

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
SEPTEMBER 17, 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 Nichol Scheld, Administrative Professional I

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

1. APPROVAL OF MINUTES FROM MEETING HELD AUGUST 20, 2020:

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

MOTION PASSED. VOTE: 5 to 0.

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

Nay: 0.

Absent: 0.

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

2. The appeal of Daniel and Monica Seador, property address 105 Red Pine Circle:

- **Sec. 32-56.2(e) – Rear yards** – RS zoning requires a rear yard of 30 feet, but plan was permitted by site plan approval for a rear yard of 25 feet. Plan shows rear yard of 14.4 feet, requiring an 11-foot variance.

Mr. Bergstrom swore in Randy Myers, contractor for the applicants. Mr. Myers stated that the applicants were requesting to add an enclosed porch onto the rear of their duplex in Evergreen, similar to those of surrounding properties. He noted the plan was to enclose the existing porch and turn it into a three-season porch. He noted the applicants had two existing porches and explained the plan called for adding an additional six feet to the smaller porch and raising it to match the level of the other porch. He added the location was an end unit on a set of duplexes and because the property line curved, the property did not match the necessary setbacks per City zoning. The applicants requested relief because they were staying within the parameters of the existing porch and the proposed porch was similar to other additions that were allowed in the development.

Mr. Bergstrom asked Ms. Scheld for public comment. Ms. Scheld read a letter from Nancy Nobile, Evergreen Maintenance Board, into the record:

Dear Dan and Monica, Thanks for submitting specs on your porch. Members of the Maintenance Board approve this plan. It promises to look beautiful and I hope you both enjoy it for many years to come.

There was no further public comment.

Mr. Fortner added that the development was zoned RS but was a cluster development to preserve open space so the lot sizes were much smaller than one would normally find in an RS zoning district. He explained the variance was needed because the applicants did not have a backyard space that a normal RS zoned house would have. Mr. Bergstrom asked if there were other houses in the development with similar configurations and Mr. Fortner confirmed there were such houses. Mr. Hudson asked if the homes had similar porches to the one proposed and Mr. Fortner confirmed this as well.

Mr. Rogers required clarification on the schematics and asked about the 14 feet dimensions on the sketch. Mr. Meyers replied the existing porch width was 14 feet and the applicants were proposing extending the porch 6 feet to meet the second existing porch on the property. Mr. Rogers asked if it was the same rear yard or if the issue was the enclosure. Mr. Meyers understood enclosing the structure made it different and Mr. Fortner confirmed that a deck did not necessarily have setbacks, but enclosures created setbacks. There was discussion on the map presented to clarify the location of the proposed porch and Mr. Meyers reiterated the new porch parameters would not exceed the second existing deck. Mr. Hudson clarified the applicants were only enclosing the smaller portion. Mr. Bergstrom asked if the applicants intended to enclose the existing larger deck and Mr. Meyers replied no.

Mr. Moore asked the applicants to describe the open space behind the home. Mr. Meyers explained it was grassy areas with a common sidewalk and what believed was water retention for the development. He stated the open space had no trees and was all open lawn. Mr. Fortner added the open space was part of the development and would remain open.

Mr. Bergstrom asked if the applicants were sure of the dimensions because the existing survey did not show the decks. Mr. Meyers confirmed and explained that because it was a cash sale, there were no surveys done for the mortgage and the presented depiction was used for the Planning Department's permit. Mr. Rogers noted the decks were not drawn to scale and Mr. Meyers confirmed they were drawn to show the basic reference of the proposal.

Mr. Morehead asked if the adjoining neighbor had any issue or approved of the proposal. Mr. Meyers assumed the neighbor approved because they had a similar addition on their home. Mr. Morehead asked if the neighbor required a variance at some point and Mr. Meyers could not speak to the variance and explained the neighbor had a similar deck setup. Mr. Morehead asked if it was in a similar position and Mr. Meyer's confirmed. Mr. Hudson assumed the neighbor did not require a variance because the duplex was shifted forward. Mr. Morehead asked Mr. Fortner if the similar structures in the neighborhood required variances because it would be useful to know if there was a set precedence. Mr. Fortner did not specifically know which properties had variances but recalled at least one with an addition in the subdivision. Mr. Morehead asked if the City kept lists of variances and Mr. Fortner replied no and Mr. Morehead suggested it become practice.

Mr. Bergstrom agreed with Mr. Morehead's suggestion and recalled a variance for the subdivision was on the border of 896 but was a different condition. He hoped that the neighbor was contacted and had the opportunity to weigh in on the case and hoped for a measured drawing. He continued that the applicant

was requesting a substantial variance because the yard was 11 feet short in the rear yard against the private open space. He added that the Maintenance Corporation included their support and assumed their opinion was in the best interest of the open space. He asked if there were additional questions for the contractor.

Mr. Morehead asked if the private open space was perpetual and would always be open space, if there was a sense of the size of the space, and assumed if there was a park in the space, then the letter of the law was not met but the intent was. Mr. Bergstrom knew what the park looked like but asked another participant to introduce the description into the record and asked for the homeowner. Mr. Seador introduced himself as the applicant and was sworn in by Mr. Bergstrom. Mr. Seador described the space as open space with a few trees between the edge of his property line and the open space. He continued there was a paved or gravel walkway around the neighborhood which only had two streets. He claimed the property behind his home could not be developed because there was no access and noted the open space was maintained by the homeowners' association. He explained there was not a park, simply a walking trail and a gazebo. He stated there were a number of residences with enclosed porch add-ons and explained the property was 32 years old. He reiterated when the homes were built, they were given a smaller setback from a shorter property line and pointed to the schematic. He noted his property line had an odd angle and confessed he originally thought his property line extended further than it did which was why he applied for relief.

Mr. Bergstrom asked if Mr. Seador noticed the cookie cutter houses were pushed back farther because they impinged on the cul-de-sac and Mr. Seador believed it was possible. Mr. Seador explained that he spoke to his connected neighbor who also had an enclosed porch, who verbally supported the addition and was amenable if the HOA had no issue. He admitted he had gotten calls from other neighbors because the direct mail notice language was vague, and he explained the proposal to their liking. Ms. Scheld noted direct mail notices were sent on September 4th to all properties within 500 feet of the applicant and the notice was posted in the Newark Post on September 4th.

Mr. Rogers asked Mr. Seador what difficulties he would encounter if the variance was not granted. Mr. Seador replied that Newark had many mosquitoes and claimed he added a screen porch to his previous home as a response. He wanted to have the same experience at his current address. He continued that the only hardship would be the work completed by the contract for laying the area out and the \$275 he paid for the hearing. Mr. Rogers asked Mr. Seador if he would be deprived of something that his neighbors had, and Mr. Seador confirmed and reiterated many of his neighbors had screened in porches and estimated 30% of the other homes had screened in porches. He believed a denial to his request would be unfair because other neighbors had screened in porches and assumed that they had all undergone the permitting process.

Mr. Rogers asked if the open space in the rear of the yard was required for the original cluster development and must be permanently protected. Mr. Fortner confirmed. Mr. Bilodeau referred to Mr. Seador's angled rear property line that cut down on the rear setback and asked if it was limited to Mr. Seador's parcel. Mr. Fortner acknowledged the yard was at a strange angle not necessarily typical in all the developments and admitted Mr. Seador was limited to where he could build the porch.

Mr. Bergstrom asked for further comments. There were no further comments and Mr. Hudson offered to read through the criteria and review the Kwik Check Factors:

1. *The nature of the zone in which the property is located* – The property is in a residential area with RS zoning.

2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – A cluster development style of homes made to create open space directly behind the applicants' property
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 saw no proof that the neighbors would be impacted, noted the rear line was open space, and the direct neighbor shared no concerns and also had an enclosed space according to testimony.
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 the permitted use of the property* – He believed the request was typical and the complaint of mosquitos was common. He added that it was a typical variance issue because of the angled property line and Mr. Seador was trying to do it at the smallest factor. He noted many other neighbors had the same issue, reiterated that Mr. Seador's request was to enclose the smallest part and the HOA took no issue. Mr. Hudson shared that he would vote to approve the variance.

Mr. Rogers agreed with Mr. Hudson's assessment and intended to approve the application.

Mr. Moore agreed with Mr. Hudson and Mr. Rogers and agreed that the angle caused problems and noted the structure would be smaller than what was in existence. He would support the application.

Mr. Morehead thought the lot was unique and deserved special consideration. He said the record indicated there was severely angled lot line and reiterated the Planning Department stated that the open space in the back would remain open in perpetuity. He added that the adjoining neighbor approved, and City Council approved the neighborhood design with site plan approval and was unique. He believed all of the factors indicated the proposal met the *Kwik- Check Factors* and he would support the variance.

Mr. Bergstrom agreed with the Board and thought the application was a strong case for a variance based upon a severely irregular lot line, including a front yard impinged on by the cul-de-sac and a rear yard with a severe angle, met all the criteria for the *Kwik- Check Factors*. He would vote in favor of the application.

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

MOTION PASSED. VOTE: 5 to 0.

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

Nay: 0.

Absent: 0.

The meeting was adjourned at 7:30 p.m.

Nichol Scheld
Administrative Professional I

/ns