

**THE MAYOR AND COUNCIL OF NEW CASTLE
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: Justin Day/Jessop's Tavern
114 Delaware Street
New Castle, DE 19720

NCC TAX PARCEL NO. 21-015.30-173
PUBLIC HEARING DATE: September 4, 2018
DATE OF DECISION: September 12, 2018

REQUESTED: Applicant requested dimensional variances from the twenty (20) foot rear property building set back line required by City Zoning Code to permit: (1) expansion of the existing building located at 116 Delaware Street to a point three (3) from the rear property line; and (2) to permit construction and maintenance of three (3) foot wide open steps zero (0) feet from the rear property line. Alternatively, the applicant seeks approval for an enlargement or extension of a nonconforming structure to permit the aforesaid modifications to the existing building at 116 Delaware Street, also known as NCC Tax Parcel No. 21-015.30-173 & 185.

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 unnecessary hardship or exceptional practical difficulty, 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. Also present was Mr. Furio Casale, New Castle Code Official. Mayor Gambacorta read into the record the official notice of the hearing. Mr. Casale testified that notice of this hearing was timely posted on the property and published in accordance with the Zoning Code. A copy of the public notice was admitted into the record.

The subject property is zoned HC (Historic Commerce) and is used, in conjunction with an attached structure at 114 Delaware Street as Jessop's Tavern.

Andrew Taylor, Esq. entered his appearance for the applicant, Justin Day. Mr. Day and architect John Winkler were sworn in as witnesses by Mr. Losco. Mr. Day testified that he plans to remove an existing deck and stairway at the rear of 116 Delaware Street and replace it with an expansion of the existing structure to be located within three (3) feet of the rear property line. An open stairway would be attached to the rear of the building with a width such that it would touch the rear property line to allow access from the rear of the building to the open crawl space beneath the proposed addition. Mr. Day stated that Jessop's Tavern has been operated at this location for 22 years. He stated that as the City has grown, so has his restaurant/tavern business. He described his current kitchen arrangement as only allowing room for one, 8 ft. by 10 ft. walk in refrigerator to store all perishable food stuffs as well as all keg beer needed to service the extensive selection of Belgian beers that his establishment has become known for. Mr. Day testified that the shortage of food and beverage storage space has resulted in the restaurant running out of beer and food at times. Mr. Day described the fact that at present, kitchen staff has inadequate food preparation and storage space to meet modern restaurant needs and sanitary codes and that they frequently interfere with each other in attempting to perform the tasks needed to operate a busy restaurant/tavern establishment. The proposed expansion of the property would provide for the installation of a new walk in cooler for food, allowing the existing walk in cooler to be used exclusively for storing beer kegs which will be connected to taps with a modern delivery service to maintain cold temperatures and better preserve a sanitary product. He noted that the existing beer delivery lines are 45 years old. Additional food preparation space would also be provided by the expansion providing a safer and more efficient work space for staff. Mr. Day testified that no new tables would be created by the expansion. Mr. Taylor pointed out that the proposed addition to 116 Delaware Street would align the rear of that structure with the existing structure on 114 Delaware Street and thus be consistent with the character of the area. He argued that the building at 114 Delaware Street is already a non-conforming structure located only three (3) feet from the rear property line. These facts and Mr. Day's testimony indicate both a practical difficulty in operating the restaurant/tavern under modern food safety regulations. In addition, Mr. Taylor argued that since 114 and 116 Delaware Street are connected and under common use, the proposed addition to 116 Delaware Street can be justified as a natural expansion of the non-conforming structure at 114 Delaware Street.

Mr. Taylor stated that the proposed expansion of 116 Delaware Street with open stairs was approved by the Historic Area Commission (HAC) by a 4-0 vote at its August 9, 2018 meeting. He also introduced a number of exhibits at the hearing including the following:

1. Aerial photo of subject property taken from the County tax website.
2. Six form letters supporting the variance requests signed by various neighboring residents.
3. Five photographs of the front, rear right side, and left side (2 photos) views of the Jessop's Tavern establishment.
4. The minutes of the HAC meeting of August 9, 2018.
5. Architectural renderings of various aspects of the existing property and the proposed expansion and stairway prepared by Mr. Winkler and labeled Drawing Nos. D-100, A-101, A-108, A-201, A-301, S-1, S-1.1 as well as a "Rear Elevation" drawing of the proposed expansion and stairs.

The Applicant's witnesses responded to various questions from Board members concerning the photographs and architectural rendering exhibits and the potential impact of the proposed improvements on surrounding property owners.

The Board then invited comments from the public. Barbara Kyczmarski, 1 Battery Park, testified that she owns the residential property to the immediate rear of 116 Delaware Street and she maintains a privacy fence at her border with that property. Her concern was whether she would be able to access her fence from both sides of the property line in order to maintain it. Mr. Taylor volunteered that the applicant would provide Ms. Kyczmarski with access rights across the rear of his property so that she could reach and maintain her fence. The Board inquired whether the stairs proposed to be built zero (0) feet from the rear property line would allow for effective access to the fence. Mr. Winkler testified that the area underneath the steps would be open allowing access for painting and general maintenance of the fence. Mr. Athey inquired if the Building Code required the stairs to be three (3) feet in width and was told by Mr. Winkler that it did not. No other public comments were received and no letters of objection to the application were submitted to the Board.

The Board elects not consider the Applicant's argument for expansion of a non-conforming structure, and instead votes to grant the requested dimensional variances subject to the following conditions: (1) that the present and future owners of 1 Battery Park be provided with access to the rear of the Applicant's property for purposes of maintaining, repairing and replacing the fence that separates that property from the Applicant's property; and (2) that the width of the proposed stairs be no more than two (2) feet, eight (8) inches wide. The variances are reasonably consistent with the character of the area. The applicant did not create the current size or configuration of the building at 116 Delaware Street and naturally seeks to make reasonable improvements to the property to enhance a growing business. The inability to effectively operate this long standing City establishment in a manner consistent with modern

safety practices in food and beverage handling creates an exceptional practical difficulty. The harm to the applicant if the variances were denied would be greater than the probable effect on neighboring properties if the variance were granted. The granting of the variances will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the Zoning Code.

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

BOARD OF ADJUSTMENT OF
THE MAYOR AND COUNCIL OF NEW
CASTLE



Jimmy Gambacorta, Chairperson

NOTE: This variance 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 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.