

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
FEBRUARY 16, 2023**

Those present at 7:00 p.m.:

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

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

1. APPROVAL OF MINUTES FROM MEETING HELD SEPTEMBER 15, 2022:

MOTION BY MR. ROGERS, SECONDED BY MR. HUDSON: TO APPROVE THE SEPTEMBER 15, 2022, MINUTES.

MOTION PASSED. VOTE: 2 to 0.

Aye: Hudson, Rogers.

Nay: 0.

Absent: Morehead.

Abstain: Bergstrom.

2. The appeal of Phyllis and Bob Neeves, property address 6 High Pond Drive:

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

- **Sec. 32-9(c)(6) – Rear yards** – The existing rear yard setback for the proposed sunroom is 27 feet. A minimum rear yard setback of 40 feet is required. Applicant requests a variance of 13 feet.

Mr. Bergstrom noted that the application included site plan and letters from the Planning and Development Department and swore in Jim Wynn, SRIG, LLC, to speak on behalf of the applicants.

Mr. Wynn explained that the applicants were requesting a rear yard setback variance of 13 feet because of the irregular shape of the lot, which was angled and affected one corner of the deck. He clarified that the lot and the deck diverged from one another. He continued that the variance would not have a negative affect on any adjacent properties but the applicants were looking to have extra space to enjoy the outdoors with the protection of a sunroom.

Mr. Rogers asked if the entire shaded area of the plan was the proposed sunroom. Mr. Wynn confirmed and explained that the door to the deck was in the bottom righthand corner of the shaded area; there was no way to enter the deck from another spot so the sunroom would have to be built in that location which would affect the front right corner, closest to the property line.

Mr. Hudson asked Mr. Wynn to describe what was on the other side of the rear property line. Mr. Wynn described the area as a field without a residence. Mr. Bergstrom asked if crops were grown in the field and Mr. Wynn stated the area was just a field and the closest building was 200 feet away from.

Mr. Fortner interjected that there was one large lot with a single-family house, but most was open space; the applicants' home was far from the property line. Mr. Hudson noted there was a shed on the Field Spring property. Mr. Wynn stated that neighboring properties were contacted through the variance process.

Mr. Bergstrom swore in Phyllis Neeves, owner. Ms. Neeves explained that her home faced the farm located at the rear of their property and neighbors on either side of their home could not see the deck. She noted that the rear property had a barn or shed and a stone wall from an older barn and her deck could not be seen from the road.

Mr. Bergstrom asked if the sunroom was necessary to make a reasonable improvement to the property. Ms. Neeves confirmed and explained that she and her husband had been unable to enjoy their deck because of the sunlight coming from the west side given her husband's skin issues. She reminded that the deck already existed, and the sunroom would not change the footprint.

Mr. Hudson asked Ms. Neeves to describe the neighboring properties and she indicated that they were single-family homes that she could not view from her deck.

The Chair opened the floor to public comment. There was no public comment, and the Chair returned the discussion to the table.

Mr. Hudson reviewed the KWIK Check Factors:

1. *The nature of the zone in which the property is located* – The property is in a neighborhood that back to a farm with an old spring. He described the area as open with many trees.
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, as stated by the witness, was a neighborhood with single-family homes, aside from the farm in rear.
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 the testimony was that the property was some what secluded with neighbors on both sides, which could not be seen, and a field with a barn and stone wall.
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. Hudson reminded that the property faced west which created heavy afternoon sun. He noted that applicants wanted to be able to enjoy the deck as they aged and needed to enclose the area to protect Mr.

Neeves from the sun. Mr. Hudson declared that there would be an unnecessary hardship given the factors presented by the applicants in their inability to enjoy the existing deck, which would not be expanded. He added that the request was the classical reason for a variance in that the property line was irregularly shaped. He would vote in favor of the variance.

Mr. Rogers agreed with Mr. Hudson's assessment.

Mr. Bergstrom agreed that the applicants' case was classic and not the first in the subdivision with irregular lot lines.

Mr. Bilodeau asked if the applicants would build the sunroom within a year and Mr. Wynn confirmed. Mr. Bergstrom informed that the applicants would need to return to the Board if the construction had not been started within the year.

MOTION BY MR. HUDSON, SECONDED BY MR. ROGERS: TO APPROVE THE VARIANCE AS REQUESTED WITH THE STIPULATION THAT CONSTRUCTION BEGIN WITHIN A YEAR OF FEBRUARY 16, 2023.

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Hudson, Rogers.

Nay: 0.

Absent: Morehead .

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

The meeting adjourned at 7:13 p.m.

Nichol Scheld
Deputy City Secretary

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