

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
FEBRUARY 18, 2021**

Those present at 7:01 p.m.:

Members:	Jeff Bergstrom, Chair Kevin Hudson Bill Moore Mark Morehead (arrived: 7:08 pm) Chris Rogers
Staff:	Paul Bilodeau, City Solicitor Mike Fortner, Planner II Nichol Scheld, Administrative Professional I

Mr. Bergstrom called the meeting to order at 7:01 p.m.

1. APPROVAL OF MINUTES FROM MEETING HELD JANUARY 21, 2021:

Mr. Moore noted an edit necessary on page four.

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

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Hudson, Moore, Rogers.

Nay: 0.

Absent: Morehead.

2. The appeal Curtis and Lisa King, property address 302 Bent Lane for the following variance:

- **Sec. 32-9(c)(5)(c) – Building setback lines.** – The minimum setback lines for the RS zone is 25 feet. The proposed plan only provides setback of 10 feet requiring a variance of 15 feet.

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

Mr. Bergstrom asked who would present the case and Curtis and Lisa King, the homeowners, introduced themselves.

Mr. Bilodeau informed that Mr. Morehead was having connectivity issues and suggested to wait for Mr. Morehead to log in.

Ms. Scheld added that direct notices were sent to neighboring properties on February 3rd and the hearing was posted in the Newark Post on February 5th.

Mr. King requested a variance to construct a car port in their driveway and informed that he had the support of four neighbors. He publicly acknowledged Ms. Scheld's assistance through the process, which he said could be daunting for residents. He introduced his architect, Ray Worrall, and explained the originally submitted design was deemed to be too expensive so the applicants submitted a revised design with the same footprint and variance requirement. He explained that both plans were included in the packet and reiterated that the setback violation was still the same.

Mr. King presented the original design that accompanied the application denied by Code Enforcement. He explained that the hashed section in the setback request was originally 28 feet from the setback line, noted that the corner of the existing garage barely touched the setback line, and said the carport would extend into the existing driveway. He and Mr. Worrall calculated the setback at 13 feet but the denial letter from Code Enforcement stated 10 feet. He wanted to clarify that the setback did not start at the street and actually began at some point in their yard. He then presented the revised drawing and explained that the structure was scaled down in building materials and design but reiterated the footprint was the same. The next slide provided a closer view of the south facing structure of the home.

Mr. King described the house as a mid-century design that adhered to mid-century modern architecture and the applicants wanted to ensure the design of the carport adhered to the original design of the house. He stated the pitch of the carport roof mimicked the pitch of the roof from the existing garage and the carport extended an estimated 20 feet into the driveway. The applicants wanted post and beam construction and wanted the carport to be open on one side for easy access to the front door of the home. He informed there would be a beam that attached to the house and would be appropriately constructed with a pocket in the existing structure to accept the beam. The next slide was the home's floor plan and he explained that the contractor received a permit on Monday to begin remodeling the existing garage. He said he and his wife initially assumed the carport would be too expensive, but the revised design was more affordable. In the meantime, he asked his contractor to begin the application process to remodel the garage into a living space. He explained that he constructed 8-foot by 6-foot privacy panels made from 4x4s and cedar planks to provide privacy from passersby and informed the panels would also be installed at the sides of the carport. Mr. King next displayed a view of his home from Briar Road and explained the carport was intended as a lid for where they currently parked their cars against the garage. He added that a 1973 Duster was parked on one side of the garage.

Mr. Bergstrom asked Mr. King to describe his neighborhood. Mr. King replied that Nottingham Green was an eclectic, well-established neighborhood. Mr. Bergstrom asked if the neighborhood was industrial and Mr. King replied it was a residential suburban neighborhood, situated in the pocket of Barksdale Road, Casho Mill, and Main Street. The homes ranged between 40 and 60 years old. Mr. Bergstrom asked if the Kings' home was in character with the rest of the immediate vicinity. Mr. King replied that the home was unique in the neighborhood. Mr. Bergstrom again asked if the home was industrial or commercial and Mr. King replied the home was residential. Mr. Bergstrom asked if the neighbors would be negatively affected if the variance was approved and Mr. King said no and revealed that he had letters of support from immediate neighbors Dale and Lola Johnson, Sally Donatello, Gordon and Stephanie Perkins, and Georgia Saum. He said his neighbors supported the project because they liked the idea of mid-century modern architecture and because the home was iconic in the neighborhood.

Mr. Hudson agreed with Mr. King's description and revealed he lived in the neighborhood. Mr. Hudson commended the Kings for the upkeep of the home. Mr. Hudson explained the Board members had to consider the aspect of legal standards for hardship and exceptional practical difficulty. He asked Mr. King to describe the property's setup. Mr. King asked for clarification and Mr. Hudson wanted to know about the

lot. Mr. King described the property as a half-acre, triangular lot without a backyard. He continued that the home was roughly 1,300 square feet with an outdoor endless pool. He explained the privacy panels lined up with the plane of the front of the current garage and there were additional panels in the triangular part of the yard. He explained that he and his wife purchased the home in a state of disrepair and then restored it to as best they could to remain faithful to the original design of the house. He informed the Board that he and his wife loved their home and it would be their last. Mr. Hudson asked if there was another place to build the carport. Mr. King replied no and emphasized that any location on their property would require a variance because the setback cut directly across the tip of the existing garage. He conjectured that the garage was originally a carport that was eventually enclosed.

Mr. Moore said that he was still confused on the question of exceptional practical difficulty and requested details on unnecessary hardship. He noted the property had a garage and asked why the carport was a necessity. Mr. King informed the garage would be repurposed. He explained that when the pandemic hit, he and his wife were forced to work from home and then learned their remote situations were permanent. They had to reconfigure how to live and work in the home to accommodate offices. He understood that many people were working from common areas, but it was not a practical solution for he and his wife. They reconfigured the home, so it was still comfortable but also had a dedicated office space.

Mr. Bergstrom asked for additional comments from the Board.

Mr. Bilodeau understood the lot was oddly shaped and assumed if the lot was a rectangle then the variance would be unnecessary. Mr. King confirmed and said they could install the carport in the middle of the front yard but it would be an obstruction to viewing traffic. He informed the intersection was busy and the more visibility allowed, the better.

Mr. Fortner pointed that the site plan had a “building restriction line” of 30 feet, which he assumed meant setback. He confirmed the home was zoned RS and the setback was 25 feet. He continued that the lot was an unusual shape and was a corner lot with essentially two front yards which made the setback more extreme.

Mr. Hudson asked for the variance request measurement and Mr. King replied that the requested setback was 13 feet, but the denial letter said 10 feet. He asked Mr. Worrall for the exact dimension of the carport. Mr. Worrall believed the measurement was 20 feet deep. Mr. King informed the carport was 20 feet, front to back. Mr. Hudson asked for the setback variance request and Mr. King replied the setback requested was 13 feet, but the denial letter said 10 feet. He reiterated the application was to go from 28 feet to 13 feet.

Mr. Fortner spoke with Tom Fruehstorfer, who originally reviewed the project. He explained the original submittal had a note estimating “about 10 feet” which was what the Planning Department used in the denial letter. He continued that the applicants submitted a more precise drawing which indicated a 13 foot setback and he deferred to their measurement as the correct amount for the variance.

Mr. Rogers replied that the variance was for a 12-foot setback and Mr. Fortner confirmed and explained the plan indicated there was 13 feet between the edge of the carport and the setback line. He assumed the applicants’ drawing and measurements were correct and a variance of 12 feet was required. Mr. Rogers referred to the applicants’ claim that their exceptional practical difficulty was the inability to use their home for work and asked if they were employed fulltime. Mrs. King confirmed that at the beginning of 2020, she became a remote associate at W.L. Gore. Mrs. King had a global role where she spoke to colleagues in Germany early in the morning and to her China team in the evening, so she was frequently on the telephone and video. Her German team leader asked if she would be willing to become permanently remote because

she was the sole employee in her role and her team was in Germany. She explained her quality of life would greatly improve when she would be able to take advantage of downtime during the day. She informed she would not be returning to the office even when Gore reopened. Mr. King explained that he was an instructor at Wilmington University and taught three different courses. He noted he often taught two sections of a course at the same time and recently learned that one of his courses would be permanently online. He continued that he and Mrs. King were both loud speakers during presentations and telephone calls and were forced to reconfigure their space. Mr. Hudson reiterated the home was small and was the Kings' forever home. Ms. King confirmed that the home was 1,500 square feet with the garage. She intended to move her office into the former TV room, the garage would be used as the living room, and Mr. King would float in between. Mr. King continued that the home was small with no attic or basement and was slab on grade construction with two bedrooms, two baths, and the remaining common area.

Mr. Morehead stated the house was shaped like an L and asked if it was possible to build into the triangle shaped yard to create a living room. Mr. King said it was possible but whoever situated the home on the lot made sure the glass wall faced due south which he considered energy conservation because the wall provided the home with passive solar heat. He explained that renovating the space would defeat the energy conservation and would also add tonnage that their current HVAC system could not handle. He revealed that they tried to do a 12-foot by 14-foot addition onto the home, but it would have cost \$60,000. They realized that they could not add additional space to the structure but could remodel the interior. Mr. Morehead assumed they could remove the glass wall and move it south to allow more footprint for the sake of an extension to the slab and mortar roof rather than moving the living room into the garage. Mr. King agreed for the sake of argument but admitted it was not affordable. He revealed they completed a cost estimate for an addition on the other side of the house and found it was cost prohibitive. He continued that the garage remodel and the redesigned carport were not difficult and repeated that an addition was not financially feasible.

Mr. Hudson interjected that based on the setback line, an extension would also require a variance unless it was setback again. Mr. Morehead assumed an addition would be an extension of the house and not an extension of the garage. Mr. Morehead suggested moving south along the back lot line, which was clearly defined as side lot because it only had 10 feet. Mr. Hudson interjected that the back lot contained the pool and Mr. Morehead asked if the pool was included in any of the submitted materials. Mr. Morehead did not have video, so Mr. King explained the pool was to the right of the front of the house, behind the privacy panel and lined up with the front of the garage. Mr. Morehead asked if the pool was inside the L and Mr. King confirmed. Mr. Morehead clarified that he was speaking about moving the glass wall between the existing kitchen and dining room and building out in that direction towards the fence. Mr. King repeated that constructing an addition was cost prohibitive and while an addition was conceivable, it was not feasible for the applicants. Mr. Hudson asked how an addition would affect the aesthetics of the home. Mr. King replied the aesthetics would be compromised and the home, in its current state, was faithful to its original footprint. He continued that they wanted to preserve the aesthetics and they were pleased with the design. He agreed the home was small and revealed that on a sunny day in the winter, the south-facing window provided enough warmth that the heat did not turn on. He reiterated the home was efficient and he did not think it was possible to add volume and maintain the efficiency. He explained the garage would be an easy project. Mr. Morehead acknowledged that Mr. King owned three cars and asked where the additional car would be kept. Mr. King explained they did not intend to renew the lease on his car so there would be two cars under the carport: the shared vehicle and the Duster. Mr. Morehead asked if the Duster was registered and Mr. King confirmed.

Mr. Bergstrom asked for public comment. Ms. Scheld informed that she received four public comments that were submitted with the application. Mr. Bergstrom stated the comments were uniform as prepared by the applicants and were all in favor of the project and Ms. Scheld confirmed.

MOTION BY MR. HUDSON, SECONDED BY MR. MOREHEAD: TO CLOSE THE PUBLIC PORTION OF THE MEETING FOR BOARD CONSIDERATION.

MOTION PASSED. VOTE: 5 to 0.

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

Nay: 0.

Mr. Hudson ran through the KWIK Check Factors:

1. *The nature of the zone in which the property is located* – residential neighborhood at Nottingham Green.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – all homes were residential, and the neighborhood was eclectic.
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 did not anticipate that any neighbors would be seriously affected and noted the letters of support.
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* – Mr. Hudson reminded the home was small, especially given the current COVID climate and the fact that the applicants required more internal space for their offices. He acknowledged the Kings wanted to remain in their forever home. He considered that constructing extensions to other areas would either require a variance or would otherwise compromise the architecture of the unique home and would be considered a hardship. He added that the additional costs and the loss of passive heating were also hardships. He continued that variance request was for 12 feet and the lot was the classical problem for those seeking a variance. He reiterated the setback line cut through the carport based on the submitted diagrams. He did not foresee a practical solution for the applicants to install the carport elsewhere.

Mr. Hudson supported the 12-foot variance request.

Mr. Moore agreed with Mr. Hudson and reiterated that the corner lot was oddly shaped, and the setback line cut through the yard. He initially questioned the need for a carport but was satisfied with the applicants' explanation that the garage was being converted into necessary living space. He agreed that the applicants' faced unnecessary hardship and he would approve the variance.

Mr. Morehead agreed that the neighborhood was residential, and the character was residential with some older, carefully designed architectural homes. He referred to Mr. King's prior belief that the former

carport was already closed in as a garage so he was concerned that the proposed carport would also be enclosed in the future. He explained that once the carport was roofed over, there was nothing to prevent the carport from being enclosed and, if the Board approved the project, the setback would be cut in half. He was unaware of other properties in the neighborhood with the same situation and reminded that the corner was busy and very visible. He believed there was ample room to move the glass wall further to the south and did not believe it was the Board's responsibility to accommodate an applicant's reasonable expenses for an addition. He did not believe the degree of expense deserved a variance because it was more or less within reason for an addition. He suspected a future owner would enlarge the home by extending the glass wall further south while maintaining architectural purity by following the same rooflines. He believed the proposal would potentially affect the neighboring properties and he did not believe there was an exceptional difficulty or an unnecessary hardship. He would not grant the variance.

Mr. Bergstrom asked Mr. Bilodeau if it was possible to include a condition with the variance to permit the encroachment of only a carport and not a garage. Mr. Bilodeau confirmed the variance was to allow a structure to be built within the setback and his analysis was that a structure was a structure, be it a carport or an enclosed room. He understood that if a porch was in a setback, it was a violation. He did not believe the Board could limit the setback variance for an open carport and nothing else.

Mr. Rogers agreed with the assessments of Mr. Hudson and Mr. Moore. He noted that none of the KWIK Check assessments was based on the fact that the project was a carport and not a garage. He explained if the plan was for a garage, the applicants would still meet the exceptional practical difficulty as testified. He would vote in favor of the variance.

Mr. Bergstrom believed very strongly that the City had building restriction lines for a reason and approaching the street should be avoided at all costs. While he agreed the applicants met three of the four KWIK Check matters, he was not certain that the hardship was anything other than a simple financial hardship. He would likely not vote in favor of the variance.

MOTION BY MR. ROGERS, SECONDED BY MR. MOORE: TO APPROVE THE REQUESTED VARIANCE BASED ON THE FACTORS AS ARTICULATED BY MR. HUDSON.

MOTION PASSED. VOTE: 3 to 2.

Aye: Hudson, Rogers, Moore.

Nay: Morehead, Bergstrom.

Mr. Bergstrom cautioned against uplift. Mr. Bilodeau interjected and asked if the applicants would be held to a time limit. Mr. Bergstrom invited Mr. Rogers to amend the motion. Mr. Rogers assumed the application was pending. Mr. Bergstrom suggested the construction should begin within six months and Mr. King accepted. Mr. Rogers amended his motion.

MOTION BY MR. ROGERS, SECONDED BY MR. MOORE: TO APPROVE THE REQUESTED VARIANCE BASED ON THE FACTORS AS ARTICULATED BY MR. HUDSON WITH THE CONDITION THAT CONSTRUCTION BEGIN WITHIN SIX MONTHS.

MOTION PASSED. VOTE: 3 to 2.

Aye: Hudson, Rogers, Moore.

Nay: Morehead, Bergstrom.

Mr. Hudson noted that the Board previously attached conditions to variances and asked Mr. Bilodeau for clear direction. Mr. Bilodeau would address the matter at a future meeting.

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

The meeting was adjourned at 7:53 p.m.

Nichol Scheld
Administrative Professional I

/ns