

New Castle City Board of Adjustment Meeting Minutes
September 4, 2018 – 3:00 p.m.
City of New Castle Town Hall

Members Present: **Jimmy Gambacorta – Mayor**
 Daniel Losco, Esq., City Solicitor
 David J. Athey, City Engineer

Mayor Gambacorta opened the meeting of the City of New Castle Board of Adjustment public hearing at 3:00 pm.

Mayor Gambacorta stated that an Application was filed by Justin Day, Jessops' Tavern, 114 Delaware Street, New Castle, Delaware, and Richard Day, 8 The Strand, New Castle, Delaware, Owner, for property located at 116 Delaware Street, New Castle, Delaware, Tax parcel No. 21-015.30-173, seeking a variance from City code Chapter §230 requirements relating to the required rear yard setback of 20' in the Historic Commerce District. They are seeking a 17' encroachment into 20' rear yard setback for an addition to half the building, to three feet; and a 20' encroachment into 20' rear yard setback to zero feet for the installation of open steps, and approval of structural alterations resulting in an enlargement or extension of a non-conforming structure.

Mayor Gambacorta called the meeting to order. Mr. Losco asked that the Applicants come forward. Andrew Taylor, Esquire, Mr. Justin Day, Owner, and Mr. John Winkler, Architect, introduced themselves to the Board and were sworn in by Mr. Losco.

Mr. Taylor advised that Mr. Day would explain the need for the renovations, and noted that the Applicants have filed in two ways for the Board's consideration: Under §230-57C as a variance, or under §230-57D as a structural alteration resulting in an enlargement or extension of a non-conforming structure. He explained that the use is conforming as the restaurant and there is an existing structure that goes to 3' from the rear lot line and a walkway that goes right to the lot line. He noted that the Application is for an expansion of the non-conforming structure. Mr. Losco asked if expanding the basic size of the building with an expanding and non-conforming use would be permitted, and Mr. Taylor noted that there is a section under §230-10 that says no existing structure shall be enlarged "except after approval of the Board of Adjustment as provided in §230-57". Mr. Losco and Mr. Athey noted that would be a variance. Mr. Taylor added that §230-57D talks about structural alterations resulting in the enlargement of a non-conforming structure, and one way to look at the Application is that it is an alteration as an enlargement of the non-conforming structure.

Mr. Day detailed some of the history of Jessop's Tavern and noted that one of the main goals of the Day family was to have a place that showcased what New Castle is about, and that over the years Jessop's has become an integral part of the town. He explained that the restaurant structure is becoming worn and requires repairs, including structural repairs, and that the extension is needed to add refrigeration units and prep space. He added that the current kitchen has one 8x10 walk-in refrigerator, and with the addition of seating and increased business, the restaurant is running out of food and beer due to the lack of refrigeration units and kitchen prep space. He noted that the enlargement will give the property:

- (1) Additional storage and the use of the original 8x10 walk-in dedicated to beer service. He explained that having a dedicated walk-in for beer service will allow Jessop's to install a long-draw system so beer stored in the walk-in can be sent directly to the bar through chilled lines.

- (2) Additional storage in the back of 116, which will allow the kitchen to be opened up, a new dedicated walk-in, and a second floor for additional storage.

He explained that without the addition, the Tavern may be unable to keep up with the demands of the customers and the town. He added that the back of #116 requires structural repairs which will be completed in conjunction with the construction of the addition.

Mr. Taylor asked Mr. Day if he planned to add any tables to the restaurant, and Mr. Day advised that no additional tables would be added and that the addition was strictly utilitarian. Mr. Taylor noted that in addition to additional storage and refrigeration, the kitchen would have additional food prep space. Mr. Day added that the renovation will give them the opportunity to upgrade old equipment and will help the Tavern maintain compliance with the Code.

Mr. Losco clarified that the Applicant is proposing to square off the back of 116 so that it has the same rear setback as 114, and add 3' wide stairs that will go right up to the property line. He also clarified that there are no stairs on the rear of 114. Mr. Day noted that the current rear of 116 has a deck on which kegs are stored and employees congregate, and the addition will eliminate that area. Mr. Athey asked Mr. Winkler which property is 114 and which is 116 on the drawings, and clarified that 116 is the property being extended. Mr. Taylor noted that the plans reflect 114 as the mailing address of Jessop's Tavern. Mr. Taylor submitted an aerial view of the properties and noted that Tax Parcel 173 is 116 and Tax Parcel 172 is the adjoining building. He added that the two tax parcels are functionally one building. Mr. Day clarified that there are two addresses, but there is a break-through between the two properties to allow access between them. He added that the front of 116 is seating and the rear was formerly the server section.

Mr. Losco asked how the property immediately behind 114 and 116 was being used, and Mr. Day advised it was residential property. Mr. Taylor noted that Mr. Day has spoken with adjacent property owners, and letters of acceptance and approval of the Application were submitted as exhibits. Mr. Taylor added that Ms. Barbara Kuczmariski's property is immediately behind the Applicant's property and she has expressed her concern with having access to the fence for maintenance purposes. Mr. Taylor indicated that the Applicant would be willing to put in writing that Ms. Kuczmariski will have access to her fence.

Mr. Day identified the adjacent property owners who submitted letters:

- Tax Parcel 204 – James and Barbara Whisman
- Tax Parcel 174 – Ellen Cleveland
- Tax Parcel 200 – Barbara Kuczmariski
- Tax Parcel 202 – Anne Daniels
- Tax Parcel 203 – Joanna Marie DiMondi
- Tax Parcel 201 – Gregory Brown

Mr. Losco asked if Mr. Day had communicated with the owners of Tax Parcels 172 and 171, and Mr. Taylor advised that Tax Parcel 172 and 173 are the Applicant's properties and Tax Parcel 171 is an apartment building. Mr. Taylor also submitted pictures of the current building as exhibits.

Mr. Losco and Mr. Athey clarified that the intention was to have the back of 116 even with the back of 114. Mr. Losco asked if there was an alley running behind the properties, and Mr. Taylor advised that

the property ran up to Ms. Kuczmariski's yard and the Applicant will grant her access to the her fence for maintenance purposes. Mr. Losco asked how many stairs were required to get to the back door and Mr. Winkler advised it would be 8-9 steps.

Mr. Winkler referenced drawing D-100, which is the demolition plan, and explained it showed what is being removed from the existing structure. He noted that on 116, the roof is collapsing and the foundation is deteriorating and those items will be repaired. He added that the addition will match the width and will extend to the back of 114 and the alleyway will be maintained. The rear stairs will allow room below to access existing mechanical units. The roof will be raised for proper drainage and new mechanical equipment will be placed on the existing roof.

Mr. Winkler walked the Board Members through the architectural drawings, and explained the new kitchen arrangement, the second floor open storage, and the various elevation drawings. Mr. Losco asked if the new roof pitch would be taller than #114, and Mr. Winkler advised it would be approximately 24' higher than the existing roof, and it cannot be viewed from Delaware Street. Mr. Athey asked if the height of the existing building was greater than what is allowed by zoning, and Mr. Winkler noted it was less than 45'.

Mayor Gambacorta asked when the construction would be completed, and Mr. Day advised the contractor indicated a construction end-date of mid-October.

Mr. Taylor stated for the record that the Application has been before the Historic Area Commission, and all four of the present Commissioners voted in favor of the Application with the following materials conditions:

- Engineered wood will be used for all siding and trim
- Windows will be Anderson 400-Series – clad
- The top of the addition will be lower than the peak of the public right-of-way
- The exterior stairs are approved as presented on the drawings provided

Mr. Athey asked for clarification of the third condition, and Mr. Taylor indicated that third item referred to the condition that the new roofline cannot be viewed from the public right-of-way.

Mr. Taylor reviewed that the Application is being presented under §230-57C as a variance, or under §230-57D as a structural alteration.

Mr. Taylor noted that Mr. Day has a successful business but is having difficulty operating. He added that the intention is not to add any tables, but is to enable Mr. Day to update the kitchen, put in the new walk-in, and comply with modern food preparation and food safety rules and refrigeration requirements. He added that the Applicant feels the expansion is in character with the existing building. Mr. Taylor also noted that the Board was presented with letters of acceptance from the neighbors, and that further discussion with Ms. Kuczmariski is required. He added that the effect of not granting the variance would hamper the business significantly. Mr. Taylor also stated that the literal interpretation of the zoning code would prohibit Mr. Day from putting on the addition. Mr. Taylor also noted that under the concept of the doctrine of natural expansion noted in §230-57D2(d), although the use is permitted, the existing kitchen building is non-conforming going to the property line.

After a lengthy discussion of the merits of viewing the Application under §230-57C as a variance, or under §230-57D as a structural alteration, it was agreed that the Application be viewed under §230-57C as a variance case.

Mr. Taylor reiterated the Applicant's desire to address Ms. Kuczarski's concerns about maintaining her fence and his willingness to put that in writing.

Public Comment:

Furio Casale, City of New Castle Code Enforcement

Mr. Casale appeared at the request of Mr. Jeff Bergstrom, who was unable to attend the meeting, and advised the Board that the Notice was posted on August 17th at 1:39 p.m.

Barbara Kuczarski, 1 Battery Park, New Castle, DE

Ms. Kuczarski thanked the Applicant for speaking with her prior to the Board meeting. She noted that she will need access to the back of her fence for proper maintenance, and that the Applicant has agreed to give permission in writing for such access. Mr. Losco clarified that Ms. Kuczarski understood the proposed steps will take up the 3' rear setback from the back of the proposed addition. Ms. Kuczarski was unclear and Mr. Losco explained that the addition will go to within 3' of the property line, and the stairs accessing the back entrance will take up the full width of the space between the property line and the addition. Ms. Kuczarski explained that she needed to see the proposed plan before giving her agreement. Mr. Winkler explained the architectural drawing and showed her the location of the fence. Ms. Kuczarski asked that the Applicant provide her with a written statement giving her access to maintain the fence that she will review with her attorney and return to him.

Ms. Kuczarski noted that she did not realize the steps would come right up to her fence; however, she expressed her acceptance and approval of the Application. Mr. Athey asked if the width of the stairs could be reduced, and Mr. Winkler advised that the minimum width would be 32". After discussion, Mr. Athey recommended that the stairs be no wider than 2' 8". Mr. Day advised that the back stairs will not be used for deliveries and reducing the width would not affect their use.

Ms. Kuczarski asked if the Board Members could inspect the area, and Mr. Athey advised that was not in the purview of the Board. Ms. Kuczarski offered to show the Board Members digital images of the area; however digital images cannot be accepted as exhibits. Mr. Day noted that his intention is to ensure Ms. Kuczarski is completely comfortable with the addition and will assist in any way he can to give her access to the fence in order to maintain it.

After discussion by the Board Members, a Motion to approve two variances was made: (1) to approve the addition so the rear of the building can be as close as 3' to the rear property line, and (2) to approve the location of stairs up to a zero lot line, provided, however, that the owner of 1 Battery Park has access to the property #114-116, to maintain and repair her fence and that the width of the steps to the rear of the property not exceed 2' 8".

The Motion was seconded.

During discussion, Mr. Athey asked for clarification of the term "zero lot line" and Mr. Losco noted that was the request in the Application; however he stated that the steps will not exceed 2' 8" and they have to be attached to the building which will put them approximately 4" from the lot line.

On vote, the Motion was approved unanimously.

A Motion to adjourn the meeting at 4:01 p.m. was made, seconded and carried.

Kathy Weirich
Stenographer