

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

MARCH 21, 2013

**13-BA-4
47 Church Street
Kevin Mayhew**

***13-BA-6
107-131 New London Road
Kevin Mayhew**

**13-BA-5
141 King William Street
Jennifer Taylor**

**13-BA-7
1100 Elkton Road
Tupp Signs/Sentinel
Self Storage**

Those present at 7:00 p.m.:

Presiding: Clay Foster

Members Present: Jeff Bergstrom
David Levandoski

Absent: Paul Faust
Kevin Hudson

Staff Members: Bruce C. Herron, City Solicitor
Michael Fortner, Planning & Development Department

1. APPROVAL OF MINUTES FROM MEETINGS HELD JANUARY 17, 2013

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

*Chairman Foster, stated Item #4 (Kevin Mayhew, 107-131 New London Road had had been removed from the agenda)

2. THE APPEAL OF KEVIN MAYHEW, 47 CHURCH STREET, FOR THE FOLLOWING VARIANCE:

A) CH. 32 SEC. 10 (c)(7) – MINIMUM SIDE YARD WIDTH IS 8 FEET WITH A MINIMUM AGGREGATE WIDTH OF 20 FEET. PLAN SHOWS BOTH SIDE YARDS AT 2.7 FEET IN WIDTH WITH AN AGGREGATE OF 5.4 FEET.

Ms. Schiano read the above appeal and stated it was advertised in the Newark Post and direct notices were mailed. No letters in opposition or in favor of were received.

Mr. Matt Longo, Esq., Longo & Associates, 1521 Concord Pike, Suite 102, Wilmington, DE, was present to speak on behalf of his client, Kevin Mayhew.

Mr. Longo stated (with the use of a Power Point presentation) the existing site currently contained a single family detached home in poor/fair condition. The property was past the point of rehabilitation and most likely the owner would be unable to rent or sell. Per the existing conditions plan that Mr. Longo had, the existing structure was currently in violation of 3 sections of the Ordinance. 1. The side yard setback, an 8 foot minimum requirement and had a 3.1 foot side yard. 2. The front yard requirement was 15 feet front yard requirement. The current structure has a 7.3 foot front yard setback. 3. A Code violation on available parking. The 2 off street parking spaces would be required and currently there was one parallel parking space.

Mr. Longo stated it was Mr. Mayhew's intention to construct a new home or move an existing home from another lot in Newark. That home would be a two story home with a brick façade with normal dimension (24 feet wide x 32 feet deep). Mr. Mayhew's proposal would remove two of the non-conformities. The parking would meet Code as would the front yard setback. Currently with the violation in the front yard setback, the sidewalk is impassable. The proposed parking would be two off street spaces, with a third compact car parking space. The existing house has a side yard setback of 3.1 on one side and 6 foot on the other side yard. The proposed structure had a 2.7 side yard on both sides.

Mr. Longo contended the shape of the lot (pie shaped) presented the exceptional practical difficulty of the *Kwik Check* factors. Due to the lot shape, it made it very difficult for Mr. Mayhew to comply with the area requirements to make any improvements to the parcel. To remain Code compliant, the proposed home would have to be 8 feet wide, which would be unrealistic.

A proposed side yard setback of 2.7 feet is required from an existing 3.1 side yard setback. Mr. Longo stated even though the proposal appeared to be taking away from the existing setback, it wasn't actually the case. The proposal was bringing the structure a foot further away. The 2.7 foot setback was needed because the proposed structure was longer and the further the structure goes back, the closer the side yard becomes.

Mr. Longo addressed the *Kwik Check* factors.

- The nature of the zone where the property was located was zoned residential (RD) and would not change.
- The character and use of the immediate vicinity was currently a permitted student rental and Church Street was one of the 33 City streets that were exempt from the student maximum rule. The proposed use would not change that. The area was a mix of owner occupied and student rentals.

- The effect on neighboring properties would not be negative and it was his belief the project would only have a positive effect with such improvements as additional parking, more accessible sidewalk in the front and a compliant front yard setback. Additionally, an older outdated building will be replaced with a newer safer structure for tenants. (HVAC, electrical, plumbing, sprinkler system).
- If not removed the restriction would create unnecessary hardship or exceptional practical difficulty to the owner in relation to efforts to make normal improvements due to unusual shape of the parcel. The burden to the owner if the proposal was not approved leaves Mr. Mayhew with 3 bedroom home with 1 parking space.

Mr. Foster wanted clarification on the number of parking spaces. Mr. Longo confirmed there would be two with a third (compact spot) and the number of bedrooms; currently 3 and would remain 3 bedrooms.

The chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table.

Mr. Bergstrom addressed the Kwik Check factors.

- The nature of the zone where the property was located was zoned residential (RD) and would remain so.
- The character and use of the immediate vicinity of the subject property and uses are two story single family detached dwellings and the proposed structure was the same.
- If the restriction were not removed would the removal seriously affect neighboring property and uses. It was Mr. Bergstrom's opinion it would not negatively affect the neighboring properties.
- If not removed the restriction would create unnecessary hardship or exceptional practical difficulty to the owner in relation to efforts to make normal improvements due to unusual shape of the parcel. It was Mr. Bergstrom's opinion it would make it nearly impossible to build a reasonably sized or shaped home on the property.

With the factors in mind, Mr. Bergstrom stated he would approve the variance.

Messrs. Foster and Levandoski concurred with Mr. Bergstrom and his analysis of the Kwik Check factors and would vote in favor of the variance.

MOTION BY MR. FOSTER, SECONDED BY MR. BERGSTROM: THAT THE VARIANCE BE APPROVED AS REQUESTED WITH CONSTRUCTION TO COMMENCE WITHIN ONE YEAR FROM MARCH 21, 2013.

**MOTION PASSED: VOTE: 3 to 0.
Aye: Bergstrom, Foster, Levandoski**

3. THE APPEAL OF JENNIFER TAYLOR, 141 KING WILLIAM STREET, FOR THE FOLLOWING VARIANCE:

A) SEC. 32-47(j) – REQUIRES TWO OFF-STREET PARKING SPACES TO OBTAIN A RENTAL PERMIT. APPLICANT HAS ONE PARKING SPACE.

Mr. Jason Bedford, 141 King William Street, Newark, DE was sworn in. Mr. Bedford stated he and his girlfriend live at 141 King William Street. Their family currently consists of three, with another addition expected in two months. The residence has two bedrooms. Mr. Bedford stated they will need a third bedroom for their expanding family. They have one off-street parking space. To obtain a rental permit two off-street parking spaces were required.

Mr. Bedford stated they wanted to obtain a rental permit because they are unable to sell the house, due to the unfavorable housing market and they wish to rent the house until the housing market changes.

Chairman Foster asked the Board if they had any questions. Mr. Levandoski asked how Mr. Bedford how obtained the valuation of his house. Mr. Bedford stated his real estate agent (present) had provided such. Mr. Bedford there were several homes for sale in the neighborhood with selling prices varying from \$75,000-\$100,000.

Mr. Levandoski asked how many of the homes had one off-street parking space. Mr. Bedford stated all homes had one off-street parking spot.

Mr. Bergstrom inquired if they were condominium ownership. Mr. Bedford replied yes. Mr. Bergstrom asked for clarification of condominium ownership. Mr. Bergstrom replied the homeowners do not own the land, they own inside the paint.

Chairman Foster asked if the spare parking spaces were shared among the neighborhood. Mr. Bedford stated they were shared. Mr. Bedford stated the home next door was vacant and Mr. Bedford currently uses the parking spot. He further stated there were 8 parking spaces located nearby and an additional row of 8-10 visitor parking spots located nearby as well which rarely are occupied.

Chairman Foster opened the floor to the public.

Mr. Victor Hudson, President of the Williamsburg Village Civic Association was present to speak. Mr. Hudson stated the City of Newark passed the requirement requiring rental properties in Williamsburg Village to have two off-street parking spaces. Mr. Hudson stated there were 141 units in Williamsburg Village and there were not 282

parking spaces. It was his opinion it would be unfair to give someone two parking spaces without giving everyone two parking spaces. The open spaces that exist are for guests and overflow. It was his opinion to give a rental permit without the two required off-street parking spaces would open the door for others to request rental permits without that additional space. Mr. Hudson further stated his daughter owned a two bedroom condominium in Williamsburg Village and had not been successful in selling and they had to sell for less than the value.

Mr. Hudson also stated the Newark Board of Adjustment made a decision on the same property back in 1992 to not allow a rental permit without the required two off-street parking spaces. Mr. Hudson requested Mr. Bedford not be granted a variance.

Mr. John Ford, a resident of Maryland; Mr. Bedford's real estate agent was sworn in. Mr. Ford wished to clarify there were several properties for sale in Williamsburg Village. One was listed for \$73,000 and several up to the \$100,000-\$110,000 range. Mr. Ford stated Ms. Taylor purchased her property at the peak of the market in 2007 for \$134,900 and financed the majority. He confirmed she did in fact owe approximately \$30,000 more than the current value. Mr. Ford stated a short-sale would bring down the value of other properties in the neighborhood and would prohibit Ms. Taylor and Mr. Bedford from obtaining another mortgage.

Mr. Mike Fortner, Planner, Planning & Development Department confirmed that Mr. Bedford/Ms. Taylor did require two parking spaces to obtain a rental permit and the change in the Code (law) occurred in 1990. The same property (previous applicant) was denied in 1992.

Mr. Bruce Herron, City Solicitor stated it was an unusual application before the Board because the applicant was not requesting an area variance, so the Kwik Check factors would not apply. He further stated in order to grant the variance, the applicant had to show the following items **and all three had to be satisfied** in order for the variance to be granted.

- The property cannot yield a reasonable return if used for a permitted purpose
- The applicants' need for the variance is due to unique circumstances and not general conditions in the neighborhood which reflect unreasonableness of the Zoning Ordinance itself; meaning the variance cannot be granted simply because the Board believes the Zoning Ordinance itself is unreasonable
- The use sought will not alter the essential character of the locality

It was determined that all three of the above factors had **not** been satisfied.

MOTION BY MR. FOSTER, SECONDED BY MR. BERGSTROM: THAT THE VARIANCE BE DENIED.

MOTION DENIED: VOTE: 3 to 0.

Nay: Bergstrom, Foster, Levandoski

4. THE APPEAL OF TUPP SIGNS, INC. ON BEHALF OF SENTINEL SELF STORAGE, 1100 ELKTON ROAD, FOR THE FOLLOWING VARIANCE:

A) SEC. 32-60(a)(3) – MAXIMUM NUMBER OF ROOF SIGNS PERMITTED IS ONE PER BUILDING WITH THE MAXIMUM HEIGHT OF 10 FEET. PLAN SHOWS A REQUEST FOR A 3' X 30' ROOF SIGN.

Douglas Goldberg, Tupp Signs was present to speak on behalf of Sentinel Self Storage, 1100 Elkton Road, Newark, DE. Mr. Goldberg stated Sentinel Self Storage was in a unique situation due to its proximity to Elkton Road. They are located at end of a narrow driveway between two properties (daycare center and a credit union). Customers are encountering difficulties locating the business. The shared sign that was perpendicular to Elkton Road was adequate to customers traveling up and down Elkton Road but not sufficient for the customers approaching from Otts Chapel Road.

There have been several issues where customers have driven into the gate during the nighttime hours. The proposed sign will be mounted parallel to Elkton Road and will be primarily intended for the people coming down Otts Chapel Road. The smallest possible sign that can be adequately viewed legibly from the Otts Chapel Road approach was the proposed sign which was at 3' x 30' roof sign.

Amelia Wyatt, 1001 Barley Mill Road, Wilmington DE property owner was present to speak. It was her opinion that proposed sign would aid in the prevention of future accidents and for visibility.

Mr. Bergstrom confirmed the conformity issue was not with the height of the sign but rather the area of the sign. Mr. Fortner stated that was the case.

Mr. Bergstrom addressed the Kwik Check factors.

- The nature of the zone where the property was located was business and a commercial property and would remain so.
- The character and use of the immediate vicinity of the subject property and uses are commercial and the subject area was consistent.
- If the restriction were not removed would the removal seriously affect neighboring property and uses. It was Mr. Bergstrom's opinion it would not negatively affect

the immediate neighboring properties.

- If not removed the restriction would create unnecessary hardship or exceptional practical difficulty to the owner in relation to efforts to make normal improvements in the permitted use of the property. It was Mr. Bergstrom's opinion that a sign that was on 25 square feet would not be adequate.

Mr. Bergstrom stated he generally was not inclined to allow larger signs but believed the applicant made a strong case. He would vote in favor to grant the variance.

Mr. Foster concurred with Mr. Bergstrom but stated he traditionally did not vote in favor of signs.

MOTION BY MR. FOSTER, SECONDED BY MR. LEVANDOSKI: THAT THE VARIANCE BE APPROVED AS REQUESTED

MOTION PASSED: VOTE: 3 to 0.

Aye: Bergstrom, Foster, Levandoski

5. The meeting was adjourned at 8:20 p.m.

Tara A. Schiano
Secretary

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