

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

NOTICE OF DECISION

APPLICANT: Nicholas J. Greto and Kathryn Gordeuk
820 Washington Street
New Castle, DE 19720

NCC TAX PARCEL NO. 21-014.00-152
PUBLIC HEARING DATE: October 8, 2018
DATE OF DECISION: October 11, 2018

REQUESTED: Applicant requested two (2) dimensional variances to: (1) permit expansion of the width of an existing front porch located at 820 Washington Street, NCC Tax Parcel No. 21-014.00-152 (the "Property") extending fourteen and one half (14.5) feet into the thirty (30) foot front property building set back line required by the City Zoning Code (the "Code"); and (2) to permit construction of a new side yard porch on the Property extending to eight (8) feet into the eight (8) foot side property building set back line required by the Code.

The Board of Adjustment may grant a variance from the requirements of Chapter 230 of the City of New Castle 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. Jeffrey Bergstrom, New Castle Code Official. Mayor Gambacorta read into the record the official notice of the hearing. Mr. Bergstrom confirmed that notice of this hearing was timely posted on the property and published in accordance with the Code. A copy of the published public notice and a photograph of the posted property were admitted into the record.

The Property is zoned R-1 (Single Family Residential) and is used as a detached, single family residence. A survey submitted into the record illustrates a lot that is sixty (60) ft. wide and approximately one hundred fifty (150) ft. deep improved with a two (2) story brick and frame residence with existing front porch positioned eight (8) feet from the W. 9th Street right of way and fifteen and one half (15.5) ft. from the Washington Street right of way.

Brian McLaughlin, Esq. entered his appearance for the applicants, Nicholas J. Greto and Kathryn Gordeuk. Mr. Greto was sworn in as a witness by Mr. Losco. Mr. McLaughlin stated that the Property was building in 1938 prior to the adoption of the Code in 1968. The original existing porch on the Property thus pre-dates the Code. It presently extends 14.5 ft. into the City's thirty (30) foot front set back line as a non-conforming structure. The applicant plans architectural improvements to the existing front porch that will expand its width so that it extends from the left front corner of the house to the right front corner. Two architectural drawings were submitted with the application showing the design of the proposed porch along with the survey plan showing the footprint of the proposed porch improvements. The front porch improvements will not extend the existing porch any further toward the Washington Street right-of-way.

Mr. McLaughlin then discussed the proposed new side porch that will face W. 9th Street and extend eight (8) ft. all the way to the property line, placing the porch in line with an existing fence on the Property. This improvement will allow the porch to wrap around both the front and 9th Street side of the residence. Mr. McLaughlin noted that despite the proposed side porch encroaching into the full eight (8) ft. side setback zone, there will still be twelve (12) ft. ten (10) inches of grassy area between the far edge of the side porch and the curb on W. 9th Street. A series of twelve (12) Google street photographs were entered into the record to depict the present home and its relation to other surrounding properties. W. 9th Street is a dead end street. One of the photo's submitted depicted several townhouses at the end of W. 9th Street all built to the property line, just as the applicants propose to erect the side porch. Mr. McLaughlin referenced other photos submitted to illustrate that many properties in the immediate vicinity fail to comply with the setback requirements of the Code. These include a commercial property adjoining the subject Property, and semi-detached dwellings on the opposite side of Washington Street that have enclosed porches abutting the side walk. Mr. McLaughlin argued that for these reasons granting a variance to permit the side porch as proposed is in fact consistent with the surrounding neighborhood and not contrary to the public interest or public welfare.

Mr. Losco asked Mr. Greto if he agreed that all factual matters discussed by his attorney were in fact accurate, and he testified that they are accurate. He further asked if the applicants

had discussed this application with their neighbors and Mr. Greto responded in the negative. Mr. Greto and Mr. McLaughlin responded to various other questions from Board members concerning the photographs and architectural rendering exhibits, the absence of sidewalks on this side of Washington Street and W. 9th Street, the presence a grassy area between the W. 9th St. curb and the proposed side porch, and the potential impact of the proposed improvements on surrounding property owners. Mr. McLaughlin was asked whether a variance for the side porch, extending a full eight (8) ft. into the eight (8) ft. setback line could be characterized as “minimal”. He argued that in this unique instance it is minimal in impact for several reasons including: (1) the porch will extend no further than the permitted, existing fence, (2) the other residences at the end of W. 9th Street are all built to the same property line as the proposed side porch, (3) more than twelve (12) ft. of grass will remain before the curb allowing for the ample flow of air and light, and (4) the neighbor’s property on the opposite side of W. 9th Street is hidden by heavy shrubbery, minimizing any visual impact the side porch might create.

No members of the public were present to speak either in favor of, or against the application. Mr. Bergstrom confirmed that no letters of objection to the application were submitted to the Board.

The Board votes to grant the requested dimensional variances to permit the proposed front and side porch improvements. The variances are reasonably consistent with the character of the area. Construction in this area largely predates the Code and pre-existing encroachments into Code required front and side setback lines are common. The applicants did not create the current placement of the building on what is an oversized lot for this area and thus did not create their own hardship. The expansion of the width of the front porch is minimal in nature and does not encroach any further into the front setback than the existing porch does. The extension of the proposed side porch to the property line is relatively minimal in nature and impact considering that all the other residences on this side of W. 9th Street extend to the property line as the proposed side porch will. The Property also is 150 ft. deep with an ample rear yard providing significant buffer from those other properties on this side of W. 9th St. The inability to make reasonable porch improvements consistent with other surrounding properties represents an exceptional practical difficulty and granting the application will not create a benefit to the applicants not enjoyed by many of the surrounding property owners with porches. The harm to the applicant if the variances were denied would be greater than the probable effect on neighboring properties if the variances were granted. The granting of the variances will not substantially impair the intent and purpose of the Zoning Code.

[No further text. Signature page follows.]

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.