

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES**

March 19, 2008

**09-BA-1
6 Briar Lane**

**09-BA-2
112 Bent Lane**

**09-BA-3
91 South Chapel Street**

Those present at 7:30 p.m.:

Presiding: Clayton Foster

Members Present: Jeffrey Bergstrom
Cathy Johnston
Michael Harmer
Linda Shopland

Staff Members: Roger Akin, City Solicitor
Tom Sciulli, Building Director

1. APPROVAL OF MINUTES FROM MEETING HELD DECEMBER 18, 2008

There being no additions or corrections, the minutes were approved as received.

2. THE APPEAL OF PETER AND GABRIELLA COLE, FOR THE PROPERTY AT 6 BRIAR LANE, FOR THE FOLLOWING VARIANCE:

A) CH. 32, SEC. 32-9 (C) MINIMUM SIDE YARD & AGGREGATE SIDE YARD REQUIRES A MINIMUM OF TEN (10) FOOT AND AN AGGREGATE OF TWENTY-FIVE (25) FEET. PLAN SHOWS AN AGGREGATE OF 14.2 FEET, INCLUDING THE EXISTING NON-CONFORMING 4.2 FOOT SIDE SETBACK ON THE OTHER SIDE OF THE BUILDING.

The above appeal was advertised in the *Newark Post*, and direct notices were mailed. There was one letter from Mr. & Mrs. Gary Meeks in objection to the appeal that included ten (10) signatures in objection.

Mr. Akin stated that the Board was constrained by its rules on a number of issues including re-hearing cases. Mr. Akin noted that the City Secretary's Office supplied

minutes and the application from October 1994 to compare with the current application.

In Mr. Akins's opinion, it appeared that the Cole's made a similar if not identical application for a variance. Mr. Akin quoted Board rule Article 6, Section 3, "A rehearing of any application shall not be permitted unless a petition is filed with the Board of Adjustment and with the City Secretary's Office within thirty (30) days after the filing of the board's decision the Office of the City Secretary."

Mr. Akin stated the Board would need to determine if this was a re-hearing of the 1994 case, in which case the request for rehearing would not be timely or, the Board could view this as a new application. If the Board saw it as a new hearing, then the Board may or may not be governed by their decision in 1994, and the Board would be within their rights to consider the merits of this case as a new case appeal.

Board members were provided with the 1994 application and the current application. Mr. Akin further stated that the other aspect of the rehearing rule was if someone sought a rehearing, it would be permissible if the applicant showed a substantial change in facts, evidence or conditions that have occurred since the Board decided the case. Mr. Akin believed it would be the prerogative of the Board to apply this standard to the case.

Mr. Peter Cole, 6 Briar Lane, was sworn in.

The Board asked Mr. Cole to state what has changed since his first variance request to the Board in 1994. Mr. Cole stated that when the case was decided in 1994 there was a summary at the end of the minutes which stated the variance was denied because there were other options available, i.e. move the basement door and put the addition in that location. Mr. Cole stated he did not have a response, other than at that time; he did not want to build the addition in that location.

Since 1994, there have been serious structural issues with his basement, as verified by Mr. Cole's engineer and contractor that prohibit the addition at this location.

Ms. Shopland asked for Mr. Cole to explain the current physical condition of his wife, Gabriella. Mr. Cole stated that in 1994 Gabriella developed osteoarthritis and encountered pain while walking. It was known at that time her condition would worsen. The variance request was submitted in 1994 to essentially to plan for the future.

Mrs. Cole's current situation is much worse. She is unable to walk any distance and experiences severe pain when climbing stairs. She has since developed a heart condition, obstructive cardiomyopathy. She is frequently dizzy and out of breath, which makes climbing stairs unsafe.

Following Mr. Cole's testimony the following was determined by the Board.

MOTION BY MR. HARMER, SECONDED BY MS. SHOPLAND TO HEAR THE CASE BASED ON A SIGNIFICANT CHANGE AND DEGRADED CONDITION IN HEALTH.

MOTION FAILED: 2-3

Aye: Harmer, Shopland
Nay: Bergstrom, Foster, Johnston

3. THE APPEAL OF KEVIN AND GRACE FRAZER, FOR THE PROPERTY AT 112 BENT LANE, FOR THE FOLLOWING VARIANCES:

- A) CH. 32, SEC. 32-9 (C) (2) TOTAL LOT COVERAGE IS LIMITED TO TWENTY (20) PERCENT. THE ADDITIONS WOULD RAISE TOTAL LOT COVERAGE TO TWENTY-SIX POINT EIGHT (26.8) PERCENT.**
 - B) CH. 32, SEC. 32-9 (C) (5) (C) SET BACK REQUIRMENTS MINIMUM BUILDING SET BACK IN FRONT IS THIRTY FEET (30) FEET; PLAN SHOWS A SET BACK OF ONLY TWENTY-SEVEN (27) FEET**
 - C) CH. 32, SEC. 32-9 (C) (7) (C) SIDE YARD REQUIREMENTS ARE TEN (10) FEET MINIMUM WITH A TWENTY-FIVE (25) FOOT AGGREGATE. THE PROPOSED ADDITIONS WOULD REDUCE THE SIDE YARD TO ONE (1) FOOT WITH AGGREGATE OF 15.9 FEET.**
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Mr. Sciulli stated that there was a slight adjustment made to the original plan. The original plan stated the proposed addition was 18'9" x 11'0". Per the request of the applicant, the plan was changed to 18'9" x 12'0".

Grace Frazer, 112 Bent Lane, was sworn in.

Ms. Frazer stated the plans proposed a 1-½ wood framed car garage with a rear addition behind the garage. The current lot size was .22 acres. The adjoining property on the west side is parkland, therefore, Mrs. Frazer claimed the reduction of the side yard of only one foot shouldn't present an infringement issue because there wasn't a neighbor. Ms. Frazer stated there were no objections from her neighbors on the east side.

Mr. Bergstrom asked if any input was solicited from the Parks & Recreation Department. Ms. Frazer stated that the first letter from the Building Department requested that prior to obtaining permits; they would need to build a barrier during construction of the garage.

Mr. Sciulli said that the Parks and Recreation Department advised if the building permit was issued, the owners/contractors would have to take positive steps to protect the parkland during construction. If the parkland were disturbed, it would have to be restored to its previous state. Mr. Bergstrom inquired if they were going to get an easement to maintain the side yard. Mr. Sciulli stated there was no request or mention of an easement.

Ms. Shopland inquired if the board did not grant the variance, would there be a substantial hardship as a result. Ms. Shopland believed there would not be a hardship. Ms. Frazer stated that they did not have a basement; therefore their storage space was limited.

Mr. Bergstrom inquired whether the garage and the addition could be pushed back several feet. Ms. Frazer stated due to the presence of bilco doors, it was not possible. The bilco doors lead to storage for a water heater. Ms. Frazer also noted the garage needed to be a proper depth to accommodate a large SUV, if not for their use, then for the re-sale value of the property.

Ms. Kathleen Robinson, 502 Radcliffe Drive, was sworn in. Ms. Robinson was concerned if the variance was granted, and the City decided to sell the parkland, any house that would be built on the property would potentially have a garage very close to the property line. She was also concerned about the total lot coverage of 26%. The house next to her added a small shed that impacted the water runoff on her property. She wasn't certain whether the addition proposed by the Frazer's would impact any of their neighbors. In her opinion there were significant water issues homes in Nottingham.

Ms. Frazer advised the Board that their property had a drainage ditch in the rear of their property constructed by the City of Newark. Ms. Frazer noted that her neighbor was in receipt of a letter that originated with the City of Newark that stated that the parkland would never be sold.

Mrs. Johnston stated that she would vote in favor of the variance and viewed it as an enhancement. Mr. Akin confirmed Mrs. Johnston was voting in favor of all the variances.

Mr. Bergstrom was concerned about the addition of a two-car garage and the encroachment on the front yard setback. He believed the reason the homes were so lovely in that neighborhood was because they complied with the front yard setback. Mr. Bergstrom stated that he would vote for a one-car garage, but he was conflicted with the current proposal.

Mr. Foster asked Mr. Sciulli if the Building Department assessed groundwater issues and was advised that Public Works handled issues with stormwater management.

Mr. Foster questioned if the Board could add a condition to the variance that the Frazer's ask the City to inform them as to what was needed to solve any potential water problems. Mr. Sciulli advised that is part of the permit process. Mr. Foster thought they could make the variance contingent upon the Frazer's obtaining an easement. Mr. Foster was concerned with the front yard setback, and said he agreed with Mr. Bergstrom comments.

Mrs. Johnston further added that the house to the right of the Frazer's was angled, not parallel to the Frazer's house, and there was no house to the left, so if the variance was granted, the variance to the front yard setback would not be visually obvious.

Ms. Shopland believed the Frazer's did not prove unnecessary hardship or exceptional difficulty, but passed the other Kwik Check items. Mr. Akin did a review of the origin of the Kwik Check items. He stated that the Kwik Check case was decided by the Delaware Supreme Court in 1978 and for the last 30 years it has essentially established the rules which the Board of Adjustment must apply when considering variance requests.

Ms. Shopland stated that due to the fact that the board was a quasi judicial board, it was not obligated or mandated to give the applicant suggestions. Mr. Foster stated that in the past, the Board had made suggestions to individuals regarding proposed variances.

Mr. Bergstrom asked Mr. Akin if it was inappropriate to make a suggestion to add a one-car garage, which would still require a variance but would be more reasonable. Mr. Akin made note of Ms. Shopland's opinion but also noted the chairman's comment that there had been instances in the past where suggestions were made to property owners during variance hearings, and the property owner's on the record changed their application and the board was satisfied. He further stated it was the prerogative of the Board to entertain that sort of negotiation, but he believed that an application had to rise or fall on its own merits.

Mr. Akin further commented that it was the Frazer's option to request the case be tabled while they considered what they heard from the Board. Also, they had the option to go forward with their application.

Mr. Foster suggested that the Frazer's ask to table their request and consider the suggestion of an easement and review the groundwater issues as well.

Mr. Sciulli advised the Building Department would provide whatever assistance they could to get the project off the ground.

The Frazer's made a request to the Board to table the request pending consideration of several issues.

MOTION BY MR. BERGSTROM, SECONDED BY MR. HARMER; THAT THIS ITEM BE TABLED.

Aye: Bergstrom, Foster, Harmer, Johnston
Nay: Shopland

MOTION PASSED : 4-1

4. THE APPEAL OF MATT DUTT, FOR THE PROPERTY AT 91 SOUTH CHAPEL STREET, FOR THE FOLLOWING VARIANCE:

A) CH. 32-51 (a) – NON CONFORMING USE – LIMITS ADDITIONS TO BUILDINGS OF THIS TYPE TO NO MORE THAN TWENTY (20%) CUBICAL CONTENT OF THE EXISTING BUILDING CONTENT. THE PROPOSED ADDITION IS AN INCREASE OF 44.4%.

Mark Sisk, attorney for the applicant stated that the property consisted of a three-story frame house located at 91 S. Chapel Street. There was also an interior structure located in the rear of the property. The rear building is the building the Dutt's are requesting a variance for.

During routine renovations after purchasing the property, it was revealed the flat roof had a leak. Attempts were made to repair the flat roof and a cave-in occurred on the porch section. It was determined that it was not worth repairing the porch. Mr. Dutt, the owner, decided he wanted to put a new roof on the building. He obtained a permit from the Building Department to replace the roof. At that point, Mr. Dutt's intention was to put on an architectural roof (pitched roof). He believed he was clear with the Building Department however, the Building Department believed he was not clear and a misunderstanding ensued about whether or not the Building Department had approved the pitched roof or an architectural roof. The pitched roof would increase the cubical content of the property. It was Mr. Sisk's understanding this was a legitimate misunderstanding. Mr. Sisk stated that when someone from the City saw the building in progress, they believed it was out of the scope of the permit. A stop work order was issued and Mr. Dutt complied. After a thorough review of his alternatives, Mr. Dutt decided to come before the Board of Adjustment. Mr. Sisk stated it was always Mr. Dutt's intention to install a pitched roof for a variety of reasons such as durability and safety, as a pitched roof was preferable. However, the pitched roof increased the area of prospective renovation.

Mr. Sisk submitted architectural renditions of what the property would look like after

the renovation. He also provided photographs of the property as it currently appeared. Mr. Sisk detailed the recent variance request of Mr. Hal Prettyman's property at 37 A&B Benny Street. He wished to point out that the variance that Mr. Dutt was requesting was significantly less in cubical content than Mr. Prettyman's variance request that the Board approved. Mr. Sisk believed there were substantial similarities between Mr. Prettyman's case and Mr. Dutt's case.

Mr. Sisk addressed the Kwik Checks. The property was zoned as BC and would remain BC. Mr. Dutt's property currently had four rental units, but after renovation, the units but would decrease to three.

The second Kwik Check item, the character and uses of the immediate vicinity of the property. It was student rentals with a mixture of non-conforming uses, multi-unit buildings, duplexes and single-family homes. The cubical content also varied from property to property.

The third item on the Kwik Check, the effect of the variance on other properties. Mr. Sisk stated the neighboring properties could only be helped by the renovations to Mr. Dutt's property, which was a fifty year old structure. The upgrades would include sprinkler system, hardwire smoke detectors, electrical wiring and new mechanical systems.

The final Kwik Check item, the effect of the applicant if the variance was not granted. According to Mr. Sisk, there were many negative effects. The pitched roof would have to be removed at considerable expense. The flat roof would have to be installed and Mr. Dutt believed that the flat roof was less attractive and more susceptible to leaks and maintenance issues. The property, in its present condition, was unattractive and outdated and wasn't competitive in the current rental market.

Mr. Sisk saw this as a win-win situation for Mr. Dutt to have a more attractive and rentable property, and for the City and the neighborhood to have a safe, upgraded and building complete with a sprinkler system. The improvements would ultimately cause a reassessment for tax purposes.

Mr. Matt Dutt, 54 McCormick Way, Lincoln University, PA was sworn in.

Mr. Foster asked how many bedrooms the property had. Mr. Dutt stated there were 2 bedrooms, 1 ½ baths. When renovations are completed, there would be 5 bedrooms, 3 bathrooms. Mr. Foster also inquired how many parking spaces and Mr. Dutt responded there were 20 spaces.

Mrs. Johnston asked why the additional information provided was not available prior to the meeting. Mr. Sisk stated that due to time constraints for filing for the March meeting, it did not afford him enough time to distribute the information on a timely basis.

There was an urgency in this situation due to the fact that the structure had been partially constructed and a stop work order issued and was told January 9. Mr. Dutt then decided to research his options with his architect and come up with a plan, therefore the time lapse.

Mrs. Jean White, 103 Radcliffe Drive, was sworn in.

Mrs. White advised that after hearing the testimony, she was now clear why when viewing the property, the second floor was half built. She was unsure why the applicant would not be aware he would need a variance since he was constructing a whole second floor. Mrs. White further stated that she was a bit perturbed that such an experienced landlord would not understand that he needed a variance to add a second floor.

Mr. Bergstrom confirmed that there was not an outstanding issue with Alderman's Court in regard to the stop work order. Mr. Sisk stated there was not.

Mr. Bergstrom addressed the Kwik Checks. The nature of the zoning where the property was located was residential and BC.

The character of the immediate vicinity of the property and the uses in the immediate vicinity. Mr. Bergstrom believed the renovations would enhance the area, in addition to being safer.

The third Kwik Check item. If the relevant restrictions on the property were removed, would such removal seriously affect the neighboring uses. This was debated at length during the Prettyman case, and Mr. Bergstrom was satisfied that with the new mechanicals, etc., it was a good enhancement.

The fourth item. If the restrictions were not removed, the restriction would create an unnecessary hardship or exceptional practical difficulty for the owner to make normal improvements in the character of the permitted use. That issue was also discussed at length on the Prettyman variance. The public does not want to live in substandard housing and this would be a positive improvement to community and tax base.

Mr. Bergstrom proposed to vote in favor of the variance. Mr. Foster concurred with Mr. Bergstrom's points. Ms. Shopland agreed as well and appreciated the updated safety features. Mr. Harmer and Mrs. Johnston agreed as well with Mr. Bergstrom's assessment. However, Mrs. Johnston wanted to note that she did not like to compare cases and that each case should be judged on its own merit.

MOTION BY MR. BERGSTROM, SECONDED BY MRS. JOHNSTON TO APPROVE THE REQUESTED VARIANCE FOR THE EXPANSION OF 91 S. CHAPEL STREET FOR THE CUBICAL CONTENT OF THE BUILDING TO BE

**INCREASED 44.4% IN CONFORMANCE WITH THE SUBMITTED PLANS.
CONSTRUCTION TO COMMENCE WITHIN 90 DAYS AND PROCEED IN
ACCORDANCE WITH THE TERMS OF THE BUILDING PERMIT.**

MOTION PASSED: 4-0

Aye: Bergstrom, Foster, Harmer, Johnston, Shopland
Nay: 0

5. Meeting adjourned at 9:42 p.m.

Tara A. Schiano
Secretary

Attachment