

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
June 20, 2019**

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chairman Chris Rogers Bill Moore
Absent:	Kevin Hudson
Staff:	Geena George, City Solicitor Tom Fruehstorfer, Planner Danielle S. Mapp-Purcell, Administrative Professional

Mr. Bergstrom called the meeting to order at 7:00 p.m.

1. APPROVAL OF MINUTES FROM MEETING HELD APRIL 18, 2019:

MOTION BY MR. ROGERS, SECONDED BY MR. MOORE: TO APPROVE THE MINUTES FROM THE APRIL MEETING.

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Moore, Rogers.

Nay: 0.

Absent: Hudson.

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

2. The appeal of Susan and Vincent Barr, property address 102 Delrem Drive, for the following variance:

- **Sec. 32-9(c)(7)c: Side yards.** Two side yards shall be provided on every lot as follows: (c) RS – on an interior lot, 10 feet, with a minimum aggregate width of the two side yards of 25 feet. Proposed plan shows a side yard of 7 feet, side yard on the other side of the dwelling is 12.4 feet which provides an aggregate side yard of 19.4 feet, requiring a variance of 3 feet side yard and a variance of 5.6 feet aggregate side yard.

Mr. Bergstrom asked if anyone wanted to speak in favor of the case. Vincent Barr, 102 Delrem Drive, was sworn in.

Mr. Barr stated he wants to build a garage on his house in order for his son to store his “show car” at the home because his son was currently paying for a storage garage in Newport. Mr. Barr noted that they currently have a small two-car garage which does not store two cars. He would like to build a second garage to house his wife’s large SUV and his son’s “show car.” He expressed wanting to preserve the show car with the custom paint job from being damaged from the elements. Mr. Barr was asking for a 20-foot garage to

have room to store both cars and to perform repairs on the show car. The garage will be built in the same character as the house including siding, shingles, architecture and garage doors. Mr. Barr stated he has spoken with his neighbors on both sides of the property and across the street; they do not have any objections.

Mr. Bergstrom asked if any letters of opposition have been received, Ms. Purcell stated no letters have been received.

Mr. Rogers verified that the plan was requesting to add onto the existing two car garage. Mr. Barr clarified that there would still be two garage doors with one being an estimated 12-foot door.

Mr. Moore stated that the reason on the application was for additional room to be used for storage and it did not mention anything about storing another vehicle. He asked if the Mr. Barr was intending on using the additional space to house a vehicle. Mr. Barr stated his son's show car would occupy the additional space.

Mr. Moore asked if the issue was that if Mr. Barr had gone 3 feet shorter on the width of the garage so that a variance would not be required, that the garage would be unable to house the show car in that space. Mr. Barr explained the vehicle would be able to fit in the space but there would not be enough room to clean the car or perform repairs with the doors open.

Mr. Moore questioned that if the variance was not approved, would he still be able to build the addition to the garage within the Code requirements, be able to house his son's show car without being able to perform repairs. Mr. Barr said correct.

Mr. Bergstrom asked if Mr. Barr knew the *Kwik Check* rules, the standard the Board uses to approve variances. Mr. Barr was not familiar with the *Kwik Check* rules. Mr. Bergstrom asked Mr. Barr to describe the nature of the location of the property. Mr. Barr stated it was residential consisting of single family detached.

Mr. Bergstrom asked for Mr. Barr to describe the immediate vicinity of the property as far as other uses of adjacent properties. Mr. Barr said as he knew it, the other properties were residential. Mr. Bergstrom asked that if the variance was granted would it have a negative effect on Mr. Barr's neighbors. Mr. Barr stated that he did not believe that it would have a negative impact on his neighbors as no one has stated that they would be against it. Mr. Bergstrom asked if the neighbors knew how large the building would be and Mr. Barr said yes.

Mr. Bergstrom stated that if the Board were to remove the condition what would be the hardship, what would be the practical difficulty. Mr. Barr stated that he did not understand the question. Mr. Bergstrom explained that there needs to be a side yard setback, but the proposed plan would not have that and asked what would be the hardship. Mr. Barr responded that his son would have to continue paying rent for a storage space for his vehicle. He stated that his son desires to bring his vehicle home to have convenient access to his vehicle in order to perform repairs and maintenance. He noted it was an inconvenience for his son to drive to Newport to have access the vehicle.

Mr. Rogers stated the property has already has a two car garage and questioned that without the additional 20 feet then two vehicles would not be able to open their doors. Mr. Barr replied they would not be able to open the door fully to exit the vehicle if either one of them separately tried to get in or out. He noted his wife is currently driving a SUV which is long and wide. He expressed his son's concern for the paint on the vehicle possibly getting chipped or dinged. He explained that the paint job on the vehicle is DuPont Chrome Illusion which changes colors.

Mr. Moore asked again what is the unnecessary hardship or exceptional practical difficulty that would occur if the request was not approved. He said from a size standpoint, Mr. Barr's practical difficulty would be for the size of the three vehicles he would like to store, he would not be able to open the doors and move freely.

Mr. Barr confirmed there were only two vehicles, not three. He noted his wife's vehicle is in the garage along with equipment used to maintain the property such as the lawn tractor, generator, yard equipment and a power washer. He said that was why they would also like to build a shed in the back to allow him to store those items and to provide access to the garage. He repeated that his wife is unable to fully open her doors.

Mr. Moore noted that it looked as if there was a shed currently on the back of the property. Mr. Barr explained that he stores some of his hand tools and equipment for work there.

Mr. Fruehstorfer added that even with a 10-foot side yard, it still would not meet the aggregate. He said if Mr. Barr was considering building just a 17-foot-wide, it still would need a variance for the aggregate. Mr. Moore thanked M. Fruehstorfer for the clarification.

Mr. Moore asked Ms. George if the property values of the neighbors would be adversely affected if this variance was granted for a side yard setback that was not within the Code or was that a too farfetched hypothetical. Ms. George responded that is a hypothetical that he asked for her legal expertise, and not her real estate expertise. She could not speak to the matter of property values.

Mr. Moore asked if it would be relevant from a legal standpoint. Ms. George said from a legal standpoint, she thought that since the neighbors had the opportunity to voice their concerns since the variance application and meeting was noticed. She noted that no one was present. Mr. Moore said he wanted that stated for the record.

Mr. Moore asked instead of going 20 feet, how wide could he go to still be within code. He said he thought he heard the answer is 14 or 15 feet. He asked was that fair.

Mr. Rogers responded 14 feet plus an older two car garage will comfortably fit two vehicles, you just would not be able to work comfortably on his vehicle. Mr. Barr stated within the 14 feet they are still losing space due to the framing.

Mr. Rogers asked would he have the room if the other equipment were moved out to a new shed in the back that was within the setbacks. He noted Mr. Barr would probably want to keep the lawn equipment and generator stored inside.

Mr. Barr responded the lawn equipment and other items are in the current two car garage. He said that the equipment occupies a little more than half of that garage space currently. He said he switches the equipment around to bring to the front what is necessary to care for the property in that particular season. He noted the snow blower was in the garage also. He said if he removed all of the equipment to the shed, it still would not be comfortable for his wife and son to get in and out of their vehicles without "smacking" one another.

Mr. Rogers asked if Mr. Barr meant when his wife and son were there at the same time. Mr. Barr said even if they were there separately and the other vehicle is already in the garage, it is still uncomfortable to get in and out of the vehicle without the possibility of damaging the other vehicle. Mr. Bergstrom said he wanted to build a new style garage onto the existing old-style garage. Mr. Barr confirmed that was the case.

Mr. Rogers explained to Mr. Barr that the Board has four criteria that need to be met for the variance to be approved. He asked that if the fourth Kwik Check was not removed, would he have an unnecessary hardship or exceptional practical difficulty in doing what he wants to do.

Mr. Barr said the hardship would be that his son would continue to pay rent at the storage facility or have the car sit in the driveway and be potentially damaged. He noted that the custom paint job would be ruined if the vehicle were scratched or damaged. He said at one point it was in the driveway for two weeks with a cover on it and even though it was strapped down, the cover was ripped off due to strong wind. Tree limbs would hit it and tear the cover. He said he would hate to see his son's money wasted.

Mr. Moore asked did Mr. Barr imply that he intends to build a new shed for the material that is in the existing garage, in addition to the work shed. Mr. Barr responded yes.

Mr. Moore said he is struggling as well with the exceptional difficulty rule. He stated he was not certain that he saw the exceptional practical difficulty in this matter. He noted that if Mr. Barr places a shed in the back, move some of the equipment and still add to the garage from a 14 or 15 feet, there would be enough room for the two vehicles to get in and out and open the doors. He said that could be a practical alternative especially noting Mr. Barr's background in construction. He said that was his position and he was not sure what the opinion of the other Board members, but he was willing to listen to the other arguments.

The Chair opened the discussion to the public.

There was no public comment.

Mr. Rogers said he has no issue with the first three conditions of Kwik Check. He stated variances had to meet certain criteria and reviewed the **Kwik Check Factors:**

1. *The nature of the zone in which the property is located* – Mr. Rogers stated that the property is residential, and Mr. Barr is not doing anything to impact that.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Mr. Rogers reiterated Mr. Barr's property is residential and has no negative impact.
3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* - Mr. Rogers stated no one was present to testify of any negative impacts. He said Mr. Barr has testified that he has spoken to his neighbors and the property was posted.
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. Rogers noted he has not heard that this criteria was met in this matter. He stated that the applicant's family would have to demonstrate more care when opening their doors. He said that this application does not meet the standard of exceptional practical difficulty when there may be other alternatives to support more room with an addition that meets both the individual setback and the aggregate setback. The suggested alternative in providing a shed in the back would mitigate that concern of space.

Mr. Rogers stated that he would vote against the application.

Mr. Moore said he is also struggling with the exceptional practical difficulty. He thought that Mr. Barr's plan for space has some appeal and noted if he were in a similar situation, he would probably be requesting something similar. He stated as a Board member, the codes and regulations that are in place are there for a reason and while there was not any objections from the neighbors, moving some equipment to the shed in the back is a positive alternative as opposed to granting a variance. He said he was not 100% there and would like to hear the Chair's opinion on the matter.

Mr. Bergstrom said he loved the paint and to see the vehicle well taken care of. He suggested if space was needed to store equipment to repair the vehicle Mr. Barr could make the garage a little deeper which does not require a variance. He said a 14-foot-wide clear space, which is what Mr. Barr already has, would allow them to open both doors at the same time. He stated it would be a nice show place for that vehicle instead of adding the rest of it to that space. This would allow more room to walk around. He explained the Board was bound to require an exceptional practical difficulty or hardship on Mr. Barr's part as to how he was unable to make it work. He stated that the applicant has not met that criteria.

Mr. Bergstrom said he regretfully denies the application. He noted he does not see another alternative. He stated the applicant requested what he would like to do and has not indicated that this was what he has to do.

The Chair asked if anyone have any additional comments on the matter. He said he is ready to make a motion.

MOTION BY MR. ROGERS, SECONDED BY MR. MOORE: TO DENY THE APPLICATION BASED ON THE FACT THAT THE APPLICATION HAS NOT DEMONSTRATED THAT WITHOUT THE VARIANCE THERE WOULD BE UNNECESSARY HARDSHIP OR EXCEPTIONAL PRACTICAL DIFFICULTY ON HIM.

MOTION DENIED. VOTE: 3 to 0.

Aye: Bergstrom, Moore, Rogers.

Nay: 0.

Absent: Hudson

MOTION BY MR. MOORE, SECONDED BY MR. ROGERS: TO ADJOURN THE METTING.

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Moore, Rogers.

Nay: 0.

Absent: Hudson

The meeting was adjourned at 7:29 p.m.

Danielle S. Mapp-Purcell
Administrative Professional, Paralegal

/dmp