

***A New Castle City Board of Adjustment Hearing (Continued) took place on March 3, 2011 at 7 p.m. in the City of New Castle's Town Hall.***

Present:                    John F. Klingmeyer, Mayor  
                                 Daniel Losco, City Solicitor  
                                 David Athey, City Engineer

City Personnel:        Jeff Bergstrom, City Code Official

Mayor Klingmeyer called the meeting to order at 7 p.m.

The Mayor read the Notice of Public Hearing that states, "An application has been filed by Carol T. Gardner, 19 Karlstad Road, New Castle, Delaware 19720, for a variance from certain provisions in the New Castle Zoning Code to permit reduction of the required rear yard setback from 20 feet to 6.3 feet, in order to permit a deck to be maintained at the rear of the existing home located at 19 Karlstad Road, New Castle, Delaware, parcel number 21-001.00-201.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Thursday, March 3, 2011, at 7 p.m. in Old Town Hall, 2<sup>nd</sup> Floor, located at 2<sup>nd</sup> and Delaware Streets, New Castle, Delaware.+

An affidavit of publication was published in the News Journal and the New Castle Weekly on 2/16/11. Mr. Bergstrom testified the property has been properly posted.

Mr. Brian Murray, attorney for the applicant, presented to the Board. At the October 2010 hearing he was requested to review and further address Section 230-57C(1)(a) (1-4).

The lot in question is one of the smaller lots in the development and has a severe slope in the back of the property to the rear property line, about 4-4 1/2 feet. Other lots in the area are flat while others have a slope similar to this property but have larger lots of about 150 feet depth. The small size of the lot and slope of the lot creates special conditions and circumstances.

A patio is not possible because of excavation work needed to make a flat surface and the lot is sloped to allow water to drain away from the home. Other homes in the area (Katrin Circle North and Katrin Circle South) with sloped properties have decks rather than patios. Keeping the deck on this property would be in character with other properties in the neighborhood.

The applicant did not create the special circumstances of lot size and sloping or the deck. The house was purchased by the applicant in 2000 with the deck in place. The applicant was made aware of the code violation upon a survey of the property prior to purchase.

Granting this variance would not convey any special privilege that is denied to other structures in the neighborhood. The existence of many other decks, porches and patios in the area supports their belief.

Based upon the rationale provided by Mr. Murray the Board was asked to grant the variance to leave the deck in its current position.

This particular lot is 100 foot deep by 52 feet wide. Some other houses along South Katrin Drive that have steep sloped lots are 150 feet deep. Mr. Murray testified there are about 10-12 houses fitting this description along South Katrin Drive. The applicant's home was built in 1998/1999 and it is believed the first homeowners built the deck.

Mr. Athey noted that discussion in the October 2010 hearing indicates it is likely that several decks in this area are illegal because they were built prior to zoning code regulations. In that hearing it was suggested the Boothhurst homeowners' association approach City Council and request relief from setback requirements due to the size of lots there.

Mr. Murray said his client did not discuss with the homeowners' association; she did speak to some neighbors. He is unsure why she did not approach the homeowners' association.

Mr. Losco asked Mr. Bergstrom if the homeowners' association or neighbors received a copy of the Notice of Public Hearing. Mr. Bergstrom informed that notices are published in local newspapers and the property is posted but notices are not handed out or mailed.

The property has a small fence on the back end of the property but not fully enclosed and the deck is visible to the neighbors. The neighbor on the right side (looking at the house) has a deck but the neighbor on the left side does not. Neighbors nearby have sunrooms, decks or patios.

Mr. Murray testified the size of the deck is 16 feet deep by about 20 feet wide. The deck is estimated to have been present for at least 10 years. Mr. Bergstrom noted if the variance is granted the deck (over 2 feet tall) would be subject to inspection. If the variance is denied then enforcement action by building officials would require the deck be removed and the homeowner bear the consequences.

It is noted for the record that there are no members of the public are present opposing or supporting this application.

Mr. Losco stated the unusual size and characteristics of this lot exhibit special circumstances. He cited the sloping of the lot and added that lots of larger size in the area as rationale. It is a common improvement for people to build decks and patios on their properties and if this homeowner is not permitted to maintain a deck it would deprive her of rights enjoyed by other homeowners. Lastly, he does not believe any special privilege is being conveyed to this applicant.

He is troubled by the fact the applicant knew she was purchasing a property with a code violation issue. He believes denying the variance would impose an unfair hardship on

the applicant. There are no prior complaints from the public in writing or verbal and none presented this evening. He will vote in favor of granting the variance.

Mr. Athey concurs with Mr. Losco's rationale excepting the applicant did the right thing by approaching this Board to request a variance. He is concerned that there is the likelihood of multiple properties in this neighborhood that are non-conforming and granting this variance knowing others still exist is awkward. He maintains that involving the homeowners' association to approach City Council would have been the cleanest way to deal with this matter. He recommended conditioning approval of this variance on the deck never having any walls or roof and that it remain flat. Mr. Murray has no issues with these conditions. Mr. Losco added the condition that a building permit be issued and it be properly inspected. Mr. Murray agreed. Mr. Athey will vote in favor of the variance request.

Mayor Klingmeyer agreed with all of the rationale presented as well as the conditions applied. The Mayor will vote in favor of the variance request.

***A motion was made by Mr. Losco to approve the dimensional variance presented subject to the conditions that the deck not be enclosed or roofed and that the applicant seek a building permit within 30 days to allow the building inspector to do a proper inspection. Mr. Athey seconded the motion. The motion was unanimously approved.***

The hearing was adjourned at 7:25 p.m.

Respectfully submitted,

*Debbie Turner*

Debbie Turner  
Stenographer