

New Castle City Board of Adjustment Hearing
November 7, 2013 – 7 p.m.
City of New Castle's Town Hall
2nd and Delaware Streets

Present: Donald A. Reese, Mayor
Daniel R. Losco, City Solicitor
David J. Athey, City Engineer

City Personnel: Jeff Bergstrom, City Code Official

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

Mr. Losco read the Notice of Public Hearing that states, "An application has been filed by Paula Richmond, 907 Queens Court, New Castle, Delaware 19720 for a property located at 907 queens Court, New Castle, Delaware, parcel number 21-014.00-506, seeking variance from Code requirements relating to front set back.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Thursday, November 7, 2013, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware."

An affidavit of publication was published in the *News Journal* and the *New Castle Weekly*. Mr. Bergstrom testified the property has been properly posted.

(Paula Richmond and Patrick McClafferty were sworn in.)

The applicants seek to replace their current post and rail fence with a solid white 6 foot high plastic vinyl privacy fence. Using a drawing they showed the Board where the 6 foot high fence would be installed. A question was raised about the location of the property line and where the City's right of way is located, and where the fence will be installed. When they first purchased their property a survey was done and the property staked. The applicants do not know exactly where the property line is located. A portion of the fence will be 4 foot high, which is acceptable for the above-ground pool with a child-proof lock, and will be to the rear and side of the property. The 6 foot sections will be along Kings Way. A photo of a neighbor's fence showing the same style they are proposing was shown to the Board.

According to Mr. Bergstrom there are two issues to be addressed. The pool is not permitted in the front yard along Kings Way. It is considered a corner lot because of the configuration of the lot, and along the front yard there is a 5 foot water line easement. If a fence is installed on top of the water line and the fence needs to be moved at some point, the applicants would bear the expense. Fences have to be within the Code-required setback. Any fence more than 25% solid and over 4 feet must be within front yard setback limits. The fencing along Kings Way is problematic.

Ms. Richmond has approached several neighbors about the proposed fence. A petition was signed by homeowners at 207 Kings Way, 219 Kings Way, 18 Juniper Court, 12 Juniper Court, 902 Queens Court, 900 queens Court, 905 Queens Court, 205 Kings Way and read into the record. Mr. Bergstrom confirmed that the immediate neighbors were unavailable tonight but is supportive of the new fence.

The fence will not create any visibility issues for vehicular traffic. The applicants were advised to have a surveyor stake the property and to install the new fence 5-6 feet away from the property line to avoid having to remove and replace the fence at their expense.

The variance issue in the application is related to the fence and not the pool. The pool is moveable and may not violate the setback. The issue may be raised if they sell the property or if someone reports it as a violation of the City Code.

The applicants testified that MISS Utility has marked their property and the proposed fence will be inside the markings towards the house.

Mr. Athey suggested contacting the Municipal Services Commission and request that the easement be rescinded. It is possible that no water main was installed. He conceded that since MISS Utility has marked the property, this possibility may be moot.

No one was present to speak for or against the application.

The Board entered into deliberations.

Mr. Losco summarized saying that the applicants have neighborhood support, the fence will be an aesthetic improvement and will not impair visibility at the corner, and the lot is of an irregular shape creating an exceptional, practical difficulty. He is concerned with the fence being on the property line and not in the City right of way and that the applicants stay within the 5 foot wide utility easement.

Mr. Athey agrees the fence needs to be within the property lines but thinks the decision to install the fence inside the easement should be made by the applicants. They understand that if work on the water main is needed they would be responsible for removal and replacement of the fence.

Mayor Reese prefers the applicants not put the fence on the water line. Mr. Losco added that the fence could be in place for a long time and he supports attaching a condition to the motion to keep the fence inside the property line. A seller should disclose issues that might impact the buyer's decision and assigning a condition to the motion would be wise.

The applicants understand that if they choose to install the fence without a staked-out property line and put the fence on the City's right of way, they bear the burden of moving it should the City need access to the water line.

Mr. Athey made a motion to approve the variance for the fence as described by the applicants within the setback line conditioned upon the assurance that the fence is constructed outside the City's right of way and the Board heavily recommends the fence be kept out of the water line easement to the extent practical. Mr. Losco seconded. Motion approved by unanimous vote.

Mr. Losco suggested that the written variance decision be stored with the deed so if the applicants sell the property the new owner could enjoy the same rights and serves as a reminder to disclose same to a potential buyer.

Board of Adjustment Hearing -- Richmond

November 7, 2013

Page 3

The hearing was adjourned at 7:40 p.m.

Respectfully submitted,

Debbie Turner
Stenographer