

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
JULY 21, 2022**

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chair Chris Rogers Mark Morehead Scott Bradley Kevin Hudson
Staff:	Paul Bilodeau, City Solicitor Michael Fortner, Planner II Joshua Solge, Planner I Nichol Scheld, Deputy City Secretary Philip Machado, Administrative Professional I

Mr. Bergstrom called the meeting to order at 7:00 p.m. and requested the roll call.

1. APPROVAL OF MINUTES FROM MEETING HELD JUNE 16, 2022:

MOTION BY MR. ROGERS, SECONDED BY MR. MOREHEAD: TO APPROVE THE JUNE 16, 2022 MINUTES.

MOTION PASSED. VOTE: 5 to 0.

Aye: Rogers, Hudson, Morehead, Bradley, Bergstrom.
Nay: 0.

2. The appeal of Daniel Grim, 5 Stone Barn Court:

Mr. Machado read the facts of the case into the record:

- **Sec. 32-9(c)(2) – Maximum lot coverage** – The maximum lot coverage for any building, exclusive of accessory buildings, is 20%. The proposed roof will cover 21.3%. Applicant requests a variance of 1.3%.
- **Sec.32-9(c)(6)b – Rear yards** – A minimum of 40 feet is required for a rear yard. The existing rear yard is 26.5 feet. Applicant requests a variance of 13.5 feet.

Mr. Bergstrom swore in Daniel Grim, the applicant. Mr. Grim revealed that he was granted a variance years ago to build a sunroom in his backyard, which had a 40-foot setback. He constructed the sunroom and eventually decided to extend the deck from the sunroom to the other end of the house where his hot tub was located. He explained that his lot faced west, and received substantial sunlight from the early afternoon until sunset; he concluded that his deck would be more usable if there was a roof to provide shade. He noted that to construct a roof, he required a variance for lot coverage beyond the permitted 20% and a variance for

the rear setback. He stated the back of his yard was the City limit, and his rear neighbor's house lay to the west a few hundred yards and had installed solar panels directly behind his yard. He maintained that the rear neighbor did not have much of a view to his home and, because his home was on a cul-de-sac, his direct neighbors also did not have much of a view into his backyard and were not very concerned about adding the roof.

Mr. Bergstrom asked if Mr. Grim had spoken with his neighbors. Mr. Grim confirmed and pointed that one neighbor asked if she needed to provide a statement, but he told her it was not likely necessary. The same neighbor told him that she received a notice from the City and did not submit a comment. He stated that he spoke to his neighbor on the other side, and they did not express objections either.

Mr. Hudson asked Mr. Grim to describe his property and Mr. Grim referred to the graphic of the property in his presentation; the dark, shaded area toward the top was the deck area where the new roof would be built and a square area on the top was where the sunroom was constructed. Mr. Grim continued that the rear of his lot came in toward his house and the shape of the lot made placing additions to the house tricky; he informed it was difficult to place the house onto the property while meeting side and rear setback requirements. Mr. Hudson believed the lot was an irregular polygon and Mr. Grim agreed and explained that there was difficulty when the plan was submitted because the contractor re-drew the lot but did not draw the house to scale, which made the house look bigger on the lot than it was. Mr. Grim spoke with his neighbor regarding the proposed addition and revealed that she had no view into his yard and no concerns about a new roof for the deck. He also described the layouts of his next-door neighbors and noted that they were unable to see into his backyard. He spoke about his anticipation of needing to use shades for when the sun comes through under the new proposed roof but stated it would not be enclosed and that he expected the roof to help with being able to enjoy the deck on rainy days as well.

Mr. Bergstrom asked Mr. Grim if the neighborhood was residential and if his house had always been used as a residence, both of which Mr. Grim confirmed. Mr. Bergstrom asked if there would be any negative effects on his neighbors if the restriction was removed and Mr. Grim did not believe there would be. Mr. Bergstrom asked how long his neighbor's solar panels had been in place and Mr. Grim answered that they had been there for around eight or nine years.

Mr. Rogers asked what type of hardship would be imposed upon the applicant if the restriction were not removed and Mr. Grim answered that he and his family would have less effective use of their deck due to the heat from the sun and whenever it would rain.

The Chair opened the floor to public comment. There was no public comment.

Mr. Bergstrom asked Mr. Rogers to review the *KWIK Check Factors*:

1. *The nature of the zone in which the property is located* – The property is zoned RT, Single-Family Residential.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Character of immediate vicinity was single-family detached community with larger parcels in rear unincorporated area outside of City limits; nature of dwelling was consistent.

3. *Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – Removal of the restriction would not seriously affect the neighboring properties and uses.
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* – The restriction would create unnecessary hardship if not removed due to need of a shaded area to utilize the deck in both sun and rain.

Mr. Rogers was in favor of the variance requests.

Mr. Hudson agreed with Mr. Rogers and added that the variance for Sec. 32-9(c)(2) was only 1.3% which he believed was de minimis; he felt similarly regarding the second variance because of the irregular shape of the property.

Mr. Morehead agreed with both Mr. Rogers and Mr. Hudson and believed the irregular shape of the lot made the setback variance reasonable.

Mr. Bradley agreed with his colleagues and stated that some sort of shelter from the weather was reasonable; he was inclined to vote in favor of the variances.

Mr. Bergstrom agreed that the variances were de minimis and complied with the KWIK Check factors; he was in favor of the variances.

MOTION BY MR. HUDSON, SECONDED BY MR. MOREHEAD: TO APPROVE THE VARIANCES FOR REASONS STATED AND FOR WORK TO COMMENCE WITHIN SIX MONTHS.

MOTION PASSED. VOTE: 5 to 0.

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

Nay: 0.

3. **The Appeal of Lyman Chen, Lambda Beta Zeta of Lambda, 163 W. Main Street:**

Mr. Machado read the facts of the case into the record.

- **Sec. 32-9(c)(5)c – Minimum front yard setback** – The minimum front yard setback in the RS zone is 25 feet. The proposed porch with a roof has a front yard setback of 17.1 feet. Applicant requests a variance of 7.9 feet.

Mr. Bergstrom swore in Lyman Chen, the applicant. Mr. Chen, Director of Lambda Beta Zeta, informed the Board he was a sophomore in college and a member of the fraternity in 1991 when the deck had to be replaced, due to someone hitting the original structure of the deck with their car the previous year. He explained that the fraternity did not have the means to restore the deck to its original design at the time of the incident, so they replaced it with a concrete deck with no roof. He noted that the fraternity now had 1,190 members and stated it was the wish of many of the original members to restore the building to its original splendor; he came before the Board to receive a variance to do so. He described the area as residential with some other non-profit organizations located nearby; the property had a vacant doctor's office

next door, as well as a religious organization, and believed the restoration of the original deck would be a fantastic addition to the character of the historic street.

Mr. Bergstrom brought attention to the historic photos provided on the presentation for the house and asked when the pictures were taken. Mr. Chen answered that one of the pictures provided was taken in 1981 and others taken in 1965. Mr. Bergstrom asked when the damage was done and Mr. Chen answered that the deck was removed in 1991 because a City inspector determined that the deck was pulling the structure of the house outward.

Mr. Hudson asked for clarification on the accident that caused the deck to be taken down and Mr. Chen answered that the driveway was on the left-hand side of the house and a car hit the deck when it was pulling out of the driveway and the damage shoved everything outward.

Mr. Bradley asked if the foundation for the deck was currently concrete and Mr. Chen answered the foundation was lined with cinderblocks and filled with dirt and sand, then covered with a concrete pad. Mr. Bradley asked if that would be removed for construction of the new deck and Mr. Chen confirmed; he reiterated that they wanted the deck to be rebuilt as it was with the only difference being the superior materials that are presently available.

Mr. Hudson asked how not having a roof affected the use of the deck and Mr. Chen answered that the residents could still use the deck but not to the fullest of their ability; he stated that the sun and rain had impeded its use and the addition of a deck would add a lot to their enjoyment of the property.

Mr. Rogers asked Mr. Fortner if the organization would have been able to rebuild the deck immediately after the damage was done and Mr. Fortner confirmed that there was a year-long period that would have allowed reconstruction.

Mr. Bergstrom mentioned the beautiful architectural plan that was submitted and believed it looked like the original historic design of the house.

Mr. Rogers asked Mr. Fortner about the setbacks allowed for the area and said a note of average setbacks in the area was 21 feet. Mr. Fortner clarified that number was for the houses within 200 feet of it and the variance would not be out of character for the houses near it, but the zoning district had a larger setback area.

Mr. Hudson asked if the applicant could request a 21-foot setback and Mr. Fortner answered that was how it was written but it was more informational in nature and while it was not out of character for the area, the requested setback was smaller than the district allowed.

Mr. Morehead asked Mr. Chen if he was willing to allow a restriction to not allow the porch to be enclosed at any time in the future and Mr. Chen agreed. Mr. Bilodeau believed the request was reasonable and reminded the Board that the condition needed to be stated in the vote and needed to be included on the building permit.

Mr. Bradley asked what the City requirement was if the organization wanted to enclose the porch and Mr. Fortner answered that they would need a building permit.

Mr. Morehead asked if the new footprint of the building could be considered including the new porch with the roof and Mr. Fortner confirmed.

Mr. Bilodeau asked if Mr. Chen had spoken to any of the neighbors regarding the change and Mr. Chen answered that he had not, but emphasized the fraternity never had any problems with the neighbors and believed he and his organization had been a great neighbor over the years. Mr. Bilodeau asked if he thought there would be any negative impact on his neighbors and Mr. Chen denied any negative impact and suggested the neighbors may be happy at the thought of the house being restored.

Mr. Chen asked if there was a time limit on variances because his organization planned on commencing with work on the deck next year when the students were in class; Mr. Hudson answered that there was not a time limit unless the Board stipulated one.

The Chair opened the floor to public comment. There was no public comment.

Mr. Bergstrom asked Mr. Rogers to review the *KWIK Check Factors*:

1. *The nature of the zone in which the property is located* – The property was zoned RS, Single-Family Residential.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Character of immediate vicinity was a mix of large historic single-family detached houses with some institutional uses and a mix of homeowners and renters.
5. *Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* – Removal of the restriction would not seriously affect the neighboring properties and uses.
6. *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* – The restriction would create unnecessary hardship if not removed due to the applicants wish to restore the building to its historic nature and the inability to use the front deck to its fullest capacity if it were not covered.

Mr. Rogers was in favor of this variance request but wanted an amendment made to state that the front porch not be enclosed.

Mr. Hudson agreed with Mr. Rogers and believed the improvement to the house itself would improve the block; he was in favor of the amendment.

Mr. Morehead agreed for reasons previously stated and thought the house was beautiful and the variance would be a step toward returning the neighborhood to its former glory.

Mr. Bradley appreciated the effort to restore the historic building and agreed with all the Kwik Check factors; he was in favor of the variance with the enclosure amendment.

Mr. Bergstrom believed the variance complied with the Kwik Check factors and wanted to add an amendment to have the homeowner begin work on the project within the next two years.

MOTION BY MR. ROGERS, SECONDED BY MR. MOREHEAD: TO AMEND THE VARIANCE THAT THE BUILDING PERMIT PLANS BE SUBSTANTIALLY CONSISTENT WITH THE EXHIBITS INCLUDED WITHIN THE APPLICATION.

MOTION PASSED. VOTE: 5 to 0.

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

Nay: 0.

MOTION BY MR. HUDSON, SECONDED BY MR. MOREHEAD: TO APPROVE THE VARIANCE AS AMENDED WITH A RESTRICTION THAT THE PORCH NOT BE ENCLOSED AND WORK IS TO BEGIN WITHIN TWO YEARS.

MOTION PASSED. VOTE: 5 to 0.

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

Nay: 0.

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

The meeting adjourned at 7:51 pm.

Philip Machado
Administrative Professional I

/pm