

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
JANUARY 20, 2022**

Those present at 7:00 p.m.:

Members:	Kevin Hudson, Acting Chair Chris Rogers Scott Bradley
Absent:	Jeff Bergstrom Mark Morehead
Staff:	Paul Bilodeau, City Solicitor Mike Fortner, Planner II Nichol Scheld, Administrative Professional I

Mr. Hudson called the meeting to order at 7:00 p.m. and swore in the applicants: Ebony Tucker, Pam Covey, and Todd Ladutko.

1. APPROVAL OF MINUTES FROM MEETING HELD NOVEMBER 18, 2021:

Mr. Bilodeau pointed that because Mr. Bradley was a new member, there was technically no quorum to approve the minutes because he was not present at the meeting.

2. The appeal of J. Todd Ladutko d/b/a Swing and a Miss, LLC., property address 54 East Cleveland Avenue:

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

- **Sec. 32-10(c) – Area Requirements** – The existing setback is 9.7 feet, which is existing legal nonconforming for the existing porch. The new porch does not meet the required setback of 15 feet. A setback variance of 5.5 feet is required.
- **Sec. 32-51(a) – Nonconforming uses, structures, and buildings** – The existing parcel has both a nonconforming use and a nonconforming setback and can increase the footprint of the structure by 20%. The plan calls for a footprint increase of nearly 50%. A variance of 30% (478 square feet) is required.

Mr. Hudson asked if anyone was present to speak on behalf of the applicants. Mr. Ladutko presented his argument for the variance requests. He explained that when he purchased the property, it was two houses on an RD lot, which was did not conform with the current codes. He estimated the house for which he was requesting the variance was built in the early part of the 20th century and had been a two-unit duplex for at least 40 years under the previous owners; the use remained when he purchased the property. He noted that both units had rental permits for four people and explained that the current floor plans were 3-bedroom, one bath unit for each dwelling, with antiquated kitchens and bathrooms that lacked modern amenities. He informed that he renovated the 11 Wilbur Street home at the rear of the property to have four bedrooms,

four bathrooms, central air conditioning, a spacious kitchen, and washer and dryer. He explained that the lot was 21,870 square feet and in RD zoning, an applicant needed 6,250 square feet for each individual building so the site exceeded the usage requirement by over 3,000 square feet. He revealed that the lot had not been subdivided at any point and pointed to the deed submitted with the application materials that showed both properties were on the same deed but listed as different addresses.

Mr. Ladutko explained that the renovation plan for 54 E. Cleveland was to keep the current façade with the front porch and the mansard roof, but extend it. He clarified that one of the reasons for the variance request was that the proposed addition porch did not conform to current Code by several feet. He thought it was appropriate to keep the porch covered because removing the porch roof would detract from the external appearance of the building. He pointed to the artist rendering of the project and noted that the house would maintain its look but albeit expanded; it would maintain its current character. He informed that Code required three parking spaces per unit for a four-bedroom unit and he currently had five external, uncovered parking spots and a two-car garage in the back for a total of seven spaces as opposed to the required six spaces.

Mr. Ladutko reiterated that the proposal would be an asset to the area and because the building would have a sprinkler system installed, it would also provide a fire safety advantage. He noted that each floor would have four bedrooms, four baths, and an upgraded kitchen.

Mr. Hudson opened the table to questions from the Board.

Mr. Rogers asked why the plot included the Wilbur Street parcel when the two dwellings in the conversation were all on the lot with the 2 ½ story framed house. Mr. Ladutko explained that 11 Wilbur Street was the street address for the other building on the property and because there were two dwellings on one lot, the City Planners deemed it a legal non-conforming use. Mr. Rogers asked for clarification on the 175-foot line. Mr. Ladutko replied that it was included in the survey, and he assumed it was included based on the reading of the deed; he reiterated that the properties were on one tax parcel. Mr. Rogers stated that it was one tax parcel, but the Deed of Correction indicated it was two lots. Mr. Ladutko did not have the deed on hand but said it was described as two dwellings and continued that the Deed of Correction was completed in 2005 and updated as an affidavit when he refinanced the property in 2015. He maintained that the deed was as discussed when he purchased the property in 2005. Mr. Rogers agreed that the deed described two lots, but City staff considered it one parcel because it was one tax parcel and Mr. Ladutko confirmed.

Mr. Rogers was confused on the City's denial letter where the setback was 9.7 feet because he did not see the number on the plot plan; it seemed that the existing setback was non-conforming. He asked for clarification on the porch and the setback. Mr. Ladutko understood that part of the parcel went into Cleveland Avenue and according to the Planning Department, the Planners interpreted the setback as starting from the curb to the porch and was a legacy rule. Mr. Fortner confirmed that the parcel went into the middle of the road, but the City Planners did not use that line to determine setback, they started near the curb, as referenced in Mr. Fruehstorfer's memo. Mr. Rogers asked if the covered porch on the plot plan was the proposed porch or the existing non-conforming porch. Mr. Fortner replied that the plot plan on display was that of the existing non-conformity and there was another image showing the proposed porch.

Mr. Hudson asked for the current setback of the existing covered porch. Mr. Fortner replied that he did not have the denial letter on hand and only had Mr. Fruehstorfer's notes that indicated the setback was about 9.7 feet. He reiterated that the existing porch was legal non-conforming, but the new porch required a 15-foot setback.

Mr. Bradley asked for the required setback using the property line at the center of Cleveland Avenue because he was used to setbacks measured from an existing property line and not from a curb as a curb could vary. Mr. Fortner reiterated that the property line was in the center of Cleveland and the City would only use the curb as a marker. Mr. Bradley referred the measurements on the survey, noted that the covered porch was 16.1 feet off of the curb, and asked if the curb would serve as the baseline for the offset. Mr. Fortner replied that the line was at the end of the right of way, and Mr. Fruehstorfer calculated 9.7 feet. Mr. Bradley explained that the right of way was not shown on the plan and was confusing from a drawing standpoint. Mr. Rogers agreed because he was trying to reconcile the 16.1 feet and the 9.7 feet in question. Mr. Hudson asked if the porch would move closer to the road, move farther back, or stay the same. Mr. Ladutko replied that the porch would stay the same because it would be a continuation of the existing porch.

Mr. Bradley referred to Mr. Fortner's comments about a plot plan including the proposed plan but noted that the Board only had the existing plot plan. Mr. Ladutko replied that he did not have a survey completed with the proposed plan; he only had the floor plan and rendering of the exterior. Mr. Fortner revealed that he had survey with the proposed additions and asked if the Board had the same. Mr. Bradley replied that the information was not on the plot plan, it was on the architectural drawings, but without knowing the City's required offset, he was unsure how to derive that the 9.7 feet was the variance. Mr. Fortner explained that he had an image showing the delineation of 9.7 feet and the footprint of the proposed addition. Mr. Bradley asked if the image could be shown on screen and Ms. Scheld informed that she had scanned every part of the submitted application. Mr. Fortner scanned the image and sent it to Ms. Scheld.

Mr. Rogers stated that Mr. Ladutko was not building closer to the roadway as shown on the mortgage inspection plan and Mr. Ladutko confirmed. Mr. Rogers asked if all of the improvements would be completed by extending the rear of the building and Mr. Ladutko replied that the improvements would all go towards Wilbur Street, matching the existing footprint. Mr. Bradley informed that the plot plan indicated that the covered porch area would extend 20 feet on the righthand side of the house and Mr. Ladutko confirmed.

Mr. Fortner asked Ms. Scheld to display the scanned survey dated April 6, 2005, from East Coast Survey. Mr. Rogers asked if the right elevation was the Wilbur Street side and Mr. Ladutko confirmed.

Mr. Bradley asked if the home was currently two separate dwelling units and if there was a separation of the units. Mr. Ladutko explained that the existing format was that each unit was on one level; the first floor was three-bedroom, single bath, and the second floor was a separate three-bedroom, one bath unit. Mr. Bradley asked if it was possible for the units to access one another, and Mr. Ladutko replied that it was not. Mr. Bradley interpreted the current plans that the building was basically an 8-bedroom house because it was possible to access the dwellings. Mr. Ladutko reiterated that the units were separate.

Mr. Fortner referred to the plot plan displayed by Ms. Scheld and read aloud Mr. Fruehstorfer's site plan review note for the record, "it should be noted that the property lines of the submitted mortgage inspection plan, which notes it should not be used for further improvements, does not match the property line shown in New Castle County GIS. Staff suspects that part of the right of way was acquired by DelDOT during improvements to Cleveland Avenue. Staff assumes the lines shown by New Castle County are correct but if the applicant can show otherwise, that will be reconsidered. At a minimum, the previous property line should be considered by the BOA if the setback issue should advance to them." He then referred to the drawing and showed where the determination of where the property line was, and the setback line should be; it was determined that the measurement was 9.7 feet from the covered porch to the redline. He continued that the proposed porch addition continued the same design theme and did not make the porch closer or farther away. Since the proposal was an expansion of more than 20%, it was determined that the porch also needed a variance to continue non-conformity. Mr. Bradley thanked Mr. Fortner for the

clarification and asked if it was possible that Mr. Ladutko did not own as much land as the parcel showed if DelDOT had taken some of the right of way and, if so, should there be a revised plan. Mr. Ladutko assumed the same and did not recall receiving any notification to the contrary, so he deferred to the County records. He maintained that even without the area in question and if there were not two residential dwellings on the lot in the RD zone, there would not be a need to request the variances. Mr. Bradley understood but wanted to know the parameters of the actual property and where the property line began after DelDOT took a portion for Cleveland Avenue; he wanted to know where the property line began and if it effected the City's offset requirements. Mr. Ladutko said there was no effect because of the legacy status. Mr. Fortner added that staff determined the setback using available information and by granting the variance, the legal non-conformity would match staff's calculations. He continued that if Mr. Ladutko owned more land, then he would still be fine. Mr. Bradley asked what would be case if Mr. Ladutko owned less. Mr. Fortner replied that the request erred on the side of extreme and staff used the best information available based on County records. Mr. Hudson believed the discussion was conjecture and could not be used in the decision.

Mr. Bilodeau interjected and explained that there were many properties on Main Street where the property line went into the middle of the street and staff calculated using the curb. Mr. Bradley asked if he should be using the curb line to make his determination and Mr. Bilodeau confirmed. Mr. Bradley said that he would use the 9.7 feet red line on the plot plan.

Mr. Bradley wanted to ensure there was a separation between the two units and it would not be an eight-bedroom house. Mr. Ladutko confirmed there was a separation.

Mr. Rogers asked if the current configuration had one door that fronted on Cleveland Avenue and the addition would propose a second door. Mr. Ladutko confirmed and pointed to the rendering which showed two exterior doors at the front of the building. Mr. Rogers noted that the units were two separate structures: one that accessed Wilbur Street and the structure in the rendering. He admitted he was confused on the issue of two dwellings and asked if there were two dwellings in the existing structure. Mr. Ladutko confirmed there were two units in the same structure. Mr. Rogers asked how the units were accessed separately. Mr. Ladutko replied that when one entered the front door, there was a second door inside that lead to the second floor.

Mr. Bradley asked for further clarification and Mr. Ladutko pointed to the staircase on the existing floor plan on the far-right side. Mr. Bradley said that he was looking at the proposed plan and Mr. Ladutko said he was answering the question about the existing staircase. Mr. Bradley noted that the new plan had the occupants climbing 11 risers and making a left into an open area. Mr. Ladutko explained that the stairs on the second-floor plan continued to the second unit and the proposed second-floor floor plan was another page. Mr. Bradley asked if the area going down three risers on the second-floor plan to the landing was from the second unit upstairs and Mr. Ladutko confirmed. Mr. Bradley asked if both units had access to the stairwell. Mr. Ladutko explained that the existing stairwell leading to the second floor on the existing floor plan would be removed. Mr. Bradley maintained that there would only be one stairwell and both units would have free access. Mr. Ladutko corrected that there were two and explained that there was a door on the first-floor plan in the existing building and the new addition would include a front exterior entrance to the second-floor unit. He emphasized that there would be no access from the first-floor unit to the second-floor unit.

Mr. Rogers wanted to confirm that even with the addition, apart from the porch issue, the property was still within the zoning requirements for setbacks and lot coverage. Mr. Ladutko confirmed and continued that if the property was a legal non-conforming use lot with two residential buildings, he would not be required to only get a 20% addition onto the existing dwelling and could go higher. He was attending that evening to request the variance.

Mr. Hudson admitted that he was still confused and asked if the proposed structure met the area requirements for the whole parcel. Mr. Ladutko believed so and referred to the open space on the site plan, between 54 East Cleveland and the back of 11 Wilbur Street; he was only going over 20 feet towards Wilbur Street as far as the length of the building and going over 25 to the back of the building. He believed it matched closely with the existing building.

Mr. Bradley asked how many parking spaces existed. Mr. Ladutko repeated five spaces and a two-car garage.

Mr. Hudson asked Mr. Fortner if the structure conformed to the area requirement for the whole parcel, regardless of how it was sectioned, because Mr. Ladutko was the owner. Mr. Fortner confirmed that no other variances were needed, and it conformed in every other way. Mr. Hudson continued that but for the artificial property division, it worked. Mr. Fortner explained that the side yard of the existing structure had not changed so it remained legal non-conforming. Mr. Ladutko pointed that the side yard on the other side had plenty of space. Mr. Fortner confirmed there was sufficient space on the east side, but the west side was 9.2 feet where RD might request 10 feet; he reiterated that it was existing and was not impacted by the project. Mr. Fortner reiterated that the proposal met every side yard setback save for the front yard. Mr. Hudson referred to footprint and square footage and asked if it worked given the whole parcel. Mr. Fortner confirmed that if it was a normal house, it would work.

Mr. Rogers pointed that the property had been deemed non-conforming and non-conforming uses could only increase by a certain percentage, of which Mr. Ladutko exceeded. Mr. Fortner confirmed.

Mr. Hudson was now clear because the parcel was currently non-conforming.

Mr. Rogers asked Mr. Ladutko to share the hardships he would experience if the variances were not approved. Mr. Ladutko explained that he would own a building that would not be up to current construction and safety standards, and it was not as marketable in its current condition. He argued that the proposed plan would be an improvement to the community and to the building's occupants.

Mr. Hudson asked if Mr. Ladutko was able to update and upgrade the current structure. Mr. Ladutko confirmed but explained there was an economic issue in terms of justifying the cost because there was more demand for a four-unit property than for a three-bedroom. Mr. Hudson noted that Mr. Ladutko was increasing from two three-bedroom units to two four-bedroom units. Mr. Ladutko confirmed and revealed that his rental permit allowed up to four occupants in the RD zoning and reiterated that the current market showed no interest in occupants sharing bedrooms. Mr. Fortner noted that each bedroom would have its own bathroom as well. Mr. Ladutko argued that the recent projects in town were evidence that the trend was very popular.

Mr. Rogers asked if Mr. Ladutko would be required to install sprinklers if he only improved the existing structure and Mr. Ladutko said no. Mr. Rogers asked if the sprinkler system would cover the existing structure. Mr. Ladutko confirmed that the entire building would be sprinkled.

Mr. Bradley asked if the construction was a tear-down or if Mr. Ladutko intended to keep the existing structure. Mr. Ladutko would keep the existing structure to redo the plumbing and replace the hot water radiators with gas and HVAC for central air conditioning. He informed that he had a similar project last year on 392 and 394 South College Avenue that was zoned RD with one building. He said that no variances were required but he refurbished the property to the City's satisfaction. Mr. Bradley asked if the entire building would be brought up to current Code. Mr. Ladutko replied that it was required. Mr. Bradley asked if there

were additional parking requirements for the increased occupancy and if the parking also included parking from the other building on the property. Mr. Ladutko referred to Mr. Fortner's earlier statements that for a four-bedroom unit, three off-street parking spaces were required. He currently had five uncovered parking spaces in the back of the property as well as a two-car garage for a total of seven spaces. Mr. Bradley asked if nine were required and Mr. Ladutko explained that he was only speaking about 54 East Cleveland and emphasized that 11 Wilbur Street had rear parking for four cars. Mr. Bradley asked if it was necessary for the Board to treat the area as one parcel with three units requiring three parcels each. Mr. Fortner explained that the parcel had enough parking to cover the entire site and each individual site had enough parking to cover its individual requirements. Mr. Bradley asked if Mr. Ladutko would have to provide a plan to the City showing the parking for approval and Mr. Fortner confirmed. Mr. Ladutko informed that in order to receive a building permit and certificate of occupancy, the parking had to meet Code. Mr. Bradley asked if the Board needed to be concerned about impervious area. Mr. Fortner stated that there was no variance required for the impervious area.

Mr. Rogers asked if the building height would be increased, and Mr. Ladutko said it would not.

Mr. Bilodeau pointed that Cleveland Avenue was famous for large outdoor gatherings and the addition to the building reduced the area for outdoor gatherings and Mr. Ladutko confirmed.

Mr. Hudson opened the floor to public comment. There was no public comment, and the discussion was returned to the table.

Mr. Rogers stated that he did not have an issue with the project because even with the improvements, the applicant was well within the building lot coverage but for the fact that the parcel was deemed non-conforming because of the other separate structure on the lot that was not the space in question. He considered the request a natural extension and expansion of a rental unit. The fact that the unit allowed for the existing units to be retrofitted with higher safety standards and a sprinkler system was a benefit to the community. He noted that Mr. Ladutko would be able to construct the addition if not for the non-conformity status and, if Mr. Ladutko was simply applying for the porch variance, he would feel the same because it was a natural extension of the existing structure albeit a non-conforming extension.

Mr. Fortner wanted to make it understood that there were two non-conforming issues: the second house structure on the parcel from Wilbur Street and the single-family house on Cleveland Avenue which was two units within a single-family house (duplex) and was the main non-conformity. He emphasized that there were three units in all which was why the property was non-conforming.

Mr. Hudson was concerned because the statute clearly did not want increases in non-conforming properties and the requests went against the statute.

Mr. Bradley admitted that he gave pause because of the non-conformity of having another house on the same parcel. He asked if it was typical in the City to have two separate buildings on the same parcel, aside from townhouses. Mr. Fortner replied that the parcel was unusual which was why it was deemed legal non-conforming, and, for unknown reasons, the parcel was never subdivided. He noted that the homes were constructed some time ago and were never required to subdivide; at one point, there were many duplexes, and it was common for occupants to rent sections of their homes and although some duplexes reverted to single-family homes, Mr. Ladutko's property had remained as two rental units since the 1940's. He reiterated that the set up was unusual and the area was an old section of town with unusual set ups; he assumed there were likely other parcels with two homes. Mr. Bradley asked if the property would need to be subdivided through the City's permitting process. Mr. Fortner said no but clarified that if Mr. Ladutko wanted to sell at

some point, he could go through a subdivision process but because the property was legal non-conforming, there was no need. Mr. Bradley understood the original intent of the original property layout where 11 Wilbur Street was built on Lot A of the parcel and 54 Cleveland was built on Lot B, but if Mr. Ladutko built the addition, the invisible property line would run through the addition. He asked if the scenario was a concern. Mr. Fortner believed the parcel could be subdivided in a number of ways and the parcel would have to be sectioned into 6,250 feet. Mr. Bradley noted there was an existing delineation on the plot plan that would run through the new addition and asked if it was cause for any legal concern. Mr. Fortner did not believe that it was of great concern. Mr. Bilodeau added that he was also unconcerned about the delineation and was more concerned about the four corners of what would be the larger parcel. He thought there might be unofficial delineations in the lot but the fact that they showed up on the plot plan was not a good idea. He maintained that the Board would address just the large parcel.

Mr. Bradley agreed with Mr. Rogers that there were many benefits to allowing the variances; the whole building would be brought up to current Code and standards to provide a better living situation. He noted that parking was not an issue and there was plenty of space on the property. He did not think the appearance would be impacted.

Mr. Rogers asked if there was another instance in the neighborhood with the same setup with two separate rental units inside. Mr. Fortner replied that there were many similar legal non-conforming duplexes and staff was looking to put them back into Code because they were removed at one time. He added that accessory dwelling units were also removed, which could have been a use of the home at one point, and there were similar homes with two or three units in older parts of town on New London Road, Cleveland Avenue, and South Chapel.

Mr. Rogers presented the *KWIK Check Factors* and said they would be applied to both variance requests.

1. *The nature of the zone in which the property is located* – The property is zoned RD for single-family detached dwellings.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – The character of the immediate vicinity, based on information from staff, had similar rental units and while they might appear as single-family dwellings, they were set up as duplexes similar to the applicant's current situation.
3. *Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – There was nothing on the record indicating any negative impacts, and he did not see where there would be any negative impacts on property and uses in the neighborhood.
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 viewed the request as one of normal improvement because the existing unit could not be upgraded and retrofitted with a sprinkler system while maintaining the existing footprint nor be expanded within the 20% requirement in an economically feasible manner to allow for the upgrades to stay within Code and still justify a sprinkler system. He believed the applicant would experience exceptional practical difficulty if the Board denied the variance because the unit would remain unsafe due to the lack of a sprinkler.

Mr. Rogers would vote in favor of the variances.

Mr. Bradley agreed with the KWIK Check factors as stated by Mr. Rogers and would vote in favor of the variances.

Mr. Hudson expressed apprehension with expanding the non-conforming use, but the KWIK Check Factors stated by Mr. Rogers, especially the safety benefits, outweighed the hardships or the extension of the non-conformity.

MOTION BY MR. ROGERS, SECONDED BY MR. BRADLEY: TO APPROVE THE TWO VARIANCES UNDER ITEM #2 ON THE AGENDA BASED ON THE FACTORS STATED PREVIOUSLY BY MR. ROGERS.

MOTION PASSED. VOTE: 3 to 0.

Aye: Rogers, Bradley, Hudson.

Nay: 0.

Absent: Bergstrom, Morehead.

Mr. Bradley asked for clarification on when KWIK Check Factors were required, and Mr. Bilodeau explained that the factors were required for every application.

3. The appeal of Ebony Tucker, property address 207 Madison Drive, for the following variance:

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

- **Sec. 32-47(j) – Existing single-family type rental dwellings** – The property has no off-street parking spaces but is required to provide two off-street parking spaces in order to be considered for a rental permit. A variance of two off-street parking spaces is required.

Ms. Tucker explained that per her plot plan, she had one off-street parking spot and the variance was for an additional spot. She explained the situation to Mr. Straub who agreed with her assessment. Mr. Hudson asked Mr. Fortner if Ms. Tucker only needed one off-street parking space. Mr. Fortner confirmed that Ms. Tucker had a paved spot behind her home which could qualify as a parking space. He shared that a Google Earth Search showed the space with a parked car, and he was unsure why it had not been designated as a parking space.

Mr. Bradley asked if Mr. Fortner was referring to the concrete or asphalt area. Mr. Fortner clarified that there was a concrete area behind the townhouse that was typically used for parking cars. He noted the area met the 9-foot requirement, but the letter said that Ms. Tucker needed two parking spaces. Ms. Tucker maintained that the denial letter was an error because the other applicant that evening, Ms. Covey at 187 Madison Drive, had the exact same configuration and only needed a variance for one off-street parking space; Ms. Tucker's request should be the same as Ms. Covey's. Mr. Fortner agreed that both homes were in the same section of townhouses and all of the townhouses had similar rear setups but different surfaces.

Mr. Hudson was amenable to the Board only considering Ms. Tucker's request for one space. Ms. Scheld asked Mr. Bilodeau if it was appropriate to display Ms. Covey's plot plan as support for Ms. Tucker's argument. Mr. Bilodeau agreed to the suggestion on behalf of the public because it was referred to in the

discussion and everyone had received the same materials in their packets. Ms. Scheld showed where cars parked on both plot plans for the record.

Mr. Rogers believed that the Code did not appear to consider the needs of the owner because if the owner remained in the dwelling and rented a portion of the home to a non-owner occupant, then the two parking spaces were required for the non-owner occupant but Code did not require parking for the owner.

Ms. Tucker explained that she was the single, sole owner of the home but she was disabled and needed a live-in aid. She noted that the need for a rental permit put her in an awkward position because she was the sole owner and also disabled so she required a rental permit to allow another person to reside in her home. Mr. Hudson believed the situation was only true if the person was paying to live in the home and Mr. Fortner agreed with Mr. Rogers' point that Code was written as two spaces and did not take the individual needs of owners into consideration. Mr. Hudson reiterated Ms. Tucker's statement that in order to have another person live in her home, then she needed a rental permit. Mr. Fortner assumed that Ms. Tucker was seeking a rental permit so she could rent the home at some point but clarified that taking in a boarder was different than needing a rental permit. He informed that anyone who owned a home and wanted to take in up to two boarders, no rental permit was necessary. He revealed that a rental permit was required when the owner moved from the home but wanted to keep the property as an investment.

Ms. Tucker believed there was a miscommunication, the result of which she caused her to relocate so she now wanted to be considered for the rental permit. Mr. Fortner asked if Ms. Tucker lived elsewhere and wanted to rent the property to another household. Ms. Tucker confirmed and Mr. Fortner stated that she needed a rental permit and need to parking spaces per Code and the variance request was appropriate.

Mr. Bradley clarified that the home would be a rental property where Ms. Tucker would not reside. Ms. Tucker confirmed and asked, for the record, if her variance request was for two off-street parking spaces or one. Mr. Hudson replied that Ms. Tucker requested a variance for a single spot because it seemed that was all that was required so the Board would proceed with the request for one space.

Mr. Rogers asked if Ms. Tucker anticipated to rent to one person hence the need for two spaces for a non-owner occupant. Ms. Tucker explained that she was confused about the issue of non-owner occupant because any person who now occupied her home was a non-owner occupant. Mr. Fortner confirmed that the non-owner occupant would be Ms. Tucker's tenant. Ms. Tucker asked how many off-street spaces were required if the zoning allowed four tenants and Mr. Fortner replied two spaces. Mr. Rogers asked if "non-owner occupant" could be singular or plural and the home would need to two spaces if Ms. Tucker rented the property. Mr. Fortner confirmed four unrelated people could live in the home and only two parking spaces were required.

Mr. Hudson stated that there was no rental permit option for an owner-occupied rental; the home was either a rental or it was not. Mr. Fortner confirmed and emphasized that an owner-occupant could take in a boarder without a rental permit. Mr. Hudson continued that an owner could not obtain a rental permit and still reside in the home; the owner could move out and the home could then become a full rental unit.

Mr. Rogers asked Ms. Tucker to explain her hardship if the variance was not granted given the fact that she was no longer living in the dwelling. Ms. Tucker replied that she would have to consider moving back into the home or consider selling it and someone would have to come with her; it all depended on the circumstances, and she did not know exactly how it would work.

Mr. Bradley asked for clarification on the rear parking. He noted that the lot was 16 feet wide and asked for the City's standard for parking. Mr. Fortner replied that it was 9 feet per spot and Ms. Tucker confirmed that the area was two feet shy for the legal dimensions for two spaces. Mr. Bradley asked if there was ever a time where two cars were parked in the space and Ms. Tucker said there was not.

Mr. Rogers asked if staff was aware of any parking deficits along Madison Drive that presented an ongoing problem. Mr. Fortner said there was not and revealed that other variances were granted in the area. He was asked to research the other cases and shared that there were two in 2017 (October 19th and December 21st), and another in October 2015; he searched for any cases within the last 10 years and discovered three that requested at least one space. He revealed that all three cases were granted because it was determined that there was sufficient street parking in the area on both sides. He noted that King Williams Village did not have street parking so there was more of an issue in that neighborhood but emphasized that Ms. Tucker's neighborhood had more parking spaces. Mr. Rogers asked if parking permits were required for on-street parking on the one side of Madison Drive. Mr. Fortner informed that it was not a parking district so no permits were required but he would confirm.

Mr. Bradley asked how many rental permits had been issued on Madison Drive. Mr. Fortner replied that there were approximately 120 rental units and 172 units on Madison Drive. Mr. Bradley asked if only three requested parking variances in recent years. Mr. Fortner replied that he only found three over the last ten years but revealed that the zoning code was adopted in 1976 so there were likely pre-existing rental units.

Mr. Rogers noted that Ms. Tucker did not currently reside in the home and assumed that she was paying the mortgage but not receiving any income. Ms. Tucker said that a man who had lived with her as a boarder currently resided in the home but because she was unclear as to the rental requirement, the permit, and the boarder status, she had moved from the home. Mr. Rogers explained that he was trying to establish Ms. Tucker's hardship and said that it sounded as if she could move back into the home. He asked if she could relocate to the residence and stay within the requirements of the ordinance with a boarder. She explained that in order to move back into her home, she would have to break her current lease and reequip her property with a ramp and similar gear because of her mobility issues.

Mr. Hudson asked Ms. Tucker if she had resided in the property when she was disabled. Ms. Tucker confirmed but revealed that she had experienced a relapse in the meantime. She was working to regain her mobility but had not yet succeeded. Mr. Rogers asked if the ramp was still at Madison Drive and Ms. Tucker said there was not and had never been. Mr. Rogers asked if there were other facilities at the property that would assist with her disability and Ms. Tucker said there were none and when she purchased the property, she was able to use the railings, but she had since had two relapses.

Mr. Hudson referred to Mr. Fortner's research into similar cases and asked for the general basis. Mr. Fortner reviewed the minutes which indicated an abundance of on-street parking in the nearby area and there was also justification that it was likely possible to fit two cars in the available spot because it was only two feet short. Ms. Tucker noted that Dickey Park was across the street and had parking. Mr. Fortner explained that Dickey Park had public parking spaces and was not appropriate for other use; he reiterated that there was available on-street parking. He added that different families had different needs which would be communicated in the lease and could appeal to someone who only had one car.

Mr. Bradley asked if Ms. Tucker could obtain a rental permit without having two parking spaces and Mr. Fortner confirmed that Code required two spaces. Mr. Bradley asked if the issue was because ten-foot spaces were required, and Ms. Tucker only had 16 feet. Mr. Fortner replied that the requirement was nine feet and confirmed that Ms. Tucker was only short a few feet.

Mr. Hudson opened the floor to public comment.

Ms. Scheld explained that Ms. Tucker had wrote a form letter to her neighbors and received one letter of support. She read:

Dear Neighbors,

Hello! My name is Ebony Tucker. I am the current owner and semi-new resident of 207 Madison Drive. Although I don't spend much time here, I'm sure you've seen me (in my wheelchair, on my walker, or driving my black Honda Odyssey) as I came and went, most likely during the renovation process. Some of you I have met, others I see only in passing. If you see me, wave, if you see me in passing "toot" your horn, if you have a second stop by and introduce yourself! I would do the same if I knew the invitation was open and I could take your steps.

Now that you know who I am, you may not know that I am new to the City of Newark. I have been informed that I need a parking variance to Chapter 32, Section 32-47(j) in order to rent. If I have your support, would you sign this letter and return it to me? I have enclosed a pre-stamped letter for your use. You can offer public comment during the meeting an email. Please be on the lookout for a letter from the City of Newark offering other options as well. Thank you in advance for your support or time even reading this letter. Either way, still take me up on the offer to introduce yourself! Sincerely, Ebony Tucker.

Ms. Scheld stated that Ms. Tucker received a returned letter from Rebecca Cole, 199 Madison Drive, and had not received any letters of objection.

There was no further public comment and Mr. Hudson returned the discussion to the table.

Mr. Rogers presented the *KWIK Check Factors*:

1. *The nature of the zone in which the property is located* – The property is zoned RR.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – The immediate vicinity consisted of rowhomes, townhouses, and attached dwellings. From the record, it appeared that there were many other rental units in the immediate vicinity.
3. *Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – There was nothing on record that would indicate that there would be a serious affect and he did not anticipate any if the variance was granted.
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* - Based on Ms. Tucker's testimony, it would be quite an undertaking and, due to a misunderstanding and in order for her to move back into the home, she would have to refit the home with facilities to accommodate her disability, which Mr. Rogers considered to be a hardship. Additionally, Ms. Tucker would be forced to break her lease.

Mr. Rogers would vote in favor of the variance which he found to be de minimis and, given that there was one spot in the rear of the property, and he was familiar with Madison Drive, there were numerous open parking spaces along the street during non-work hours. He maintained there was ample parking in the vicinity of the property.

Mr. Bradley agreed with the KWIK Check factors as stated by Mr. Rogers. He reiterated that the area was over 50% rental properties, and the applicant was only requesting on parking spot. He noted that Ms. Tucker had already moved out and would experience financial hardship by reoccupying the home with a boarder. He would support the variance.

Mr. Hudson echoed the statements of Mr. Rogers and Mr. Bradley. He felt that because the majority of the properties were already rentals and while there seemed to be less variances, it seemed equitable to approve the variance in the presented situation.

MOTION BY MR. ROGERS, SECONDED BY MR. BRADLEY: TO APPROVE THE VARIANCE BASED ON THE KWIK CHECK FACTORS ARTICULATED BY MR. ROGERS AND MR. BRADLEY.

MOTION PASSED. VOTE: 3 to 0.

Aye: Rogers, Bradley, Hudson.

Nay: 0.

Absent: Bergstrom, Morehead.

4. The appeal of Kanokporn Covey, property address 187 Madison Drive, for the following variance:

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

- **Sec. 32-47(j) – Existing single-family type rental dwellings** – The property has one off-street parking spaces but is required to provide two off-street parking spaces in order to be considered for a rental permit. A variance of one off-street parking space is required.

Mr. Hudson asked Ms. Covey to present her case.

Ms. Covey explained that she purchased the property on December 5, 2021, and owned two other rentals: 163 and 165 Madison. She did not encounter any issues with her other properties because they came with rental permits, plenty of rear parking, and garages. She had not anticipated purchasing another rental property, but she was contacted by Sally McCain, the owner at the time, to determine if there was interest in Ms. Covey purchasing the home. Upon visiting the home, Ms. Covey became extremely interested in its purchase because Ms. McCain had taken immaculate care of the property during the 18 years that she lived there. Ms. Covey explained that she was very familiar with the property and street so she never considered that she would encounter an issue with obtaining a rental permit or parking. She contacted City staff in charge of issuing rental permits and was told that staff could not discuss the property until it was legally owned by Ms. Covey. Directly after settlement, Ms. Covey applied for a rental permit with the promise that she would rent the home back to Ms. McCain until she was able to move into assisted living. Ms. Covey discovered that she was unable to obtain a rental permit because of the parking issue. She learned that the property had one parking spot in the back and Ms. McCain had enlarged the step area for accessibility and railings. As such, Ms. Covey requested a variance for one parking space so that she could obtain a rental permit. She intended to tell potential tenants that there was only parking spot at the rear of the property and other cars had to park at the front. She would also allow the tenants to park at the front of her other properties at 163 and 165

Madison Drive because the tenants of those units parked in the rear of the properties; each had a single car garage, two parking spaces and additional parking. She continued that guests could park on another area of the street and informed that she lived in the area and drove through the street daily. She revealed that Madison Drive was her favorite street and she met with Councilmember Creecy to share her intent to improve the area. She imagined her children living in the home in the future. She informed that there was sufficient parking in the front of the home and believed that she should be granted the variance in order to receive a rental permit.

Mr. Hudson opened the table to comments from the Board.

Mr. Bradley asked Mr. Fortner if the City allowed landlords to grant parking rights from one unit to another. Mr. Fortner complimented the plan, but stressed that the properties must meet the zoning requirement. He continued that the properties could be sold at some point and if the Board granted the variance, it would be permanent to the specific property, and a future owner might not own the other properties. He reiterated that shared parking was a good planning concept to utilize available space. Mr. Bradley asked if it was possible, from the City's standpoint, for Ms. Covey to use excess parking from one property for the current property in order to obtain a rental permit. Mr. Bilodeau explained that the scenario was not permitted, and each property needed two spaces.

Mr. Rogers asked if Ms. Covey was speaking about the public parking in the front of the units and Ms. Covey confirmed. He asked if Ms. Covey was speaking about parking spaces on the other parcels. Ms. Covey confirmed that she was not referring to the parking in the back because she did not want to create an issue between the tenants or residents; she was speaking to the parking available at the front of the properties which was open to everyone. She noted that only visitors used the front parking and reiterated her plan to inform potential residents that only one parking spot was available. She revealed that the units had no backyards and only one parking spot so potential renters with multiple vehicles were not likely to be interested. She stated that she was prohibited from forbidding tenants with multiple vehicles due to Fair Housing laws so she would make the parking situation clear, and the tenants could decide for themselves. Mr. Rogers asked if Ms. Covey was making the point that there was typically open parking along the frontage of the other units she owned but she could not grant permission for people to park there; in her experience, there was open parking along Madison in the vicinity of her units. Ms. Covey confirmed.

Mr. Rogers noted that Ms. Covey's lease-back to the existing tenant had no bearing because she intended to rent the unit after the existing tenant vacated. Ms. Covey confirmed that Ms. McCain secured her assisted living space sooner than anticipated so she needed another tenant to pay the mortgage which was why she needed a rental permit. Mr. Rogers asked Ms. Covey to explain any hardships she would experience if the variance was denied. Ms. Covey explained that she would be forced to sell the property and would lose money on the transaction because her intent was to make the money back as a long-term investment. She explained that she also envisioned her son and daughter living in the property as young adults.

Mr. Hudson asked for public comment. Ms. Scheld stated that she had not received any letters of support or opposition. There was no public comment and Mr. Hudson returned the discussion to the table.

Mr. Bradley presented the *KWIK Check Factors*:

1. *The nature of the zone in which the property is located* – The property is in a rental property area and based on staff reports, over half of the homes are rentals.

2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – The subject property would match uses in the immediate vicinity if it became a rental property.
3. *Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – Mr. Bradley found there to be no issues.
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. Bradley admitted he struggled with the issue of unnecessary hardship because the only concern was that the property could not become a rental property. He did not think there was enough hardship to cause a denial.

Mr. Rogers agreed with Mr. Bradley's first three factors and felt the same about the hardship. He did not know from where the miscommunication came but pointed that the situation was buyer beware and the buyer should have known the requirements to obtain a rental permit. He admitted that if the variance was not granted, there would be quite a hardship but was one that was brought on by buying the property to begin with.

Mr. Hudson agreed with the first two factors and did not think a serious argument could be made for effecting the neighboring properties and uses given the street and the number of existing rental units. He thought the question of exceptional practical difficulty was not excessive but because there were other rental properties that had waivers for parking in the immediate area and given the unique character of the road, he would be in favor of granting the variance.

MOTION BY MR. HUDSON, SECONDED BY MR. ROGERS: TO APPROVE THE VARIANCE TO SECTION 32-47(j).

MOTION PASSED. VOTE: 3 to 0.

Aye: Rogers, Bradley, Hudson.

Nay: 0.

Absent: Bergstrom, Morehead.

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

The meeting adjourned at 8:49 pm.

Nichol Scheld
Administrative Professional I

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