

A New Castle City Board of Adjustment Hearing took place on April 9, 2009 at 7 p.m. in the City of New Castle's Town Hall.

Present: Mayor John F. Klingmeyer
Roger A. Akin, City Solicitor
David Athey, City Engineer

Mayor Klingmeyer called the meeting to order at 7:15 p.m. He introduced City Solicitor Roger Akin and City Engineer David Athey.

The Mayor read the Notice of Public Hearing that states, "An application has been filed by Paul J. and Deborah L. Freebery, 213 Baldt Avenue, New Castle, Delaware 19720, requesting a variance to permit the construction of a deck with a 0 foot front yard setback along 13th Street and to permit a shed to be located with a 0 foot sideyard setback along the property line between 213 and 211 Baldt Avenue on their property at 213 Baldt Avenue, New Castle, Delaware, known as tax parcel number 210-07-00-179.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Thursday, April 9, 2009, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Street, New Castle, Delaware.+

An affidavit of publication in the News Journal was published 3/25/09 and the New Castle Weekly on 3/26/09. The completed application has also been submitted.

(Mr. Paul Freebery and Mrs. Deborah Freebery were sworn in by the Mayor.)

Mr. Jeff Bergstrom confirmed that the property was posted in accordance with the law and provided a brief background of the applicants variance (front and side yard setbacks) requests. The property is zoned R1 so it does not comply with several parts of that zoning. The lot is difficult to build on if you require 30 foot front and side yard setbacks and the configuration of the lot existed before the zoning.

Mr. Freebery informed the Board that he and his wife own and have resided at the current residence for 19 years. The request is for a non-conforming property (Chapter 230, General Zoning Code). The front yard setback request (on the 13th Street side) goes from 5 feet to 0 feet for the purpose of erecting a new deck and incorporating a kitchen or landing and stairs into the deck construction. The finished dimension of the deck will reside on the property line just as the existing fence does currently. *(He attached four (4) pictures showing the current landing, current fence, property line and ground markings of the deck layout.)* The deck will be 16 foot X 41 foot, 6 inches and go across the back of the house ending at the property line. It will be built of treated lumber and be no higher than 40 inches from the ground and will not interfere with any roads, site lines or intersections (Section 239-29, General Zoning Code).

The side yard setback variance requests the elimination of the distance from the current property line bordering between 211 and 213 Baldt Avenue, New Castle,

Delaware from the required 5 feet to 0 feet (Section 230-33, General Zoning Code) and leave in place a shed (16 feet X 20 feet). A letter of non-objection signed by the residents of 211 Baldt Avenue, New Castle, Delaware is provided as evidence of approval and is part of the application. The majority of homes in this subdivision were built prior to the present zoning laws for this district. Photos 5 and 6 show the current position of the shed on the property line. It is not a garage; rather, it is an Amish-built shed that has been painted to match the house. It has been in this location approximately 6-7 years. *(Lengthy discussion about various shed locations on the property followed.)* Under the zoning code it was determined that the shed is located in an unlawful position since the applicant did not previously request a variance for the shed. Mr. Freebery explained that he had an agreement with his neighbor (a relative) that he would be permitted to put in a shed because he also put in a driveway for the relative. Mr. Akin asked Mr. Freebery to describe what is on the 13th Street side where he is proposing a 0 foot setback for the edge of the deck. Mr. Freebery informed it is a city utility right-of-way that he has maintained since living at this location. *(Discussion followed about the current fence and deck.)*

The Board decided to separate the requests.

Mr. Athey made a motion to approve the side yard setback for the 13th Street property line from 5 foot to 0 feet, 6 inches as a precaution to allow the construction of the deck as shown on the exhibit.

Mr. Akin prefers that some space between the edge of the deck at the northwest end and what is believed to be the current surveyed lot line along 13th Street taking account the possibility the surveyed line might be in an incorrect place. He added he is cautious about 0 foot setback structures and prefers at least 6 inches from the 13th Street lot line.

Mr. Akin seconded the motion.

Mr. Freebery said as part of the permit process all plans were submitted to Mr. Bergstrom for review. One of the other items involves installing a privacy fence and taking down the existing fence. Since the deck is going to be 6 inches from the line the fence would be 6 inches from the line. He asked for clarification. Mr. Bergstrom said that the 6 foot privacy fence is an addition to the variance requested. *(Discussion followed.)* The removal of the existing fence and installation of a privacy fence is included in the applicants requests. Mr. Athey noted that the notice does not mention the fence, which is not the applicants fault. Mr. Freebery confirmed that he has spoken to the neighbors about the fence and there are no objections. There are similar solid fences in the neighborhood.

Concern was expressed that the public was not informed of the proposed privacy fence installation. *(Brief discussion.)* Mr. Freebery went to the Tree Commission

and requested that trees be planted in the right-of-way because of issues with theft of items in his backyard and the backyards of his neighbors.

Mr. Bergstrom suggested continuing this matter until 5/7/09 and repost the notice. Mr. Akin concurs.

Roll call vote was taken.

Mr. Akin – voted in favor of a 6-inch setback on the 13th Street side where the proposed exterior deck the applicants are requesting a variance for referring to provisions in 230-57(C)(1). He believes the applicants have demonstrated that special conditions exist because of the location of the house on the lot and the constraints that are placed on them by this location, it is unique. Literal application of provisions of the zoning code would preclude the exterior decks that others find attractive and he believes that special conditions posed by the home's location on the lot was not of the applicants doing and lastly, granting the deck variance being requested with a 6-inch setback would not convey on the applicants any special privilege that is denied to others wishing to make a similar improvement.

Mr. Athey – voted in favor of the motion citing the same reasons as Mr. Akin.

Mayor Klingmeyer – voted in favor of the motion citing Mr. Akin's rationale.

The motion carried by unanimous vote.

Mr. Freebery has admitted in good faith that he should have come before this Board when the shed was first installed 6-7 years ago. Mr. Akin does not feel that this Board should take any action on the current location of the shed since there are other places it could be moved to. In its current location it is in an unlawful location. *(Lengthy discussion about options for the applicants, off-street parking and the driveway followed.)* Mr. Akin reminded the applicants that the special conditions of putting the shed in its current location were caused by actions taken by the applicants. This Board typically does not act favorably on a variance request when special conditions have been caused the actions of the applicant as opposed to some other circumstance beyond the control of the homeowner. *(Additional discussion between the Board and applicants took place.)*

Mr. Freebery respectfully withdrew the second variance request.

Mr. Athey made a motion to table the fence issue because that portion of the applicants' application did not appear in the notice of public hearing until the 5/7/09 Board of Adjustment hearing. Mr. Akin seconded the motion.

Photos 1 through 4 will be identified as Applicant Exhibits 1-4.

A roll call vote was taken.

Mr. Akin . voted in favor of tabling the fence issue until the 5/7/09 Board of Adjustment hearing.

Mr. Athey . voted in favor

Mayor Klingmeyer . voted in favor

The motion carried by unanimous vote.

The hearing was adjourned at 8:20 p.m.

Respectfully submitted,

Debbie Turner
Stenographer

Applicant Exhibits 1-4 . Photos showing current landing, current fence, property line and ground markings of the deck layout