

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
JUNE 20, 2024**

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chair Mark Morehead James Cloonan
Absent:	Kevin Hudson Chris Rogers
Staff:	Paul Bilodeau, City Solicitor Mike Fortner, Senior Planner Tara Schiano, City Secretary Heather Amos, Administrative Professional II, Paralegal

Mr. Bergstrom called the meeting to order at 7:01 p.m.

1. Approval of minutes from meeting held May 16, 2024:

Mr. Bergstrom stated he was not in attendance for the May 16th meeting and asked if the board members were able to review them.

Mr. Morehead stated he had reviewed them and affirmed he felt there were no corrections or additions needed.

Mr. Cloonan stated that he, too, was not in attendance for the May 16th meeting.

Due to two members needing to abstain from approval due to absence from the meeting, the minutes could not be approved, and their approval will be postponed until the next meeting.

2. The appeal of Tupp Signs, Inc., property address 292 W. Main Street, Newark, DE 19711, for the following variances:

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

Sec. 32-60 – Schedule of sign regulation

- Per the table under Section 32-60(a)(1), the maximum height of an identification ground sign is 6 feet (72 inches). Applicant is proposing a height of 6 feet, 5 inches. A 5-inch variance is requested.
- Per the table under Section 32-60(a)(1), the maximum area of an identification ground sign is 4 square feet. Applicant is proposing an area of 36.75 square feet. A 32.75 square foot area variance is requested.

Mr. Bergstrom asked if anyone in the audience was going to present the variance. He then swore in Ryan Stout of Tupp Signs, Inc.

Mr. Stout explained the current sign is over 32 square feet, which is more than the current regulation of 4 square feet, but it was grandfathered in. He advised that the new sign would be approximately the same size, but that it would be shifted to the middle of the property due to a viewing obstruction. The current sign is an old "reader board" sign and letters must be manually changed. It's old and leaking and it has lighting issues. They would like to upgrade the sign to get their message out in a better more effective way for the community since the church also hosts many community events. The proposed variance is 5 inches higher than allowable, so it is 6 foot 5 inches, and the total square footage is 36.75 square feet, (the regulation is 4 square feet). He reiterated that the current sign is roughly 32 square feet, with a 4 foot by 8-foot sign.

Mr. Cloonan asked for the dimensions of the existing sign.

Mr. Stout replied the sign, without the base, is 4 feet x 8 feet.

Mr. Bergstrom asked what the size of the sign with the base was.

Mr. Stout did not have the information available.

Someone from the audience stated that the width is 91 inches.

Mr. Stout asked the speaker if the base was 12 inches high.

Mr. Bergstrom interrupted the speaker to invite him to identify himself to be sworn in.

Mr. Bergstrom swore in Don Tancredi, an Elder for First Presbyterian Church who is also in charge of community outreach and lives in Newark, DE .

Mr. Tancredi stated the present sign with the base is 5 feet, 7 inches tall and the width is 90 inches. The base stands approximately 18 inches off the ground and the sign is 4 feet by 90 inches.

Mr. Bergstrom stated that KWIK Check Factors need to be addressed for an area variance.

Mr. Stout interjected that the Board approved a similar variance request for Temple Beth El, in the same zoning district, adding that the sign itself is a little different but the area of square footage was basically the same and it was in the same zoning district, and he reiterated that it was approved through Tupp Signs.

Mr. Bergstrom reiterated that KWIK Check Factors need to be addressed and asked about the nature of the zoning of the property.

Mr. Bilodeau asked if it was residential or commercial.

Mr. Stout said it was mixed, meaning it is residential on one side of the road and commercial on the other.

Mr. Tancredi interjected that the church property is commercial, and the zone is residential across the street.

Mr. Fortner clarified it is a conforming use, but it zoned as a residential property under RS Residential (One-family detached).

Mr. Bergstrom asked Mr. Fortner whether a church is a conforming use under RS district.

Mr. Fortner affirmed.

Mr. Tancredi reiterated that he is an elder of the church and has been there for 13 years. He changes the letters on the existing sign which means lifting a 4-foot by 8-foot sheet of plexiglass, crawling underneath and manually setting the letters on the sign, on both sides. The present sign doesn't allow the use of a cell phone or computer to put the message up or time of services. In addition, the letter sizes are not variable. The new sign is not going to be a scrolling sign. The messages will change when they have events, but not like the one at the fire hall with flames shooting out. It will be a passive sign but with the ability to change the message for community awareness of events such as polling location, welfare events, meals for Christmas, blood drives, and the recovery community.

Mr. Cloonan asked if this is meant to be an identification sign rather than a bulletin board, as bulletin boards are separate from identification signs.

Mr. Fortner stated it is classified as a ground sign, and even though it has a lot of the same function of a bulletin board, it is not considered one because it is internally lit.

Mr. Cloonan stated that he finds that determination unclear, because bulletin boards are addressed separately from ground signs and are not meant to be things you can change with your phone, so we're dealing with something beyond the zone size for an identification sign and beyond the zone size for a bulletin board and is functioning differently than a bulletin board. He then asks if he is correct.

Mr. Fortner reiterated that even though it has some of the same functions as a bulletin board, it is classified as a ground sign because it is internally lit.

Mr. Cloonan stated in reference to the previously granted variance that he believed it was put in the same location as the existing sign and had not been relocated.

Mr. Stout stated he didn't know the location and had only referenced the other variance due to its dimensions. He clarified his reference did not have anything to do with whether it was moved from its location.

Mr. Bilodeau stated that there was a letter submitted in opposition to this request, asserting that the church previously requested a variance for a sign, and it was denied. He noted one of the questions on the application asks whether this variance has been before the board previously, and he is curious as to whether this variance has been requested before, or if they have been before the board previously for a variance.

Mr. Tancredi said that was before his time and he did not believe there was a variance, but that he heard rumors of people who would be opposed to it. He continued that he has not heard objections from anyone in the surrounding community and there will always be people who will object. We either move forward, stay the same or move backward.

Mr. Stout asked how long ago the previous variance denial was.

Mr. Bilodeau responded that did not know. When asking for an area variance, there are things that need to be proved, such as the nature of the area where the church is. He added that, when considering an area variance, one of the other prongs applied is the question of whether granting the variance would detrimentally affect surrounding properties.

Mr. Tancredi replied that he didn't see any reason it would and added that there are things that can be done, like turn the sign off at 9 or 10 o'clock at night to a black screen.

Mr. Bilodeau asked him to confirm his claim that he was not aware of how it could detrimentally affect anyone.

Mr. Tancredi said no.

Mr. Bilodeau then asked how denying the variance would detrimentally impact the church.

Mr. Tancredi stated they wouldn't be able to get a message out regarding times of services, Easter service, Sunday schools, and he is currently limited to the 4-inch letters that he has to put out there. He continued, stating he changes the sign himself; he is 73 years old and one of the youngest people in the church. In addition, he is the facilities person, so if he doesn't change it, it won't get done.

Mr. Stout interjected that the current sign doesn't allow enough space and capability to change screens to get all the messages out for multiple events at one time.

Mr. Tancredi added the events might not be on the same day and the sign could also be used for snow emergencies as part of the code, which is another way they could help the community, advising people to stay home. He concluded stating he is a citizen of Newark and does not see how it the sign could be detrimental, and this is a "sign of the times."

Mr. Morehead noted the application talks about improved visibility and moving the sign from where it is now to improve the visibility but adds the proposed variance would also raise the sign height. He asked, since the proposed location of the new sign is on a higher piece of land, does the base need to be 18 inches tall or could it be 12 inches tall because with the new location, on higher ground, there would already be better visibility.

Mr. Stout confirmed the base could be any size, but that 18 inches was the preference.

Ms. Morehead noted the sign is already 4 feet higher than the road and he would think the church would want to bring it down, to practically no base, because the sign would be directed at people driving by and you wouldn't want the drivers to have to look up too much.

Mr. Tancredi agreed with Mr. Morehead's comments but noted he wouldn't want to have the base be less than 12 inches due to potential snowfall.

Mr. Morehead asked to clarify whether a 12-inch base is possible.

Mr. Stout confirmed that it is, and that an 18-inch base is not required, rather it was decided upon based on the concerns of the church.

Mr. Morehead asked for confirmation on whether the size of the current sign is in fact, grandfathered in.

Mr. Fortner stated it is not. Section 32-59(d) of the Code states grandfathering does not apply to signs when it is a non-conforming sign, and it is replaced or altered in any way. Therefore, they wouldn't get credit for the oversized sign that they have, and it would also be in a different location.

Mr. Bergstrom asked for the dimensions of the existing sign.

Mr. Fortner stated they are comparable to the proposed sign dimensions.

Mr. Stout and Mr. Tancredi both replied the existing sign is larger than the proposed sign when the base is included.

Mr. Tancredi stated he does not want to leave without the variance, but if he did, he would need to spend a lot of money to replace the internal components of the existing sign to keep it.

Mr. Morehead asked whether the current sign is lit.

Mr. Tancredi confirmed.

Mr. Morehead asked whether it is lit all night.

Mr. Tancredi affirmed it is lit all night.

Mr. Morehead noted, in regard to the lighting, the proposed sign would not be different from what already exists.

Mr. Tancredi confirmed they would like to keep the new sign lit.

Mr. Morehead noted it is a little confusing, because the top part of the proposed sign could be considered an identification sign, whereas the lower part of the sign functions more like a bulletin board. He asked Mr. Tancredi to clarify and confirm that there are many functions taking place at the church and the sign would give the church better capabilities to interact with the community, especially if the sign had the ability to scroll from one event to the next displaying important information such as dates and times of services, elections, concerts, etc.

Mr. Tancredi agreed and added they hold many concerts and right now they do not have the capability to get the information out to the community.

Mr. Morehead asked Mr. Tancredi how often he thought the message on the sign would be changing, offering examples: every 10 sec or every 5 min.

Mr. Tancredi confirmed he would like it to change but doesn't want it to change as frequently as the fire hall sign, which changes often. Every 10 minutes would be fine, or whatever the board wishes, in order to obtain approval of the variance.

Mr. Morehead stated that he thought it would make sense and it would be a natural use of the sign to be able to change the display.

Mr. Bergstrom stated he thought the board restricted the frequency of the sign changes for Newark High School, which was across the street from a residential district.

Mr. Morehead noted that was before his time on the board.

Mr. Tancredi interjected that the church has been there a long time. They have changed locations several times, they strive to be good neighbors. They are trying to increase community involvement, so whatever the board wants for the scrolling they will abide by it.

Mr. Cloonan noted one of the obvious things with the relocation of the sign will be that the residences, which are across the street and adjacent, are going to see something different. It will be more obvious than what was there before and could be a distraction to the community. Considering this, he asked if Mr. Tancredi had talked to residents on either side of the church, Newark County Club, Newark Manor and the residences across the street.

Mr. Tancredi responded he had not.

Mr. Cloonan clarified and confirmed that there has been no input on that level.

Mr. Tancredi stated the new sign would be between the properties across the street, whereas the current sign is directly in front of one property.

Mr. Cloonan stated it is moving a fair distance.

Mr. Tancredi stated the current sign is hard to see.

Mr. Cloonan asked whether the church has other ways of notifying people of their events.

Mr. Tancredi stated they can notify people within their own congregation.

Mr. Cloonan asked for clarification that there are no other notices for concerts or things of that nature, other than on a bulletin board.

Mr. Tancredi responded, where the sign is now, PVC piping was installed to hang notices on 5-foot by 8-foot banners. These banners flap in the wind and are unsightly. He reiterated that he has to hang the banners himself, and that a new sign would be much more suitable.

Mr. Cloonan opined the church has been successful since the 1960's with getting messages to the community.

Mr. Tancredi reported in 1964, the congregation had over 700 members. Now, there is an active congregation of only 120. He continued stating the type of large events the church holds with the University of Delaware are drawing families from the school, rather than the church's efforts at community outreach. He stated that they do utilize Facebook, but that 2 million cars drive past the church each year, so they are not really getting their message out.

Mr. Morehead stated it's arguable that a post on Facebook could receive 2 million views, but he understood the comment by Mr. Tancredi.

Mr. Tancredi concluded by stating he appreciates the board and their civic duty and hopes that they take affirmative action to approve the variance to help the church.

Mr. Bergstrom asked if there was any public comment to speak regarding the proposal and swore in Dr. Patrick Hart of 257 W. Main Street, Newark, DE

Dr. Hart stated the proposed sign is an illuminated, scrolling electronic messaging sign with a luminosity similar to the church on Main Street. The luminosity is subjective, and the sign can be scrolling which he believes to be a distraction. Anytime the eye sees a moving object, the eye has to look at it. He thinks any scrolling sign in an area zoned residential is not acceptable, a potential danger, distracting and does not add to the architectural residential character of the houses on main street. He expressed his concern about sign creep, and if approved, it would be difficult to control similar requests from the other businesses in the area. He expressed his belief that it doesn't belong in a residential neighborhood and if they want to change zoning that is something else. As far as promulgating the events the church has, there are many ways, such as posting in the Newark Post or on the internet. He does not think the sign is needed and believes the events are well promulgated and attended without the sign. He added a college student could be hired to change the message on the current sign, so it is not burdensome on an elder. He concluded by stating as a long-time resident of Main Street, he is very happy with the way things are and doesn't think it should be changed. The benefit of the sign to the community is not worth the distraction.

Mr. Morehead asked Dr. Hart to affirm that he had been an eye doctor in Newark for a long time and would understand about eyes and being distracted and so forth.

Dr. Hart affirmed.

Mr. Morehead reiterated the church is allowed to be in a residential district and asked whether the current sign is a problem for him now.

Dr. Hart stated the current sign is a little obstructed and he understood why the church may want it in a different location. He does not have any problem with the existing signage at the church or any of the surrounding establishments, such as the nursing home, doctor's offices or the country club.

Mr. Morehead noted the establishments mentioned by Dr. Hart put up temporary signs occasionally, which are static signs that come and go. He asked whether the fact the sign is lit at night bothers him.

Dr. Hart answered yes due to the glare.

Mr. Morehead asked if he lives directly across the road from the existing sign.

Dr. Hart stated that yes, he lives across the road but not directly.

Mr. Morehead asked if there would be a way to have a sign that is not too bright, or if it went black prior to a new message being displayed, if appropriate, so that it didn't morph and roll.

Dr. Hart expressed his concern that without limits and restrictions being specifically codified, issues such as the creep, luminosity and frequency of change are too flexible.

Mr. Morehead asserted the board has the authority to place limits on this type of variance, such as when it's lit, how bright it is or how often it changes. All of which would then be legal requirements until another variance request was brought before the board. He affirmed the board was able to set limits and restrictions on the sign installed at Newark High School and the creep regarding this sign specifically could be limited by the board if the variance is granted.

Dr. Hart argued there would be a lot of legalese and technical terms, as well as reliance on common sense and to think in terms of residential zoning. He stated he is aware that Main Street is a busy street, and a bit of a hybrid regarding residential and commercial zoning. He asked, hypothetically, whether a sign would be approved on Dallam Road. There are many other ways for the church to advertise their events. It was his belief that when cars pass the church, they are going 40 to 50 miles per hour and the proposed sign is too big to have to read at that speed.

Mr. Morehead stated he agreed with Dr. Hart's sentiment and understood the issue, as he was at one point his neighbor, but the issue regarding the speed of passing cars is a policing issue.

Dr. Hart argued it's also a sign issue because to read the sign you have to drive slower. He noted the size of road signs relative to the speed of cars, specifically pointing out how big signs have to be on I95.

Mr. Morehead thanked him and stated that he had no further questions.

Mr. Bergstrom swore in Mrs. Frances Hart of 257 W. Main Street.

Mrs. Hart stated a sign of the size proposed and the things that are happening on it does not belong in a neighborhood. If this sign is approved, there will be many other similar signs. This residential area will turn into something that it isn't. Right now, it is very nice, and it won't be nice if this request is approved.

Mr. Bergstrom asked if there was any additional public comment and received no response. He asked if anyone was online wishing to make a public comment.

Ms. Schiano stated that there was no one online that had raised their hand.

Mr. Bergstrom advised that any emails received need to be read into the record and asked if there were any.

Ms. Schiano advised there is one.

Ms. Amos read the emailed comment:

"To: City Secretary/City Boards and Commissions. As the current owner of 246 West Main Street Newark, Delaware I am opposed to the new digital sign being proposed in violation to Section 32-609(a)(1). Please do not allow this sign to be approved. My property has been in my family since 1917. We opposed this proposal the last time it was brought forward as well. This is a residential neighborhood. The sign size and character is completely out of line with what would be approved for a residential neighborhood. From the information provided this is more appropriate for a retail establishment that would be in a shopping center/retail environment...not a house of worship in a residential setting. I strongly believe it will have a financial impact on the value of the property as it not only detracts from the aesthetics of the street it now potentially opens the door for more unsightly non residentially oriented signage. I am prepared to take

whatever actions are necessary to in the strongest way possible encourage the City Boards and Commissions to reject this proposal. Sincerely, MaryLee Brown Lesko Owner 246 West Main Street Newark, DE”

Mr. Bergstrom stated if there were no further comments, public comment would be closed, and the Board would go into deliberations.

Mr. Morehead stated the fact that the church is an allowable use in a residential neighborhood is just a basic tenet of our laws. When you look through the zoning laws, the church is allowed to be there and has a right to identify who they are with a sign. According to City Code, the sign is allowed to be lit internally, be 4 square feet, 6 feet high and it must be 5 feet from the lot line. A bulletin board is allowed for institutions only, according to Code, and is allowed to be larger.

He continued, it is not clear whether the church is an institution, but would interpret it to be . A bulletin board sign is allowed to be 10 feet high and 10 square feet, but still 5 feet from the lot line. He stated he sees nothing in the summary of the code that talks about moving or scrolling signs.

He stated the flip side of this is that of the residents who live there. One person stated the house had been in the family for more than 100 years. The other folks that have spoken have lived in the house for quite a long time and don't want this sign across the street. He's torn because he believes the church has a lot to offer the community and has successfully gotten their message out in past.

He concluded stated the church's representative has expressed a willingness to limit the use of this sign and he believes, legalese notwithstanding, that everyone should be able to find a happy medium. However, he didn't think they would be able to do so in one sitting. He thought arrangements for members of the church and members of the public to discuss and negotiate needed to be made and didn't think that it could happen during this meeting. As such, he was inclined to side with the residents given that your home is typically your single largest investment and that swayed him.

Mr. Bergstrom asked if he would prefer to table the request rather than vote it down

Mr. Morehead stated he didn't know that tabling was an option. The representative from the church has expressed a willingness to negotiate, but he didn't know if negotiation would even work. Therefore, he wasn't sure if that path would be successful. He concluded that, if a decision had to be made that night, he was not in support of the sign as proposed, but that he would like to see the church put together a group and hammer things out with the neighbors to see if there is another alternative the residents would approve of.

Mr. Cloonan offered that this is clearly a residential area, the character immediately opposing on the property is residential with businesses on either side. One being a nursing home, one being the country club, both of which have modest signage. If the restriction was waived, as indicated by the residents that commented, it could have significant impact on the nature of their satisfaction with the environment in which they live.

He continued, moving the sign to a new location greatly increases visibility. He recognized the sign is a little more hidden by the trees, but relocation of the sign creates a different dynamic. The church has been successful for a long time, and there are numerous ways, as noted, for advertising. There are more and more of these methods used daily with Facebook, in addition to local newspapers. He did not feel denying the variance would present an exceptional practical difficulty to the church in its current function. He concluded stating he was leaning toward not voting in favor of this variance.

Mr. Bergstrom asked Mr. Bilodeau if tabling is ever appropriate.

Mr. Bilodeau stated it has been done before, but usually before deliberations begin. He added the board was short 2 members, so 2 members would need to vote in favor of the application for it to pass.

Mr. Bergstrom commented the church has a large sign now and his read on the applicant's presentation is that there is room for negotiation. If they mocked it up, and talked about light levels, perhaps the neighbors could take a look at what was proposed and might not be upset. He expressed that he too, was not inclined to vote for anything that's glaring.

He stated the board was able to limit the sign at Newark High School from what they initially wanted to what they have there now. Therefore, he felt the board has the authority to limit the scrolling and the intensity of the light across the street from a residential neighborhood. In addition, he is interested to learn more about the first appeal for the sign.

He thought if the board agreed, he would like to consider having the church come back with a modified presentation, to convince the neighbors and the board the sign wouldn't be as intrusive as it is currently proposed to be.

Mr. Bilodeau asked if the board would be okay with tabling.

Mr. Bergstrom stated he would be okay but it's going to be a vote of all 3 members of the board in attendance.

Mr. Bilodeau asked Mr. Fortner if the board voted against the variance tonight, whether there was a waiting period that would prevent them from coming back the following month with the same variance request.

Mr. Fortner stated if the board denied this variance request, nothing would stop the church from being able to create a sign that is different and talking with the neighbors to have a better case for it.

Mr. Bilodeau concurred that it might not be a bad idea to table this.

Mr. Bergstrom stated if it was in his power and the members agree, he would like to let the church come back with another presentation for a slightly different sign. He would like to offer the church every effort to find something that can be approved.

Mr. Bilodeau stated when a matter is tabled, it should be indicated when the matter will be discussed again.

Mr. Morehead proposed a date in September or October. Since, during the summertime, folks are away, and it is hard to get full attendance of the board

MOTION BY MR. MOREHEAD, SECONDED BY MR. CLOONAN: TO TABLE THE VARIANCE UNTIL THE OCTOBER 17, 2024, MEETING.

MOTION PASSED. VOTE: 3 to 0.

Aye: Bergstrom, Cloonan, Morehead.

Nay: 0.
Absent: Hudson, Rogers