

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
JULY 16, 2020**

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chair Kevin Hudson Bill Moore Mark Morehead Chris Rogers
Staff:	Paul Bilodeau, City Solicitor Mike Fortner, Planner II Tara Schiano, Deputy City Secretary

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

1. APPROVAL OF MINUTES FROM MEETING HELD MAY 21, 2020:

Mr. Rogers asked that misspellings of his name be corrected on page three and noted the second line on page four should read "Rogers agreed with Mr. Hudson's assessment". He also questioned the language "he agreed to approve the waiver" and stated the word should either be "variance" or "appeal" as stated in the application. Ms. Schiano said that she would have Ms. Scheld check the recording. Mr. Hudson then realized "waiver" was spoken by Mr. Moore and, if that was the case, it should stand. Mr. Moore could not recall the word he used and would defer to the recording. (*Secretary's note: the word waiver was transcribed accurately from the May 21st recording and would remain in the minutes.*)

MOTION BY MR. ROGERS, SECONDED BY MR. MOORE: TO APPROVE THE MINUTES WITH THE RECOMMENDED CHANGES.

MOTION PASSED. VOTE: 5 to 0.

Aye: Bergstrom, Hudson, Morehead, Moore, Rogers.

Nay: 0.

Absent: 0.

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

2. The appeal of Joseph and Linda Magnus, property address 4 Creek Bend Court, for the following variance:

- **Sec. 32-9(c)(2) – Maximum lot coverage** – The maximum lot coverage for any building, exclusive of accessory buildings, shall be 20% in RS zoning. Proposed plan indicates the construction of a new screened porch requires a variance from 20% to 22% lot coverage.

Mr. Bergstrom asked if anyone was present to speak for the applicants. Joe and Linda Magnus stated they were the applicants and they were requesting a 2% variance to enclose a portion of their 12' x 48' deck. They further added the area would measure 12' x 12', would be screened on three sides and underneath, and be topped with a clear piece of polycarbonate to serve as a roof. Mr. Magnus explained that Ms. Magnus had health issues and the subsequent chemotherapy left her with an allergic reaction to mosquito bites. As such, she was unable to enjoy the deck. He said their application included a note from their doctor verifying her allergy. He reiterated the request was for a variance of 2% to screen in a 12' x 12' ft section of their existing 12' x 48' ft porch.

Mr. Hudson asked Mr. Magnus to describe his property. Mr. Magnus explained he lived on Creek Bend Court with neighbors to both sides. He said if one were facing his home, the house to the left was constructed five years ago on a treed lot and the house to the right was another single-family home. He said White Clay Creek was behind his property and there were four homes on the opposite side of the street in front of his home. Mr. Hudson noted Mr. Magnus lived in a residential area and Mr. Magnus confirmed. Mr. Hudson asked if the neighbors or their properties would be affected if the restriction was removed and Mr. Magnus replied no. He continued that his neighbor, Don Orr, called to discuss the proposed plans and had no issues, but said he had not spoken to his other neighbor, Carol. He thought there could be some concern with the roof but pointed that it was clear and did not suspect his neighbors would have obstructions.

Mr. Bergstrom asked Mr. Magnus if the plans would have a negative effect on his neighbors and Mr. Magnus replied no. Mr. Magnus then introduced his contractor, Allen Philipson, and asked if the neighbors would be affected in his opinion and the contractor replied no.

Mr. Rogers asked staff if the adjoining properties were notified and Ms. Schiano confirmed that direct mail notices were sent to all neighboring residences. Mr. Rogers asked if staff received negative responses and Ms. Schiano replied staff received no negative responses.

Mr. Bergstrom pointed to the 2% variance request and asked if the applicants would be negatively impacted if they were unable to enclose the porch to the requested size. Mr. Magnus said the area was 12' x 12' and did not think it was realistic to make it any smaller.

Mr. Hudson interjected and asked if Mr. Magnus said a smaller enclosure would not be functional and Mr. Magnus confirmed. Mr. Hudson noted the enclosure was smaller than the original plans and asked if enclosing the entire porch made more sense for the applicants. Mr. Magnus said they considered it, but it was too costly.

Mr. Morehead asked staff if the legal problem was the roof and the area it covered. Mr. Fortner replied that the roof caused the lot coverage and a normal patio would not count in this type of lot coverage. He explained that when a patio was roofed (even if it was not enclosed), it added to the 20% lot coverage if it was attached to the primary structure. Mr. Morehead stated the deck was not the problem and Mr. Fortner confirmed that an uncovered deck would not contribute to the lot coverage.

Mr. Bergstrom asked if the Board had any other questions and there were none. He asked for public comments and Ms. Schiano stated there were none. Mr. Bergstrom asked for the Kwik Check Factors.

Mr. Hudson read through the criteria and reviewed the Kwik Check Factors:

1. *The nature of the zone in which the property is located* – The property is in a residential community.

2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – The properties are residential homes backed up to a wooded area with a creek along the bend.
3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – The testimony from the abutting neighbor did not oppose the installation and there were no other complaints. The contractor stated the neighbors could not see it because of how the houses were angled and did not think other properties would be affected.
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 documented, Ms. Magnus has medical issues that do not allow her to enjoy her property and are an impediment. The 22% requested variance was de minimis and the applicants stated it was unrealistic to make the screened area smaller.

Mr. Hudson stated he would approve the request based on the Kwik Check Factors and supported making a motion to allow the applicants to cover the entire porch if they desired. Mr. Bilodeau explained the variance could not be increased sua sponte because it was a substantial change to the application. Mr. Bergstrom agreed that the neighbors were not notified. Mr. Bilodeau recommended sticking with 2%. Mr. Hudson agreed.

Mr. Bergstrom asked Mr. Hudson if he supported the variance and he confirmed.

Mr. Rogers agreed with Mr. Hudson's assessment and added the applicants were only asking to cover 25% of the existing deck so the requested variance was the minimal to achieve their goal. Mr. Rogers noted that although his point was not a formal Kwik Check Fact, he thought it was factor in the applicants' favor. He said he would vote in favor of the requested variance.

Mr. Morehead supported the requested variance for the reasons listed by Mr. Hudson and Mr. Rogers.

Mr. Moore supported the requested variance for the reasons stated by his colleagues and added that he believed it was a minor variance and the owners had an exceptional practical difficulty if the variance was denied.

Mr. Bergstrom concurred with the Board that the Kwik check factors were entirely met, and the application was for the least possible variance.

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

MOTION PASSED. VOTE: 5 to 0.

Aye: Bergstrom, Hudson, Morehead, Moore, Rogers.

Nay: 0.

Absent: 0.

Mr. Bergstrom congratulated the applicants and asked when construction would begin. Mr. and Ms. Magnus thanked the Board for the hearing and for the approval. They also thanked Ms. Schiano for her help. The contractor said he would begin as soon as was permitted.

MOTION BY MR. HUDSON, SECONDED BY MR. MOORE: TO ADJOURN.

MOTION PASSED. VOTE: 5 to 0.

Aye: Bergstrom, Hudson, Morehead, Moore, Rogers.

Nay: 0.

Absent: 0.

The meeting was adjourned at 7:21 p.m.

Nichol Scheld
Administrative Professional I

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