out to Corbit Street as there were larger townhouse right on Corbit Street but also the applicant does not own everything in the area so the applicant would have to tie things together and it was easier to continue on with what has already been approved with Campus Walk I which continued up New London Road and right behind it. As an example, on Wilson Street there were four single family homes which look roughly the same and the applicant does own them but did not include them in part of the townhouse project. Mr. Bergstrom questioned the parking which would be taken away from the existing homes for this proposed project. Mr. Tracey explained the existing home would maintain their required parking as there was enough room to add additional parking spaces which and they would not fall under the parking requirement for each of the proposed units.

Mr. Hudson stated the variance request in front of him had the variance request from Mr. Mayhew and asked if Mr. Mayhew owned the property. Mr. Tracey stated correct for both and explained the equitable owners of the property were, Ms. Hayman-Simms and Mr. Mayhew's entity named "Terry Lane". Mr. Mayhew was out of the country at the time of the meeting. Mr. Bergstrom asked what type of homes were on the property from which the applicant had proposed to take space from and where the lots larger than the proposed project's lot. Mr. Tracey explained the existing homes were single homes, the lots were deeper off of Wilson Street and appear to be wider than the lot but he did not have a scale in front of him. Mr. Bergstrom asked how long it would take for the owner to come back for those properties. Mr. Tracey stated he was unsure because when they did Campus Walk II no changes were made other than adjusting some lot lines. When the Campus Walk II was done one of the elements of the project a home was taken from New London Road which was not particularly old, and it was relocated to replace an older home on the lot. Mr. Hudson asked if Mr. Tracey had been in the area

around rush hour. Mr. Tracey stated he had observed traffic in the area although traffic was not something typically the Board of Adjustment considers, but the potential of three cars of student whom do not drive at the same peak hours in rush hour either in the morning or in the evening would not likely impact the peak hour generation numbers. Mr. Hudson had noticed a difference in peak hours when the University was in session. Mr. Tracey believed peak hours to be between 7am and 9am and between 4pm to 6pm. Typically, students do not travel in great numbers in their cars at those hours. Mr. Hudson said the proposed project would double it and then with the owners on the side street it would double each one there. Mr. Tracey stated he did not know of any plans for the four referred too. The one immediately below 38 & 48 Corbit Street was already a duplex, two dwelling units on one lot; it would not seek relief to keep its status as well as the 4-plex across the street.

Mr. Moore asked to have the lot lines highlighted for 38 & 40 Corbit Street. Mr. Tracey pointed out the white line which was shown to run through the middle of the building. Mr. Moore asked about the rear lines. Mr. Tracey reminded Mr. Moore that the applicant modified so that the applicant would not need the lot coverage variance. Mr. Tracey asked Mr. Hill to correct him if he was incorrect with his explanation to state that a part of the adjustment was to move some of the property that was on the other parcel to the project parcel [38 & 40 Corbit Street] or it could be by using easements to leave the lot line where it lies. Mr. Hill said the real lot line would stay the same with a parking access easement between the lots on Wilson Street with easements on those lots. Mr. Hudson asked if they were the same owners. Mr. Tracey was unsure if it was the same entity, but it was the same owners. Mr. Rogers asked if the rear lot line of the lot on the corner extended through the parcel of 38 & 40 Corbit Street and Mr. Hill responded that was the case. Mr. Moore asked if the percentages which were adjusted were all within the existing lot lines and Mr. Hill responded correct. Mr. Moore asked if the applicant would obtain easements as part of the subdivision approval. Mr. Tracey stated correct. Mr. Moore wanted to clarify that the applicant had not created nonconformities on the other lots. Mr. Tracey stated no that the only thing which would have been impacted would be lot coverage because those lots [Wilson Street properties] were large enough that the change did not impact the 50% number. Mr. Moore asked if the required parking was still available for the existing homes and Mr. Tracey stated the parking was still there with three parking spots for each one.

Mr. Bergstrom suggested an issue would not occur until they may be a decision to change those lots. Mr. Tracey explained that if the parking requirements were changed then the existing parking for the existing lots would have to be changed. Both Mr. Tracey and Mr. Hill advised that they knew of no other plans for changes. Mr. Hill stated it was discussed to do other projects on the existing lots, but all suggestions were turned down. Mr. Rogers stated the duplex to the South of the proposed project with more or less the same lot width. Mr. Tracey clarified by stating it was smaller than the proposed project it was 42 feet versus the 50 feet requirement and that the size of the existing unit was smaller than the proposed project and that he did not know if anyone had looked at the actual square footage, he just knew it was a smaller lot and a smaller width. Mr. Rogers added that when the communities were planned and built, the lots may have had duplexes on a small lot with a small unit; however now units were permitted to be 35 feet to 40 feet tall, it would be a different bulk in proportion to the lot. It did not see fair to use a duplex that was a smaller unit in comparison to the proposed project unit. Mr. Tracey it was not unfair in the sense that there were two dwelling units which allow three kids each as a student rental. It was the same number of people on a smaller lot, but it would be the same density of

people. Mr. Rogers stated he did not mean people he meant light, air and bulk dimensions. Mr. Tracey explained that the applicant thought they would only need a lot coverage variance if it were to be part of the project, but it was not. It would have the same use when addressing the character of the community. When evaluating character of the area, would there be other uses similar to what the applicant had proposed. Currently there exist four across the street on one lot and two right next the proposed project on one lot and there were three others on the street made up of a combination of semi-detached and duplex homes.

Mr. Rogers was interested in other duplexes which were 3,000 square feet. Mr. Tracey pointed out what was submitted for Prospect Avenue where the lots were between 3,000 square feet and 4,000 square feet in lot sizes for duplexes. The 38 & 40 Corbit Street lot historically was either a duplex or a semi-detached per the exhibits provided showed two houses on one lot or two houses on two lots with two addresses in reference to each house, but the point was that the applicant proposed was not out of character particularly when the lot behind the proposed project there was four to six person townhouses. Mr. Rogers added they were all on lots at the appropriate width. Mr. Hill stated that the lot width interested him because the lots across the street which were already zoned RD, the lots appear to visually a lot smaller in width than their current lot. The lots already being less than 50 feet, it would not be outside the area to have the proposed project's lot be smaller than 50 feet. Mr. Tracey stated from the rendering it appeared as one contained structure with two doors on the front. It would be two separate small houses independently with side yards on both sides. The proposed project would be a semidetached structure that complies with the code with the shared lot line and the "party wall" which would sit on top of the lot line.

Mr. Hudson referenced the *New Castle County vs. Harvey* in Chancery Court which stated that "generally held the spirit of the zoning ordinances would be to restrict and not to increase a nonconforming use and to secure its gradual elimination". Mr. Hudson questioned if the approval of the variances requested would perpetuate nonconformity. Mr. Tracey state it would not perpetuate nonconformity because it was a zone district where this would be a permitted use. Mr. Hudson stated the use was understood, but the issue to be decided was what was permitted. Mr. Tracey explained the relief sought was consistent with what was asked by other areas in the City under the same zoning analysis. The issue to be discussed was what the City had tried to do with the development which occurred to eliminate older structures in favor of newer structures. The University has not built additional places for students they had actual shrunk. Mr. Hudson corrected Mr. Tracey, it was the Legislative branch performing that function. Mr. Tracey argued that it was the University who had performed that function. Mr. Hudson said Mr. Tracey spoke about what the City had done in terms of housing. Mr. Tracey explained that people had come before the Board of Adjustment as shown in other examples where they have sought relief for the same variance this applicant had requested relief from. One sought to have an extra person, one to be taller than what the code permitted, there were multiple different routes which could be taken and here the applicant was not saying the zoning was wrong, the zoning permits what they wanted to do, to conform to the zoning by creating a semidetached home which needs a couple of variances permitted as a use under the Code. Mr. Hudson explained to conform would be to build something that was permitted. Mr. Tracey stated unless the RD zoning was eliminated or if semidetached homes were eliminated from RD zoning which again was called the "Semi-detached District" this would be the situation that would be encountered. Nonconforming homes in existence or

have an example such as 3 Prospect Avenue and 45 Prospect Avenue and the applicant there tonight seeking the relief in which the Code has allowed them to seek to fit a semidetached home on a lot in the "Semi-detached District".

Mr. Bergstrom wanted to hear more about the numbers as to how many owner occupied structures were in the neighborhood. Mr. Hill stated he could point out some of the properties which were owner occupied. Most of the other homes were student rentals on one side of the street and the others were going to be replaced by the Campus Walk II. Predominantly student rentals would be around the proposed project property. He was not able to say if the duplex next door was a student rental or not. Mr. Bergstrom when weighing the harm to the neighboring properties that the harm would be proportionally born by owner occupants and he wanted to know if the applicant had actually contacted them. Mr. Bergstrom would have loved to have seen a petition like they did have for the Prospect Avenue people. Mr. Tracey explained that Mr. Hill had highlighted one home where the homeowner was aware of the Campus Walk II because they specifically spoke to the homeowner about the project. The homeowner did not object and asked for the applicant to revise a fence which the applicant had proposed as part of the project which they did do. The property below the proposed project was originally part of the application when it was submitted and was going through a "quite title". For business reasons they elected not to proceed.

Mr. Rogers asked if the neighboring property that was supposed to be part of proposed project smaller in size and was that structure permitted or grandfathered in. Mr. Tracey believed it was grandfathered in as it was not a new home and was not sure if it was smaller in size. Mr. Rogers stated the second example seemed similar in lot width, but the lots were larger but not by much. Mr. Tracey responded they were probably grandfathered in but he was not sure. Mr. Rogers asked if the 4-plex was new and Mr. Tracey said he did not say that and did not know if it was new or not. Mr. Rogers pointed out that then neither of those examples were kin to the proposal. Mr. Tracey explained they were in kin in terms of fact that they were multi-dwelling unit lots where the applicant has proposed a split lot with one unit on each. Mr. Rogers educated Mr. Tracey that he did not need to demonstrate that there were others. Mr. Tracey said part of the argument was character of the community and when looking at the character of the community meant to view what was around the proposed project which would include the 4, 5 and 6-bedroom townhouses behind the proposed project area it also would include the student rentals along Corbit Street and the detached, semidetached and 4-plex. Mr. Rogers asked if there was anything in the Code that required the architectural features shown in the rendering that would mitigate the intensity of the lot. Mr. Tracey stated there was if they were going through the site plan process. Superior architecture was one of the elements and they incorporated that as part of this application. Mr. Hudson added all the variances were related to size not architecture. Mr. Rogers asked how they could be sure there would be dormers. Mr. Tracey responded that the Board of Adjustment could condition it on the rendering which had been provided. In New Castle County, if an applicant sought a discretionary approval and a landscape plan or an architectural rendering was shown they would condition the decision on the rendering.

Mr. Bergstrom asked the Ms. Potts if the Board of Adjustment received any letters and she responded that no letters had been received in support or in opposition.

Mr. Bergstrom asked if the Planning Department had any special comments to make and Mr. Fortner responded that there was concern about the low-density designation. Per Mr. Fortner's calculations there were 14 units per acre so it was above the 11 units per acre for low-density. That would mean the applicant would have to

speak with the Planning Commission for the change from low-density to high-density which they would have to go to anyway since this would be a subdivision because the creation of a new lot would be considered a minor subdivision but they would have the by-right plans if they did have the variances with the site plan approval process too.

Mr. Bergstrom asked if any Board members had any questions for the applicant at this moment then opened it up to the floor for anyone to speak in favor of the application. If that person was not a lawyer or associated with the case they would need to be sworn in.

Crystal Hayman-Simms was sworn in, 2 Parliament Court, Newark, DE. Ms. Hayman-Simms sold the property at 38 & 40 Corbit Street to Mr. Mayhew. Ms. Hayman-Simms explained that at the time of the sale Mr. Mayhew did convey his intentions for the property and asked if she had any objections to the plans. Ms. Hayman-Simms did not have any objections to what she would term a duplex as she was not sure of all of the nuances which had been spoken about. The reason as to why she did not object stemmed from the fact that she was of the persons born in what has been called the New London Avenue Community and she has been one of the people who has tried to document the history of the community. Ms. Hayman-Simms had participated in a podcast with the University of Delaware and she has collected photograph of the old neighborhood and testimonies from people who had grown up in the community for documentation and for distribution to the community. She expressed sadness to see the community has changed from residential to predominantly student rental buildings but at this point there was nothing that could be done. Ms. Hayman-Simms stated that if she looked at the map, she could probably name at least four people who live on the streets who are residential owners. She also does not have a problem with a duplex on the property because of its history. As far as she knows, although she does not have documentation, all the testimonies she has collected point to the fact that there was as people term a duplex on the property before her grandparents built the current structure on the property. Ms. Hayman-Simms did not have any actual pictures of that duplex; however, a few hours prior she was given a picture of the property next door, 5 Corbit Street, where a corner of the property and the corner of 38 & 40 Corbit Street can be seen. It could be viewed that there was just as much space between those two properties as there was now. Ms. Hayman-Simms had testimonies from people who knew the property when it was a duplex which was before her remembrance, who live in the neighborhood now. She stated again she did not have any problem with the new structure to be a duplex as it was a duplex before so it would keep with the historical significance of that particular property. She did know what when her grandparents purchased the property which has always been named 38 & 40 Corbit Street, they did have to have, she did not know if it was a variance, but they did have special permission to put a single dwelling on the property because there were two houses. She did sell this property to Mr. Mayhew in September of 2018. Ms. Hayman-Simms stated that she could not speak for the other residents on the street, but the street was predominantly students. From what she has seen tonight with the parking being behind 38 & 40 Corbit Street and Wilson Street was a good thing to the community it would be better than backing out of a driveway into oncoming traffic on Corbit Street. It would be a benefit and she did not have any objection. Mr. Bergstrom thanked Ms. Hayman-Simms for her perspective.

Trey Donald Gude of 36 Corbit Street was sworn in whom was there on behalf of himself, his wife and son as the owners of 34 & 36 Corbit Street. Mr. Gude stated to his knowledge, 34 Corbit Street was considered 18 RD Multifamily and as far as permits they were fortunate to have grandfathered permits. He felt because of those, the property has been sought after by private investors for student rental purposes. Mr. Gude said he does not rent to students but to small families or people who were in transition trying to better themselves. There has

been a lot of discussion about the City of Newark trying to “upgrade” the entire community, however there were little fish in the pond just as well. With that in mind, as long as the little fish were to be within the City guidelines as far as inspections and everything up to date whether their house was not the newest or the prettiest on the block per se it was sufficient as far as he was concerned. As of owner occupants on Corbit Street he knew there were no more than five owner occupied homes and two in the Terry Manor. The community in the little square was gone. Mr. Gude was not for nor against the project he and his family just happen to be in the unique position. In reference to the “quite title” action that had been concluded and was not sure why Mr. Mayhew did not continue 34 & 36 Corbit Street in his equation. Mr. Gude felt there was no community there and those who have concerns for or against the project they would have come forward. Mr. Gude added that he just wanted to have his voice heard and to hear what was being discussed because at one point and time 34 & 36 Corbit Street was part of the proposed project. Mr. Hudson asked Mr. Gude if he owned 34 & 36 Corbit Street and Mr. Gude responded yes. Mr. Gude wished the applicant “Good Luck”.

Jean White, District 1, of was sworn in. Ms. White mentioned that Mr. Tracey spoke several times about Prospect Avenue to imply that it would be precedence at other Board of Adjustment meetings. It also has been stated that the Board of Adjustment could site other things that were decided by the Board but does not constitute precedence for something else. Ms. White felt that the minimum lot area for 38 & 34 Corbit Street was quite large variance for both. The minimum lot width for each would be 50 feet but the actual width was 25.36 feet which would make a variance of about 49%. As she understood this project, a proposed property line would go between the two sides of the duplex, that the property line between 38 & 40 Corbit Street was not one large property. Her question was that if there was one property and did not divide 38 Corbit Street from 40 Corbit Street it seemed that the variances being asked would be much smaller. As an example, the minimum lot width and the minimum lot area the whole property could be used and not just the 38 side and the 40 side. She wanted to have it explained to her as to why it had to be split into two separate properties.

Mr. Bergstrom explained that even though the district was designed for duplexes, duplexes were not a permitted use. So, if the lot was not split, and someone wanted to put two families in the home and increase the density of the students, it could not be done without theatrically a use variance or a site plan approval or it could have been an area variance which could have been addressed at this meeting. Ms. White stated then basically that was the reason why there was a duplex or two semidetached that would be on two separate properties living all on one property. Mr. Bergstrom stated that was what the applicant was proposing. Ms. White asked how many occupants and or students would be on either side. Mr. Bergstrom answered three on each side, six in total. Ms. White said she would now have to ask right away that with three in 38 Corbit Street and three in 40 Corbit Street then why would the building need to be three stories. Another thought which she believed had been discussed at the table was that if the property was not divided with one house on it, it seems to her a larger house maybe two stories with five or maybe six occupants. By doing that there would be one building on a wider house where the minimum lot width and area would have could have more occupants up to five. That was something she was asking about.

Mr. Bilodeau asked Mr. Fortner what the rental restriction would be if there was just a single-family home on the property. Mr. Fortner stated that he did not see Corbit Street on the list of exempted streets so it meant to him that if the property were already grandfathered with a rental permit for students, it could have three students. The other would have to be a 3-2, where they could do two students and one nonstudent it would not be a student rental per se. The max would be three students for a single-family house if the property was a student

rental which they have one grandfather but to get the second one he was not sure if they had. Ms. White wanted Mr. Fortner to verify that Corbit Street was not on the exempt street list and he stated she was correct. Ms. White wanted clarification that if Corbit Street was not on the exempt list, then there could only be three unrelated students in a single house. She wanted to ask if that was the case because there were many students on Corbit Street then when one of those goes, if it was a nonexempt street, student rentals have to be ten properties apart. She wanted to know if that was true or if Corbit Street was grandfathered before that was passed in circa 1998. Mr. Fortner stated the grandfathered properties still existed as they were. If a new unit were to be created with one student rental next to it than his interpretation would be that it could not be a student rental. It would have to be a nonstudent rental, one nonstudent and two students or it could be a family. Ms. White stated all the other rentals on Corbit Street with students living in them they all happened before 1998 when the ordinance was put into place that the units had to be ten units apart. She did not think that was the case. If the house was built with room for three students in each of the two sides and they were separated, did that mean the developer Mr. Mayhew could not put in any students or could not put them on both sides because that would fit in the ordinance. Three could go into one part but three others could not go into the next door one.

Mr. Fortner stated the Student Housing Ordinance was established the 1990's and what student rentals were already there could continue if there were already three students or more in a house where sometimes there were four because that was what existed with the rental permit before. Any new rental permit would need to be obtained because the applicant created a new unit. A new rental permit then could not be a student rental because by his interpretation, the existing house right next door would be a student rental which would not give enough distance to have a second student rental since it was not an exempt street and not zoned RM. Ms. White asked the street number for the property which was right next to the other that was already was a student rental property. Mr. Fortner explained it was currently a one single family house and if there was a rental permit on it, he thought it might have been owner-occupied at the time, if there was a student rental permit for that one property, 38 & 40 Corbit Street, then they would need to an additional rental permit and since it was not an exempt street they may not be able to get a second student rental. Ms. White asked that if the proposed project was approved and moved forward on the property each holding three students or three people, if one was for student rental the other half could not be a student rental because there would be one right next door. Mr. Fortner agreed.

Ms. White said if Mr. Mayhew were approved to build as proposed, then he could put two students in one side but not three in the other. Mr. Fortner responded correct. Mr. Hudson asked if that meant that Mr. Mayhew would need two new permits. Mr. Fortner explained that he was assuming one already had permit so it would continue as grandfathered, but if the house was owner-occupied and it did not have a rental permit on the property then there would need to be two permits. Then the property could possibly not be able to have any students in either of side. Or at least not three unrelated students. However, if there was a rental permit on the one property, that would mean it was a student rental or a preexisting student rental then they could continue that under grandfathering. The second unit he did not believe it could be a student rental because it was not an exempted street. There could be two students and one nonstudent and have three unrelated persons in there. Ms. White stated she was trying to follow everything and getting to 40 Corbit Street has a house which would be demolished was that a rental and if students were living in it. Mr. Fortner stated he did not know that answer. Ms. White reiterated that if it was a rental and if students were living in it that would follow over, she stated her memory was that if something was demolished it would lose the student rental issue. Mr. Fortner said his

interpretation was that the property would be given a year because of the grandfathered permit. Ms. White said then the question was what was happening at 40 Corbit Street and if the other property could get a student rental permit.

Mr. Bergstrom asked if anyone else wanted to speak for or against the application. Since there were no other comments or questions from the public, the floor was opened to the Board of Adjustment for questions.

Mr. Bergstrom said he was at a quandary for this matter. He asked Mr. Bilodeau if it were possible for the Board to make a decision on this matter [since they were unsure as to the rental permit status at 38 & 40 Corbit Street]. He echoed Ms. White's prior concerns as to whether student rental permits were permitted or existed for both properties. Mr. Hudson stated the Board of Adjustment could continue to proceed. Mr. Bergstrom agreed to proceed but added that he knew what the outcome would be. He asked if the Board could request additional information from the applicant regarding the rental permit status for 38 & 40 Corbit Street and in response, Mr. Bilodeau advised yes, the question could be asked. If the applicant did not have the information at the moment, Mr. Bilodeau said the matter could be tabled until they came back with the information as it seemed like a big issue. For the Board to move forward, the applicant would need to provide information as to whether any type of rental permit (i.e. student rental or non-student rental) existed at either property. According to Mr. Bilodeau, the Board of Adjustment needed this information from the applicant before they would be able to determine what rental uses were permitted at both locations. Mr. Bergstrom asked Mr. Tracey if there was a student rental license on both properties now. Mr. Tracey stated he did not know the answer to the question; however, he was willing to have the Board table the application [if the applicant was agreeable] and would return with the requested information at the next Board of Adjustment meeting (March 21, 2019). Mr. Hudson stated that he was fine with proceeding because he did not think the answer would have any bearing on what the Board would decide. Mr. Tracey clarified the applicant did not request any relief from the occupancy limitations; therefore, the matter should be tabled until they had the answer. Mr. Moore agreed with Mr. Hudson to the effect that it was not an easy request; specifically, he believed the outcome would require the applicant to come back later.

Mr. Bergstrom asked how the Board of Adjustment could grant a variance for a student rental property since it required a use variance in addition to the requested area variances. Mr. Tracey stated it was not on the agenda; therefore, the applicant was not requesting a use variance. Mr. Tracey expressed his response was in reference to the question; moreover, he referenced Exhibits C and D. The cases presented in Exhibits C and D provided examples of variances that were granted which added an additional person into a unit. Mr. Tracey stated the request was not to go from "Non-student" to "Student". Mr. Tracey explained the requests from Exhibits C and D were treated as area variances regarding the limitations on the number of renters in a unit. For these reasons, Mr. Bergstrom announced the public session of the meeting was closed and brought discussion back to the table for deliberation. Mr. Bergstrom asked if any of the Board of Adjustment members wished to conduct the Kwik Check Factors.

Mr. Hudson addressed the Kwik Check Factors:

1. *The nature of the zone in which the property is located* – Mr. Hudson said it was currently a mix of rental and owner-occupied housing both duplexes and semidetached as well as single-family homes.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that*

immediate vicinity – Mr. Hudson stated that it was again a mixture of rentals and homes or residences, 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. Hudson had an issue with increased traffic and doubling the number of renters; another concern was that if this project were to be approved, it could encourage future requestors to use the decision for their cause which would multiple such requests.
4. *Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to efforts to make normal improvements in the character of that use of the property* – Mr. Hudson said the burden was not met for many reasons. First, normal construction requirements should not be a basis for some sort of economic hardship such as the fire suppression systems.

Mr. Hudson echoed his previous concerns about doubling of compacity at the property and the applicant's attorney stated a semidetached could not be built anywhere in Newark. Mr. Hudson felt that was on the City Council as to what should be permitted and what would be allowed. What would be permitted in the terms of zoning and what would be permitted as buildings, that does not mean an applicant could and or should get approval just because they cannot meet the actual requirements of setbacks and other requirements. He did not believe the dimension request were minimal. As part of the problems of meeting the hardship it must be shown that as the *Kwick Check Factors* stated the hardship would be exceptional rather than routine; also, as stated previous properties had requested the same type of relief. The destruction of a single-family home and the construction of a semidetached or duplex would be a normal improvement. He also wanted to know that it was keeping in the precedence because the opinions which were presented to the Board of Adjustment, he had voted against all of them; also, to be noted one of the comparisons made or not made was the one that was on New London Road which was denied. It was a similar instance of a single-family home having two addresses on the same conditions and it was just recently denied. Finally, as he announced that Chancery Court made a decision which was reviewed by the Supreme Court, the Board of Adjustment should look to restrict than increase nonconforming uses and try to secure the gradual elimination. Mr. Hudson stated he did not think the request sought the gradual elimination of nonconformities and would just be creating more and so along those lines he would most likely be voting against the variance.

Mr. Rogers agreed with the previous statements, especially with the fact that the variances requested were not minimal. The applicant requested half of the required lot size and half of the required lot width as stated in the zoning ordinance for the semidetached in the zone. The zone was not intended for those types of lot sizes and lot widths regardless of whether something similar could be built but the Board do not know what the framers had intended when they wrote the standards for the zoning for the requested use in the proposed zone. Mr. Rogers stated again that he felt the requested variances were far from minimal.

Mr. Moore echoed Mr. Hudson's and Mr. Rogers's opinions. The property was zoned RD which was for single family and semidetached homes. Based on the information provided, there could be some compelling arguments. However, in his opinion, the "exceptional practical difficulty" and "economic hardship" had not been proven. Area variances should not be liberally granted as it was stated and seen before. Mr. Moore added that it cannot be use as a substitute to amend the current code, the code was there for a purpose and as Mr. Hudson said, the case had not been proven and did not believe granting the variances would be in the best interest of

the public and as such Mr. Moore probably would not approve the variances as well.

Mr. Bergstrom while he expressed that he was not against the requests, based on the information presented he did not feel it would be in the worst interest for the community or for the applicant. With the information provided, Mr. Bergstrom did not see how the request could be a simple area variance. The relief granted would need to be rezoning or a site plan approval. Mr. Bergstrom asked if anyone had a motion to make an affirmative motion.

Mr. Bilodeau stated the Board of Adjustment needed to make the motion to grant the variances and that the motion had to be positive. Mr. Hudson expressed dislike with the process. He made a motion to approve the variances in total. Mr. Moore seconded the motion. Mr. Bergstrom asked if the Board wanted to have a discussion about the motion. Given there were no further comments from the Board of Adjustment, Mr. Bergstrom closed the discussion to entertain a motion. Mr. Bergstrom stated the motion failed to pass and the variances requested were denied.

MOTION BY MR. HUDSON, SECONDED BY MR. MOORE: TO APPROVE THE VARIANCES AS REQUESTED AS REQUESTED.

MOTION FAILED. VOTE: 0 to 4.

Aye: 0.

Nay: Bergstrom, Hudson, Moore, Rogers.

The meeting was adjourned at 9:00 p.m.

Danielle S. Mapp-Purcell, Administrative Professional, Paralegal

/dmp