

**THE CITY OF NEW CASTLE  
BOARD OF ADJUSTMENT**

**NOTICE OF DECISION**

APPLICANT: Krienen-Griffith, Inc./New Castle Dream Real Estate Holdings, LLC  
101 W. 6<sup>th</sup> Street  
New Castle, DE 19720

OWNER: New Castle Dream Real Estate Holdings, LLC  
101 W. 6<sup>th</sup> Street  
New Castle, DE 19720

NCC TAX PARCEL NO. 21-015.00-041  
PUBLIC HEARING DATE: February 12, 2018  
DATE OF DECISION: February 20, 2018

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2018 FEB 20 AM 11:36  
CITY OF NEW CASTLE

REQUESTED: Applicant requested variances from City Code Chapter 230 and Zoning Code Chapter 230 Attachment 1 so as to: (1) permit maintenance of a handicapped accessible ramp and base along the Tremont Street side of the existing structure up to 7 feet over the 20 foot set back line facing Tremont Street; and (2) permit maintenance of a covered porch attached to the handicapped ramp along the front of the existing structure up to 7 feet 4 inches plus an additional 4 feet for front steps to access the porch over the 20 foot set back line facing Sixth Street, on property located at **101 W. Sixth Street, Tax Parcel 21-015.00-041**, (the "Property"). The Property is in the R-2 zoning district.

The Board of Adjustment may grant a variance from the requirements of Chapter 230 of the City of New Castle Code, (the "Zoning Code"), as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Code would result in exceptional practical difficulty or unnecessary hardship, and where the applicant has demonstrated: (a) that special conditions and circumstances exist which are peculiar to the land, structure or buildings involved and which are not applicable to other lands, structures or buildings in the same district; (b) that literal interpretation of the provisions of the Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Zoning Code; (c) that special conditions and circumstances do not result from the actions of the applicant; and (d) that granting the variance requested will not convey on the applicant any special privilege that is denied by the Zoning Code to other lands, structures or buildings in the same district.

Mayor Jimmy Gambacorta chaired the meeting. Also present at Board members were City Engineer David Athey and City Solicitor Daniel R. Losco. Mayor Gambacorta read into the record the official notice of the hearing. That notice was timely published in accordance with the law and a copy of the notice was admitted into the record.

Brian J. McLaughlin, Esq., represented the applicant, New Castle Dream Real Estate Holdings, LLC, at the hearing. William Krienen was sworn in by Mr. Losco as a witness for the Applicant. The Applicant introduced a series of photo exhibits labeled Exhibits A through G illustrating the Property and surrounding properties. Mr. McLaughlin stated that the Board of Adjustment previously granted a special exception to the Applicant permitting use of the Property as a funeral home with casket sales (*See*, BOA application 2017-03 granted 5/17/17). He pointed out that since the Property is a corner lot, both the Tremont Street side of the Property and the Sixth Street side are considered “front” yards subject to the 20 foot setback requirement as set forth in Chapter 230, Attachment 1. Normally, a 10 foot side set back would apply to a property in the R-2 zone. Mr. McLaughlin emphasized that the Applicant seeks a variance not only under Chapter 230 of the Code but also a modification of the City’s Zoning Ordinance under the Americans With Disabilities Act (the “ADA”) to allow ramp and porch encroachments on the 20 foot front and side setbacks.

The testimony revealed that the existing structure was constructed in 1969 and sits 23 feet from the Sixth Street property line and 20 feet, 8 inches from the Tremont Street property line. Mr. McLaughlin argued that the ramp and connected porch are necessary to remove an access barrier to personal with disabilities as required by the ADA. The proposed ramp would be 3 feet wide but due to the fact that an existing chimney extends out from the side of the building the ramp, as constructed, would extend as much as 7 feet into the 20 foot setback. The ramp itself would be constructed of concrete block but faced with brick to match the existing structure. The walkway on the ramp would also be brick. There would be an aluminum handrail on the ramp. The ramp would attach to a newly constructed front porch and lead to the front door of the building. Mr. McLaughlin stated that the porch itself would extend 7 feet 4 inches into the 20 foot setback but construction of the porch would require relocation of the existing steps to the front of the porch adding another 3 feet 6 inches of additional encroachment into the set back. The total encroachment over the Sixth St. setback would be no more than 11 feet. The porch would be of the same construction materials as the ramp and would have a canvas awning. No new signage is proposed. There would be exterior lighting on the porch under the awning only. Mr. Krienen confirmed the factual accuracy of Mr. McLaughlin’s statements.

Mr. McLaughlin referred to the photo exhibits to illustrate that many other properties on both Sixth Street and Tremont Street have improvements (porches and other structures) that encroach on the 20 foot setback. Many of these properties predate the Zoning Code but the proposed porch would not be any closer to the street than what is maintained on these neighboring properties. Moreover, he argued that a full 14 feet 4 inches of grass would exist from the outer edge of the porch to the existing sidewalk. The proposed ramp on the Tremont St. side of the building would similarly leave 13 feet of grass to the property line. With ample space

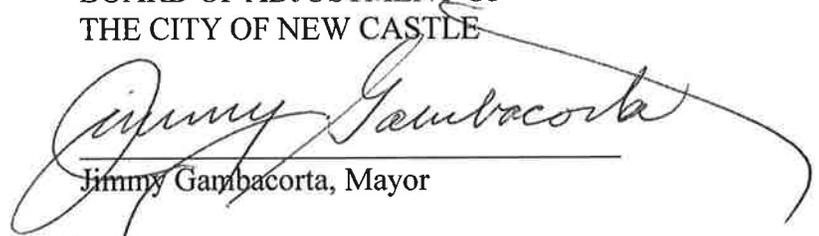
between both front property lines and many neighboring properties maintaining improvements well into the 20 foot setback, he argued that the proposed improvements caused no harm to surrounding properties and did not convey special privileges not enjoyed by other area property owners. He argued that the Applicant did not build the existing structure in a manner that would make construction of the proposed ramp and porch improper under the Zoning Code.

No members of the public were present either to support or oppose the application.

The Board votes to grant the variances requested subject to the following conditions: 1. That any new lighting be placed under the porch canopy; and 2. That no new signage be erected by the Applicant. The Board felt that had any reasonable variance request for a handicapped accessible ramp and entry porch been requested by a City resident, the Board would grant the relief necessary for that individual to access their home without special hardship. The fact that the Applicant operates a commercial business at the Property does not change the fact that disabled patrons of the business, many of whom will be City residents, should enjoy unobstructed access to the Property. The Property is located on a sizable lot and the building erected thereon is set back from both streets to a greater degree than many surrounding properties creating a unique situation not experienced by many other area properties. Ample room for the passage of air and light will remain between the ramp and porch and the sidewalks and street pavement. While the Applicant did purchase the property in its current condition with at least constructive notice of required setback regulations, it did not build the structure in a manner that created access obstacles for the disabled or left no room to erect handicapped access facilities.

**Vote: 3-0 (Grant: Gambacorta, Athey and Losco)**

BOARD OF ADJUSTMENT OF  
THE CITY OF NEW CASTLE



Jimmy Gambacorta, Mayor

NOTE: This decision is neither a building permit nor a Certificate of Occupancy. Appropriate permits must be obtained from the applicable governmental agencies prior to construction or establishment of any use on the property. This decision should be kept in a safe place with the property deed. This decision may be

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appealed to the Superior Court by any person aggrieved by it within 30 days of its filing in the Office of the Board of Adjustment.