

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

April 16, 2009

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

**09-BA-4
108 E. Main Street**

**09-BA-5
Thorn Lane/Lehigh Road**

Those present at 7:30 p.m.:

Presiding: Clayton Foster

Members Present: Jeffrey Bergstrom
Michael Harmer

Members Absent: Kevin Hudson
Linda Shopland

Staff Members: Bruce Herron, City Solicitor
Tom Sciulli, Building Director

1. **THE ORDER OF THE AGENDA WAS CHANGED TO HEAR: THE APPEAL OF LANG DEVELOPMENT GROUP FOR THE PROPERTY AT 108 EAST MAIN STREET TO ITEM NUMBER #3. THE APPEAL OF STUDIO GREEN/CAMPUS LIVING VILLAGE WAS MOVED TO ITEM #4.**

MOTION BY MR. BERGSTROM, SECONDED BY MR. HARMER: TO CHANGE THE ORDER OF THE MEETING TO HEAR THE APPEAL OF STUDIO GREEN/CAMPUS LIVING VILLAGE AS ITEM #4.

MOTION PASSED: 3-0

Aye: Bergstrom, Harmer, Foster

Nay: 0

Absent: Hudson, Shopland

2. **APPROVAL OF MINUTES FROM MEETING HELD MARCH 19, 2009**

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

3. THE APPEAL OF KEVIN AND GRACE FRAZER, TABLED FROM MARCH 19, 2009 FOR THE PROPERTY AT 112 BENT LANE, FOR THE FOLLOWING VARIANCES:

- A) CH. 32, SEC. 32-9 (C) (2) LOT COVERAGE – TOTAL LOT COVERAGE IS LIMITED TO TWENTY (20) PERCENT. THE ADDITIONS WOULD RAISE THE TOTAL LOT COVERAGE TO TWENTY-SIX (26) PERCENT.**
- B) CH. 32 SECT. 32-9 (C) (5) (C) – SET BACK REQUIREMENTS – MINIMUM BUILDING FRONT SETBACK IS THIRTY (30) FEET; PLAN SHOWS A SET BACK OF ONLY TWENTY-SEVEN FEET (27).**
- C) CH. 32 SECT. 32-9 (C) (7) (C) – SIDE YARD REQUIRMENTS – 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 AN AGGREGATE OF 15.9 FEET.**

MOTION BY MR. BERGSTROM, SECONDED BY MR. HARMER: TO REMOVE THE ABOVE ITEM FROM THE TABLE.

MOTION PASSED: 3-0

Aye: Bergstrom, Foster, Harmer
Nay: 0
Absent: Hudson, Shopland

Grace Frazer, 112 Bent Lane, was sworn in. Ms. Frazer stated there was an alteration to her side yard variance and the proposed addition would now reduce the side yard to two (2) feet with an aggregate of 16.9 feet rather than the one (1) foot with an aggregate of 15.9 feet stated previously

In regard to the two issues that were raised in the prior meeting -- water runoff and the easement, Ms. Frazer had the following information to offer the board. In regard to the easement, she contacted Charlie Emerson who visited the property, and gave Ms. Frazer verbal permission to do maintenance on the side yard. She further stated that granting an easement was not possible due to stipulations in how the property was donated to the City.

In regard to the issue of hardship, if the variance was not granted Ms. Frazer said it would cause an unnecessary financial hardship or exceptional practical difficulty in their efforts to make necessary improvements to the character of their home in order to remain competitive in the City of Newark's housing market. They wish to remain competitive in

the market and believe that without a garage they would be unable to do so. Ms. Frazer stated there were 55 homes in Nottingham Manor. Of those 55 homes, 36 have a two-car garage, 15 have a one car garage, three have no garage, and of the three, two are conversions that originally had one car garages. The remaining house without a garage was their home.

An additional concern was safety. She stated that the City of Newark crime report for the last year showed 120 automobile thefts. Further, in their district alone, there were three automobile thefts within the last two weeks.

In regard to water runoff, Mr. Emerson had a supervisor visit the property and the City agreed to clean out their area of the ditch because that was where the water has been collecting. Due to the small size of the lot, which was $\frac{1}{2}$ an acre, the supervisor did not feel the garage would cause drainage difficulties.

In regard to the setback issue, the setback from the front of the proposed garage was actually $42 \frac{1}{2}$ feet to the legal setback line from the street. There is $12 \frac{1}{2}$ feet that the Frazer's do not own. The setback would not be 27 feet from the street; it would be approximately $39 \frac{1}{2}$ feet from the street.

Mr. Bergstrom inquired about the shed in the back of the property that was in disrepair, and asked if it would be possible to replace it with something larger in lieu of a garage, or put a garage in that location? Ms. Frazer stated there was only $14 \frac{1}{2}$ feet from the back of the house to the property line so this was not possible. Decreasing the size of the garage, was determined not to be an option as once an averaged sized car/SUV was in the garage there would be no additional room for storage. After Ms. Frazer spoke with Mr. Sciulli, he advised her to keep the garage at the original dimensions.

The Chair opened the discussion to the public. There were no comments forthcoming and the discussion was returned to the table.

Mr. Harmer reviewed the Kwik Checks and said if the restriction was not removed, exceptional practical difficulty would exist due to financial hardship as stated by Ms. Frazer.

MOTION BY MR. HARMER, SECONDED BY MR. BERGSTROM: TO APPROVE THE TOTAL LOT COVERAGE TO 26%.

MOTION PASSED: 3-0

Aye: Bergstrom, Foster, Harmer
Nay: 0
Absent: Hudson, Shopland

MOTION BY MR. HARMER, SECONDED BY MR. BERGSTROM: TO APPROVE THE SETBACK OF 27 FEET.

Mr. Bergstrom stated additionally that in reference to the character of the immediate vicinity, the properties along the street was residential and would remain so and there would be no impact on the other properties.

MOTION PASSED: 3-0

Aye: Bergstrom, Foster, Harmer

Nay: 0

Absent: Hudson, Shopland

MOTION BY MR. BERGSTROM, SECONDED BY MR. HARMER: TO APPROVE THE SIDE YARD REQUIREMENT.

Mr. Bergstrom stated that although this was a large variance, the property was adjacent to a park with a deed restriction that it could never be sold. In addition, the City does not have any objection.

Mr. Bergstrom confirmed with Mr. Sciulli that one hour fire resistant construction would be used on the side adjacent to the parkland to eliminate any safety concern.

3. THE APPEAL OF LANG DEVELOPMENT GROUP FOR THE PROPERTY AT 108 EAST MAIN STREET:

CH. 32, SEC. 18 (D) (4) HEIGHT OF BUILDINGS – IS LIMITED TO A MAXIMUM OF 3 STORIES OF 35 FT. EXCEPT UNDER SPECIAL CIRCUMSTANCES AS CONTAINED IN THIS SECTION. PROPOSED BUILDING HEIGHT IS 42 FEET AND DOES NOT CONTAIN ANY OF THE CIRCUMSTANCES THAT WOULD ALLOW THIS EXTRA HEIGHT.

Ms. Schiano read the above appeal and stated that it was advertised in the *Newark Post*, and direct notices were mailed. One letter was received from Kimberly Hoffman representing neighbors that had concerns that were not related to Board of Adjustment issues. The letter was forwarded to the proper departments for review.

Mr. Foster asked for clarification of the Building Code from Mr. Sciulli of the term “special circumstances.” Mr. Sciulli upon interpreting the Building Code stated the special circumstances would include such structures as a parking garage or a structure that

would include a floor that contained an open plaza, or floors that 60% would be used as exhibition, lobby or gallery area. None of those conditions applied in this situation.

Mr. Jeff Lang, representing Lang Development Group, 13 Springwater Way, was sworn in. Mr. Lang stated the proposed project was submitted to the Planning Department and approved by the Planning Commission. They were now appealing to the Board of Adjustment for the variance prior to moving forward with Council. They sought to add two stories to an existing structure. The bottom two stories would be commercial in nature and residential on the third floor. To accommodate a commercial use of two floors of the building, a review of the existing height was needed. They sought a modification due to the fact that commercial floors typically use 15 feet of space per floor. Two commercial floors would use 30 feet of space. With the addition of a 12 foot residential floor, it would bring the height to 42 feet.

Mr. Lang noted that adjoining structures exceeded the 35 foot maximum. The existing building next door which was one of Mr. Lang's projects, has a height of 41 feet. The finished first floor was 5 feet above the street, so the actual height of the building was 46 feet. The building in this project is 42 feet tall. Therefore, the structure fits in with the street scape and would not be out of place. Also noted was the height of the Washington House at 60 feet and the Opera House at approximately 50-55 feet.

Mr. Foster inquired why Mr. Lang came before the Board prior to going to Council. Mr. Lang stated they had received preliminary approval through the Planning Commission but would have to receive final approval from Council.

Mr. Bergstrom asked Mr. Lang the actual hardship. Mr. Lang stated it was a functional hardship due to the fact that the structure could not accommodate the usage proposed and that becomes an economic hardship because it cannot be leased.

The Chair opening the discussion to the public.

Ms. Jean White, 103 Radcliffe Drive, was sworn in. She opposed this variance due to height. Her main reason for opposition was the adjoining post office building. She believed that adding the additional feet to Mr. Lang's building would diminish the significance of this building. In addition, the adjoining building has a pitched roof and the proposed building has a flat roof, thereby making Mr. Lang's building look even taller in comparison.

Mr. Foster inquired about adequate parking. Mr. Lang responded they were working with the City and would be donating the back parking lot as well as a house on Center Street to the City for their long term parking needs. He further added there was adequate parking for this project and the uses of this building.

Mr. Harmer addressed the Kwik Checks.

- The nature of the zone in which the property was located. There are several buildings in the vicinity higher in height than the proposed building.
- The character and uses in the immediate vicinity of the property. The building in proximity was higher than the proposed building. The current use of the property fits in with the existing character.
- Such removal would seriously affect the neighboring property. It would not affect the neighboring property and would fit in with the “intent” of the “plan” of Main Street.
- Whether or not if the restrictions were removed it would create an unnecessary hardship or exceptional practical difficulty for the owner. It was mentioned by Mr. Lang that they could demolish the building and start over which would create an economic difficulty.

MOTION BY MR. HARMER, SECONDED BY MR. BERGSTROM: TO APPROVE THE VARIANCE FOR THE PROPOSED EXPANSION OF 108 E. MAIN STREET TO 42 FEET.

MOTION PASSED: 3-0

Aye: Bergstrom, Foster, Harmer

Nay: 0

Absent: Hudson, Shopland

4. THE APPEAL OF STUDIO GREEN/CAMPUS LIVING VILLAGE FOR THE PROPERTIES AT 111 THORN LANE, 21 THORN LANE, 0 LEHIGH ROAD FOR THE FOLLOWING VARIANCES:

A) 111 THORN LANE, (FORMERLY TOWNE COURT APARTMENTS) (30 VARIANCES REQUESTED IN REGARD TO 14 SIGNS)

B) 21 THORN LANE (FORMERLY TOWNE COURT APARTMENTS) (23 VARIANCES REQUESTED IN REGARD TO 11 SIGNS)

C) 0 LEHIGH ROAD (FORMERLY PARK PLACE APARTMENTS) (66 VARIANCES REQUESTED IN REGARD TO 35 SIGNS)

Ms. Schiano read the above appeal and stated that it was advertised in the *Newark Post*, and direct notices were mailed.

Ms. Pamela Scott, Esquire, 222 Delaware Avenue, Wilmington, DE was present to represent the Studio Green/Campus Living Villages.

In addition, Mr. Geoff Eisenacher, of Campus Living Villages, of Houston, TX, Mr. Don Esh, Engineer from McBride and Ziegler and Mr. Barry Jacobson of Forman Signs were sworn in.

Ms. Scott stated that the company she represented acquired what were formerly known as Towne Court and Park Place apartments last year. Since the acquisition, they have spent considerable time and money renovating the properties.

Ms. Scott stated that essentially they were requesting variances on three categories of signage. Entrance signs are located along the main road upon entering the complex; directional signs are located within the complex; and address signs, which were essentially the apartment building numbers above the entrance of each building.

Mr. Eisenacher, Assistant Vice President of Business Development of Campus Living Villages, Houston, TX stated that his company was a provider since 1990 of student housing around the country in approximately 20 different states on and off campus.

The integration of both Towne Court and Park Place, which are located on both sides of Elkton Road has created significant directional issues which would necessitate proper signage to assist tenants and the public.

Mr. Eisenacher added that although they were requesting a few monument signs, the majority of the variances requested were for directional signs that his company believes are necessary to give logical direction for people to safely and efficiently get from one area of the property to the other.

In terms of signage on the building, the only signs that currently exist are one small blue and yellow numbered sign to the left or right of each front building entrance which was not very visible.

Regarding directional signs, there was literally no way for an individual to be able to logically find their way across Elkton Road to the other section of the complex and especially to the new clubhouse which was under construction. Ms. Scott inquired if the complex receives calls from individuals having difficulties locating people/buildings. Mr. Eisenacher stated they continually receive calls from people having such difficulties. In addition, it should be further noted the fire department and EMT's have had difficulties over the years locating various buildings to reach individuals in need of their services, where time was of the essence.

It was determined that for both the former Park Place/Towne Court locations, the requested signage would consist of the following:

- Entrance signs – signs to provide direction/instruction to motor vehicles approaching or entering the complex:
- Larger directional signs – for vehicles to enable them to locate certain buildings or to locate the clubhouse.
- Smaller directional signs – for pedestrians that would direct the individual to a particular building once they have parked and were walking.
- Wall signs – signs that are placed directly on the building to indicate the building number.

Regarding the issue of internally illuminated signs, Mr. Barry Jacobson of Forman Signs, detailed the construction of the signs and the fact that the only illumination of the sign was the actual wordage contained within the sign and the Studio Green logo.

Mr. Foster inquired why the necessity for the signs to be backlit. Mr. Jacobson stated there were a variety of reasons: traffic safety, ease of use from a distance at night, etc. If external lighting was used, there were issues to consider such as ice, ground growth, and bulbs needing replacement.

Mr. Foster inquired why the additional height was needed on the directional/instructional signs. Mr. Jacobson stated when driving, the signs would have to be slightly elevated to ensure they were readable. In addition, the smaller the sign, the smaller the copy, and the sign wouldn't be able to be seen by an individual in a vehicle.

Ms. Scott stated, in conclusion, that the majority of the signage that was proposed was mainly directional in nature. The purpose was to help the general public and the tenants. In regard to the Kwik Check items, she addressed them as follows:

- The nature of the zoning would not change,
- The character of the immediate vicinity. The area was primarily apartments and would not negatively impact anyone in the area
- If the restrictions were removed what impact would it have on neighboring properties? Since the signage was internal to this complex, it wouldn't have any negative impact but rather a positive impact on their community.
- If the restrictions were not removed, would it create an exceptional practical difficulty for the owner in making general and normal improvements to their property? It would, as currently the signs were not adequate in their size and design.

Ms. Jean White, 103 Radcliffe Drive, was sworn in. She stated she was not for or against the variances, however she wished to make a few comments. She believed the current signs on the buildings were sufficient. She wished to convey her distaste for the neon green color. She asked for confirmation from Mr. Eisenacher whether similar

signage was used in their other complexes. He stated they were similar. She also suggested Newark PD be consulted in regard to the sign in question (#1) for clarification on site distance.

It was determined after discussion that an internally illuminated combination identification and instructional sign, of which nine are proposed, should be tabled due to sight distance issues. (Identified as Sign #1)

Mr. Harmer addressed the Kwik Checks as they applied to all the variances and said the character of the immediate vicinity will not change. The use would not change and there would not be a negative impact. With regard to the exceptional practical difficulties, the signs that currently exist were not adequate for a number of reasons. Mr. Foster concurred and added that in consideration of the area being self-contained it would have little effect on the surrounding community.

MOTION BY MR. HARMER, SECONDED BY MR. BERGSTROM: TO APPROVE THE REQUESTED VARIANCE AT 11 THORN LANE, FOR 30 (MINUS THE SETBACK VARIANCES) VARIANCES IN REGARD TO 14 SIGNS.

MOTION PASSED: 3-0

Aye: Bergstrom, Foster, Harmer
Nay: 0
Absent: Hudson, Shopland

MOTION BY MR. HARMER, SECONDED BY MR. BERGSTROM: TO APPROVE THE REQUESTED VARIANCE AT 21 THORN LANE, FOR 18 VARIANCES IN REGARD TO 10 SIGNS (THE MODIFICATION BEING THE REMOVAL OF THE LARGE #1 MONUMENT SIGN AT INTERSECTION OF ELKTON ROAD AND THORN LANE). THE SETBACK VARIANCES WOULD NOT BE INCLUDED.

MOTION PASSED: 3-0

Aye: Bergstrom, Foster, Harmer
Nay: 0
Absent: Hudson, Shopland

MOTION BY MR. HARMER, SECONDED BY MR. BERGSTROM: TO APPROVE THE REQUESTED VARIANCE AT 0 LEHIGH ROAD, NEWARK, FOR 66 VARIANCES (SETBACKS WITHDRAWN) TO 35 SIGNS.

Aye: Bergstrom, Foster, Harmer
Nay: 0
Absent: Hudson, Shopland

MOTION BY MR. HARMER, SECONDED BY MR. BERGSTROM: THAT SIGN #1 (COMBINATION SIGN – IDENTIFICATION AND INSTRUCTIONAL SIGN) AT THE CORNER OF ELKTON AND THORN BE TABLED.

MOTION PASSED: 3-0

Aye: Bergstrom, Foster, Harmer
Nay: 0
Absent: Hudson, Shopland

5. Meeting adjourned at 9:58 p.m.

Tara A. Schiano
Secretary