

New Castle City Board of Adjustment Meeting Minutes
December 18, 2018 – 6:30 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 convened the meeting at 6:30 pm.

An application has been filed by C & K Custom Builder, LLC, (Owner and Applicant) 334 Bear Christiana Road, Bear DE 19701, for a property located at 1003 Wilmington Road, New Castle, DE 19720, Tax Parcel No. 21-007.00-203, seeking variances from City Code Chapter §230 requirements relating to side and front yard setbacks in order to construct a new single family residence and to permit construction of a fence. They are seeking a four foot six inch (4'6") encroachment into the required thirty foot (30') Baldt Avenue front yard setback; and a one foot six inch (1'6") encroachment into the required eight foot (8') side yard setback adjacent to 1005 Wilmington Road; and permission to install a six foot (6") solid wood fence adjacent to 1005 Wilmington Road from the (30 foot) front yard setback line along Wilmington Road to the right of way line of Baldt Avenue.

Mr. Losco stated that the application was published in the News Journal and the New Castle Weekly, and an affidavit of publication is in the public record; and the property has been posted and a photograph of the posting is in the public record.

Daniel Hogan, Esquire, introduced himself as the representative of the Applicant. He stated the subject lot is unique in that it is triangular and has two front yards; one on Washington Road (referred to as Wilmington Road) and one on Baldt Avenue. The proposed dwelling would encroach on the side yard adjacent to 1005 Wilmington Road, for a chimney. The encroachment on Baldt Avenue would be 4.5'. The Applicant's position is that the lot is entirely unusable for a residence without approval of the requested variances.

Mr. Losco asked why the Applicant believes the lot is unusable for a dwelling, and Mr. Hogan noted that a smaller dwelling could be built; however the practical aspect is a return on investment. Mr. Losco asked if the Applicant owns the property and if he purchased it in its current footprint. Mr. Hogan noted it was purchased in the last year, and that the Applicant was aware of the footprint at the time of purchase. Mr. Losco asked if this was a self-created hardship issue, and Mr. Hogan replied that he did not believe it was self-created because the Applicant proposes to build a structure to sell for value and if he were to build a smaller dwelling he would not be able to create that value. He added that a similarly shaped triangular lot at intersection of 11th and Wilmington Streets appears to have certain violations with respect to setbacks and the Applicant is seeking to create a similar situation with regard to setbacks.

Mayor Gambacorta asked for the dimensions of the lot, and Mr. Hogan noted the frontage along Wilmington Road is 173.20', the frontage along Baldt Avenue is 212.94' and the frontage adjacent to 1005 Wilmington Road, owned by Jonathan Schlegel, is 123.94'. Mr. Athey asked for clarification of the plan, which shows a 25' setback along Baldt Avenue where a 30' setback is required. Mr. Bergstrom stated the engineer made an error and that the plan is erroneous. Mr. Athey noted that both Wilmington Road and Baldt Avenue have 30' setbacks. Mr. Hogan concurred that the plan is wrong and explained that was why the Application seeks a 4'6" setback.

Mr. Losco asked what the size of the dwelling footprint is, and Mr. Hogan advised it is 36' x 27.6', including the garage on the 36' side. Mr. Hogan explained the interior layout. Mr. Athey clarified that the Applicant owns the property and has the intention to build the house to sell. Mr. Athey noted that the previous description of the triangular lot at 11th and Wilmington Streets is that it "appears" to have setback issues and Mr. Hogan stated that he based his review on Parcel View and it appears likely that the lot has setback issues. He added that it also appears that parcel may have been grandfathered.

Mr. Losco clarified that the Applicant is seeking to construct a 6' high fence along Wilmington Road and asked why a 6' high fence was necessary. Mr. Hogan stated the Applicant is seeking to build a 6' high fence to shield the property from the train tracks. Mr. Athey clarified that the proposed fence is not on the Plan, and asked if it would go along the entire property line adjacent to Mr. Schlegel, turn 90 degrees and run down Wilmington Road to the intersection with Baldt Avenue. Mr. Hogan stated that was correct and added that the wood fence would also mask an existing brick wall that runs along a section of Wilmington Road.

Mr. Losco asked what the square footage of the proposed dwelling is, and the Applicant stated it was approximately 1,700 square feet. Mr. Losco asked if the Applicant had considered a configuration that would detach the garage, moving it to the portion of the triangle more toward the intersection of Wilmington Road and Baldt Avenue, and the Applicant stated the lot was not wide enough to accommodate a detached garage. Mr. Losco further questioned why the setback needed to be violated, and Mr. Bergstrom advised that moving the driveway closer to the intersection makes ingress and egress more dangerous. Mr. Losco asked why the driveway could not be curved. Mr. Athey asked if there was a restriction of how far away from the main structure the garage would have to be, and Mr. Bergstrom noted there was a 10' setback.

Mr. Losco asked if there was a fence along the property line with Mr. Schlegel's property.

The Applicant, Joseph Kokoszka, was sworn in by Mr. Losco.

Mr. Losco asked if the Schlegel property has a 6' high privacy fence along Wilmington Road, and Mr. Kokoszka stated that Mr. Schlegel's fence is along the side property line adjacent to the Applicant's property. Mr. Losco noted that Mr. Schlegel did not seem to need a fence along Wilmington Road, and clarified that the Applicant is seeking to install a 6' high privacy fence along Wilmington Road to protect the lot from the railroad. Mr. Kokoszka explained the fence was to block the railroad tracks and to insulate the property from traffic and noise.

Mr. Losco asked Mr. Hogan to go through Quick Check requirements for the Record. Mr. Hogan stated the Applicant is seeking variances from City Code §230 requirements relating to the side and front yard setbacks in order to construct a new single family residence. He stated the Applicant's position is that the situation has created a practical difficulty in terms of being able to utilize the property. He added that the Applicant has met the standards required for the variances and are seeking relief from the Board.

Mr. Losco asked if there were any other properties along Baldt Avenue closer to the road than 30' in the vicinity of the subject property, and Mr. Hogan advised that to his knowledge, there were none. Mr. Losco asked if anyone else had fencing along Wilmington Road right at the property line in violation of the 30' setback in the vicinity of the subject property, and Mr. Kokoszka explained the subject property was unique, but that none of the properties on the block had fencing along Wilmington Road.

Mayor Gambacorta clarified the dwelling was 1,700 square feet excluding the single car garage, and asked what sales price the Applicant expected. Mr. Kokoszka stated the sale price of the home would be approximately \$225,000.

Mr. Athey noted that the building plans are dated December 1989, with a New Castle County Stamp and Mr. Kokoszka explained that the plans were for a house previously built in New Castle County. Mr. Athey then clarified that the design architect, James Fahy from Rochester, New York, did not design the house for the subject lot, and asked if Mr. Fahy was aware that the Applicant was using his plans. Mr. Kokoszka explained that he purchased the rights to the plan. Mr. Athey then clarified that the privacy fence would be built along the entire 173' length of the Wilmington Road side of the property.

Mr. Losco clarified that there are three other dwellings in the block, and asked the square footage of those homes. Mr. Kokoszka noted that they are all approximately the same size and the house he is proposing will fit in with the community.

There being no further questions from the Board, Mayor Gambacorta opened the floor to public comment.

Jonathan Schlegel – 1005 Wilmington Road

Mr. Schlegel questioned the 1.5' setback encroachment on the side of the parcel that abuts his property, and noted that the setback would allow only approximately 14' between his house and the proposed dwelling. Mr. Losco explained that the only encroachment is a 2' chimney on his side. Mr. Schlegel noted that no one had spoken to him about the Applicant's proposal and was concerned about the encroachment; however, he stated that if it was only the chimney that was encroaching, he had no objection to the application. He added that in his opinion, the parcel was a dangerous property for a family and noted many accidents have occurred there. Mayor Gambacorta asked if Mr. Schlegel had any objection to the proposed construction, and Mr. Schlegel stated that his preference was that the parcel remains undeveloped. Mayor Gambacorta noted that the proposed dwelling would add value to the area, and Mr. Schlegel stated that he did not agree it would add value.

Mr. Bergstrom stated for the Record that no other property in New Castle has a privacy fence directly on the property line and that he felt it would impair sight distances. Mr. Athey thanked Mr. Bergstrom for his opinion and asked what the regulatory variance for installation of a fence is. Mr. Bergstrom stated a 4' solid fence can be installed in the front yard setback and a 6' fence in the side or rear yard setback. He added that he was of the impression the variance was to move Mr. Schlegel's fence, making a 6' privacy fence from Wilmington Road back to the right-of-way line on Baldt Avenue, which would be fine; however, putting a privacy fence on Wilmington Road would cause sight distance issues. Mr. Schlegel added there is a chain link fence on the border of the two properties.

Mr. Athey asked if the Code specifically stated to seek approval from the Board of Adjustment if a type of fence not authorized in the Code was being requested. Mr. Losco stated §230-40 of the Code specifies that a solid fence is permitted in an R-1 zone, shall not be more than 6' high and any such fence shall be subject to the minimum front yard provisions (30' setbacks). He noted that having a 6' high fence was allowed; however, if the fence is closer than 30' to either Baldt Avenue or Wilmington Road, a variance is required because they are both considered front yards. Mr. Bergstrom reiterated that he thought the requested variance was to have a fence from Baldt Avenue to Wilmington Road. During discussion it was noted that a variance can be sought from any portion of the Zoning Code. §230-57C(1) states: a variance shall authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to public interest where owing to special conditions, a literal enforcement of the

provisions of this chapter would result in unnecessary hardship. Mr. Losco added that one can ask for a variance from any portion of §230; however, he noted that the Applicant is asking for a fence that extends from the front setback line along the property border to the intersection of Baldt Avenue and Wilmington Road. Mr. Kokoszka noted that the front of the house will face Baldt Avenue, and the fence is being proposed along Wilmington Road, which would be at the rear of the house. Mr. Hogan asked the Applicant if a fence that did not extend all the way to the intersection would be acceptable, and Mr. Kokoszka said it would.

There being no further questions from the Board, Mayor Gambacorta asked for any further public comment.

There being no further public comment, Mr. Losco made a Motion to move into the business meeting. Mr. Athey seconded the Motion. On vote, the Motion was approved unanimously.

Mr. Losco reiterated that Mr. Schlegel had stated that he had no major objection; however he would rather see nothing on the parcel and that he does not think a new house will add value to the property. He added that Mr. Schlegel's main concern was the setback, but after it was explained that the setback was only for the chimney, he did not have a major objection to it.

Mr. Athey stated that he was not able to support the Application. He noted that the plan is erroneous in several instances: the setback line is shown incorrectly and the fence is not depicted. He added that he felt the hardship test is self-imposed and that there are multiple ways to change the plan that would not require Board approval:

- the garage could become detached and fit into the remainder of the buildable envelope;
- an architect could have designed a dwelling unit that would fit the lot but the Applicant is trying to use a 20-year old plan approved by New Castle County that does not work at the proposed location;
- often an Applicant will come to the Board before they purchase a property, or make a purchase contingent on the Board's approval.

Mr. Athey also noted that he agrees with the Building Inspector's opinion that the fence along Wilmington Road is a site distance issue.

Mr. Losco noted that there are three variances being requested: the side yard setback, the front yard setback, and the fencing variance. He added that he does not have an issue with the side yard setback for the chimney. He stated that there is an element of self-created hardship in that the Applicant purchased an odd-shaped lot and the plans he already owns do not work on the lot. He added that there is ample space on the lot in the buildable envelope triangle to the south for a detached garage and by using a curved driveway the entrance would not have to be relocated closer to the intersection. He stated that an unnecessary hardship or exceptional practical difficulty is not so much based on the shape of the lot, but on the design of the house the Applicant wants to build; which the Applicant should have known when he first bought the lot. Mr. Losco added that he takes the Building Official's concerns about the fencing and site distance very seriously; and a 6' high fence at the intersection of Wilmington Road and Baldt Avenue will cause site issues. He added that Mr. Schlegel had testified that there have been numerous accidents at the intersection. Mr. Losco stated that he would vote to approve the side yard variance, but not to approve the other two variances.

Mayor Gambacorta had not further comments.

Mr. Losco made a Motion to approve the side yard setback variance of 6.5' from the side lot line, but to deny the fence variance request and the front yard setback variance request due to the fact that the design is not suitable for the lot-size, the self-created hardship of the Applicant, and as to the fence, the health and safety issues with respect to sight lines. Mr. Athey seconded the Motion and commented that he feels it is a buildable lot. He added that the Board must be concerned with setting a precedent, and stated this would be a bad precedent to set. On vote, the Motion was approved unanimously.

There being no further business, Mr. Athey made a Motion to adjourn the meeting. Mr. Losco seconded the Motion. On vote, the Motion was approved unanimously.

Kathy Weirich
Stenographer