

**New Castle City Board of Adjustment Meeting Minutes  
December 12, 2018 – 7:00 p.m.  
City of New Castle Town Hall**

**Members Present:**     **Linda Ratchford, City Council President**  
                                  **Daniel Losco, Esq., City Solicitor**  
                                  **David J. Athey, City Engineer**

**Absent:**                   **Jimmy Gambacorta – Mayor**

**Also Present:**         **Jeff Bergstrom, Building Official**

In Mayor Gambacorta’s absence, Ms. Ratchford, City Council President, convened the meeting regarding the Application of Angelo J. Rispoli at 7:00 pm as permitted by Charter.

**516 Harmony Street – Angelo J. Rispoli**

An application has been filed by Angelo J. Rispoli (Owner & Applicant), 516 Harmony Street, New Castle, DE 19720 for a property zoned Residential - R2 located at 516 Harmony Street, New Castle Delaware 19720, Tax Parcel No. 21-015.10-034, seeking variances from the zoning code relating to lot area, side yard, rear yard and building bulk from the Zoning Code Schedule of District Regulations. Specifically, the variances requested are: to maintain a width of 45’ where 50’ is required at the front of the lot; to maintain a width of 25’ where 50’ is required at the rear of the lot; to maintain a 4,858 square foot lot where a 6,000 square foot lot is required; to permit 34.71% Building Bulk where 30% is permitted; to permit 3’ set back on both sides of the structure where 5’ on each side is required; to permit an aggregate of 5’ of side yard setbacks where 15’ is required; to maintain a rear yard setback of 4’ where 25’ is required; to permit a structure in Flood Zone AE; to permit an accessory structure (a shed) in the front yard.

Ms. Ratchford introduced Dan Losco, Esquire, City Solicitor, and David Athey, City Engineer, and requested that Mr. Losco read everything into the record. Mr. Losco stated the Board is in receipt of the Affidavit of posting in the Wilmington News Journal and the New Castle Weekly, as well as documentation of posting of the property.

William Rhodunda, Esquire, and Angelo J. Rispoli were sworn in by Mr. Losco.

Mr. Rhodunda stated that Mr. Rispoli is seeking a number of variances, some of which apply to existing conditions. Mr. Rhodunda explained that the lot is odd-sized, with the structure sitting far back on the lot. He referenced a number of photographs submitted for the Record. Mr. Athey questioned the survey and it was noted that the survey was done earlier in 2018 and the covered storage unit identified on the survey has been removed as well as building materials that were stored in the storage unit. It was also clarified that the Applicant has no plans to build a structure on the site of the removed storage unit. Ms. Ratchford clarified that both the wood deck and wood shed are still on the property. Mr. Rhodunda noted that the Applicant is requesting approval to have the shed remain in its current location.

Mr. Rhodunda explained that the existing structure is 3 ½’ to 4’ to the property line on one side, 3 to 5’ to the property line on the other side, and approximately 4’ to the rear property line. Mr. Rhodunda detailed the variances for which approval is being sought.

**A variance to maintain a 45' setback at the front where a 50' setback is required.** Mr. Rhodunda explained that the lot is a legal non-conforming lot and that in 1983 the Board of Adjustment approved variances to construct a residence at the front of the property

Mr. Losco asked how the 1-1/2 story building was approved and Mr. Rhodunda explained that the original structure was a garage at the back of the lot. Mr. Rispoli purchased the parcel in 2002 and received a building permit to build an addition to the garage in April 2003. Mr. Athey clarified that the parcel has always been in the current footprint and Mr. Rhodunda suggested that at one time it may have been two parcels. Mr. Rispoli explained that the addition to the front of the garage was outfitted as a house over a long period of time. Mr. Losco asked if the home was being used as a residence, and Mr. Rispoli stated that he and his children moved into the structure in 2011 as a residence.

Mr. Rhodunda added that the parcel is a pre-existing lot that does not meet the Code requirements; but because it is a pre-existing lot it is legally non-conforming. He also noted the purpose of the Application was to validate and comply with the City's recommendation that the property as it exists today be documented and legalized.

**A variance to maintain a width of 25' where 50' is required at the rear of the lot.** Mr. Rhodunda explained that at the back of the lot, it is 25' wide where it should be 50' wide; however it is a pre-existing non-conforming lot and the Applicant is seeking to maintain the existing condition.

**A variance to maintain a 4,858 square foot lot where a 6,000 square foot lot is required.** Mr. Rhodunda explained that within the Zoning category, the lot should have 6,000 square feet; however, by nature of being legal non-conforming it only has 4,858 square feet.

**A variance to permit 34.71% building bulk where 30% is permitted.** Mr. Rhodunda explained that the lot exceeds the permitted building bulk by 4.71%, which is in excess of the maximum. He added that Mr. Rispoli applied for and received a building permit in 2003 to construct a 15' x 40' addition attachment to the 15' x 30' garage. Mr. Bergstrom confirmed that the permit was granted to enlarge the garage. Mr. Athey asked for clarification of when and how the structure transitioned to a residential structure. Mr. Rhodunda explained that the structure was originally built for an office; however, due to personal issues, Mr. Rispoli transitioned the structure over time to residential and in 2011 it became all residential. Mr. Athey confirmed that the Applicant is requesting variances after the fact.

**A variance to permit a 3' setback on both sides of the structure where 5' on each side is required; to permit an aggregate of 6' of side yard setbacks where 15' is required; and to maintain a rear yard setback of 4' where 25' is required.** Mr. Rhodunda explained the side yard setbacks are being sought based on the pre-existing structure. He explained that the rear yard setback is implicated with the original structure and the Applicant is seeking to maintain the existing setback. He added that the St. Peter's Church parking lot is behind the subject parcel.

**A variance to permit a structure in flood Zone AE.** Mr. Rhodunda explained that the parcel is no longer in Flood Zone AE, and therefore no variance is required.

**A variance to permit an accessory structure (shed) in the front yard.** Mr. Rhodunda explained that the applicant is requesting a variance to maintain the current location of the shed since there is no other location on the property where it will fit. Ms. Ratchford asked what is in the wood shed, and Mr. Rispoli

advised that there is nothing currently in the shed, but that if the variance is approved, it will contain yard utility equipment to maintain the property.

Mr. Losco asked for clarification of the building materials and tools referenced in the plan, and Mr. Rispoli advised that all equipment and tools have been removed from the property. Mr. Rhodunda noted that some of the neighbors were not pleased with the state of the property and that Mr. Rispoli has made improvements to the property. Mr. Rhodunda also noted that approval letters were received from neighbors at 518 Harmony and at 46, 44, 42, 40 and 36 5<sup>th</sup> Street, which were submitted for the Record.

Mr. Losco asked when the shed was constructed, and Mr. Rispoli advised it is portable and that he put it up several years ago. Mr. Losco also clarified that Mr. Rispoli is not proposing any change to the existing structure. Mr. Losco further asked for clarification of why variances are being sought at the current time, and Mr. Rhodunda stated that the variances were being sought because the Building Official raised concerns that the property converted from office use to residential use and demanded that the matter come before the Board of Adjustment to confirm that everything is approved. Mr. Bergstrom stated that he was unable to issue a Certificate of Occupancy on the property despite the fact that it has been used as a residence since 2011. He clarified that Mr. Rispoli had a permit for a bath and a sink, and there is nothing in the Code preventing such a facility in a garage. He added that the conversion to a residence was illegal and a building permit would not be granted because of setback issues, which require Board of Adjustment approval.

Mr. Losco restated that any variances received in the past on the parcel were for garage use, and that with the conversion of the garage to a residence the Applicant is seeking to enjoy the same non-conformance setback variances granted for the garage and use it as a residence; however, the Building Official is not comfortable issuing a Certificate of Occupancy as a residence, unless the Applicant legitimizes the property as a residence vis-a-vie applying for variances. Mr. Bergstrom concurred, and added that the Applicant did apply for a building permit for a new residential structure but was unable to follow-through with construction.

Mr. Athey asked what the consequences were if the Board was to deny the Application, and Mr. Losco stated that without a Certificate of Occupancy the structure cannot be occupied as a residence.

During discussion, it was noted that the Board of Adjustment previously approved a variance to build a house, but the Applicant was unable to start construction.

Mr. Athey noted that it appeared other properties in the area do not meet the 6,000 square foot lot size, and Mr. Bergstrom confirmed that adjoining lots do not meet the 6,000 square foot lot size and because they existed long before the Zoning Code was established, they also have setback issues. Ms. Ratchford clarified that it is the Applicant's intention to maintain the front of the parcel as open space with the exception of the wood shed.

Mr. Losco asked Mr. Rhodunda to address the Quick Check Standards and how it applies to the subject lot. Mr. Rhodunda stated that with respect to Quick Check, use of the parcel as a residence fits within the zoning classification much better than a garage. He noted it is a different lot layout but fits within the residential character of the community. There is a difficulty in that the lot is awkward and without variances being granted, no other structure could be built in the back portion of the lot. Mr. Rhodunda added that the structure has been used as a residential property for many years, and a denial of the

Application would impose a financial hardship on the Applicant. He added that the Applicant's difficulty is based on the shape of the lot, economic hardship, and that the variances based on the history are somewhat minimal, and the Applicant is primarily seeking to maintain existing conditions. Mr. Rhodunda added that the Applicant made significant effort to make the property more acceptable to the neighbors. He also noted that the building bulk variance being requested is minimal.

During discussion, it was noted that if the variances are granted and the property is subsequently sold, a new owner would be required to meet the building bulk requirement of the Code before adding onto the existing structure, or if the existing structure is demolished and a new structure is proposed to be built.

Mr. Losco restated that the property was originally a garage in the back. Approval was secured to expand the garage and over time the structure was converted to a residence. The Applicant is seeking to legitimize what has been done in order to obtain a Certificate of Occupancy and secure a mortgage. Mr. Losco expressed his concern that the Applicant produced the self-created hardship and asked that his concern be addressed. Mr. Rhodunda noted that the Delaware Supreme Court in CCS Investors LLC vs Brown indicated that a self-created hardship is not, pro se, a prohibition to granting a variance; however it is a factor to be considered. He noted that although the Applicant changed the use of the structure, the structure itself was not changed. He further noted that making the structure a residence was not intentional, but a matter of changing personal circumstances necessitating the use of the structure as a residence. He added that the fact that the structure has been converted from an industrial workshop to residential use is beneficial to the neighborhood and is supported by the letters endorsing the Application.

During discussion, it was noted that the 3' to 4' side yard setback would not allow attaching a lean-to type structure to store utility lawn equipment, and the front of the house does not have adequate wall space to accommodate such a structure. Mr. Rhodunda noted that the wood shed is screened from neighboring properties on 5<sup>th</sup> Street and from Harmony Street by 20' high arborvitae.

There being no further questions from the Board, Ms. Ratchford opened the floor to public comment from anyone speaking for or against the Application.

**Connie L Peck – 518 Harmony Street**

Ms. Peck stated that her only concern with regard to the Application is that after the addition to the garage was built, water run-off from the roof and yard of the Applicant's property has increased, causing her property to have ponding issues, and she would like to see that issue addressed. She added that she wrote a letter in support of the Application. Mr. Rispoli noted that water run-off is directed to Harmony Street; however, if the gutters are clogged, water will overflow. After discussion, Mr. Rispoli stated that he is willing to add gutter-guards to all rain gutters on the house to help alleviate water flow to Ms. Peck's property. He added that the brick pavers on the side of the property about a 6" x 6" curb running along the side of the property to Harmony Street. Ms. Peck advised that the water run-off is occurring at the back of the property and it was noted that it was hoped installation of gutter-guards would alleviate the water run-off issues.

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

Mr. Losco stated that there is no change beyond existing circumstances, and the immediate neighbors have supported the Application. Mr. Losco expressed his displeasure with the manner in which the

circumstances have evolved to the current state, and notwithstanding the Applicant's personal challenges, the conversion of the garage to a residence was done without going through the proper channels of obtaining appropriate building permits, the Certificate of Occupancy, and inspections. He added that he found it bothersome that the Applicant came before the Board asking for forgiveness of past actions rather than obtaining prior approval. Mr. Losco also noted that without approval of the variances, not all of which are minimal in nature, the Applicant would not be able to obtain a Certificate of Occupancy or a mortgage. He stated that after weighing the facts, he would be in favor of approving the Application subject to a number of conditions:

- No exterior storage of building materials, tools, equipment or other debris.
- No additional structures of any type, including temporary structures.
- The variances granted will pertain only to the existing structure; for example, the 3' side setbacks would not apply to the construction of any other proposed structure on the site, nor would they apply if the existing structure is demolished and a building permit is sought for new construction.
- The self-imposed condition of installing gutter guards on all gutters on the house to minimize the water run-off experienced by Ms. Peck.

Mr. Losco reiterated his concern about how the Application was presented to the Board; but added that the property could become a liability to the community if the variances were denied and the Applicant would be subject to eviction.

Mr. Athey concurred with Mr. Losco's comments and stated that he had, in the past, voted against variances that were requested after-the-fact. He added that if the Application had been done pro-actively instead of reactively, he would probably have voted in favor of it. He noted that many of the parcels surrounding the lot have non-conformances and that residential use is more compatible to the neighborhood than a garage. He added that not only does the Applicant have a hardship issue, but the City would also have a hardship issue if the property is abandoned or comes up for Sheriff's Sale. He stated that he is in favor of the variances with restrictions.

Ms. Ratchford noted there is a long and circuitous history on the property and feels that the Applicant's intentions are good in terms of making things proper and the Board should evaluate (1) that the property is only residential use and (2) to make sure that all the restrictions are approved as they should be. She added she would be hesitant to approve many of the requested setbacks in other areas of the City; however, the lot is oddly shaped and there is a very odd history to it. She noted that the Applicant and the neighbors are supportive of the current situation of the parcel, and expressed the importance of the community coming together. She also stated that she supports a family having a home and the property rights for future uses. Ms. Ratchford stated she supports the Application with recommendations.

**Mr. Losco made a Motion to approve the requested variances, including the maintenance of a 45' lot width where 50' is required at the front; maintaining a 25' where 50' is required at the rear; maintaining a 4,858 square foot lot where 6,000 square foot is required; permitting 34.71% Building Bulk where 30% is required; permitting a 3' set back on both sides of the structure where 5' is required; permitting an aggregate 6' side yard setbacks where 15' is required; maintaining a rear yard setback of 4' where 25' is required; and permitting the front yard accessory structure, a 7' x 10' shed, subject to the following conditions:**

- 1. There will be no exterior storage of building material, tools, equipment or other debris.**
- 2. There will be no additional structures, including temporary structures, erected on the site.**

- 3. The variances granted pertain only to the existing structures and will not extend to any proposed future development of the site of any nature.**
- 4. That the Applicant will install gutter guards on all gutters of the existing building within three months of the grant of the variance.**

**Mr. Athey noted that the third condition referred to “structure” and the Board is actually granting a variance to two structures. Mr. Losco noted his third condition would be so amended.**

**Mr. Athey seconded the Motion. On vote, the Motion was approved unanimously.**

**There being no further business, Mr. Losco made a Motion to adjourn the meeting for 516 Harmony Street. Mr. Athey seconded the Motion. On vote, the Motion was approved unanimously.**

Kathy Weirich  
Stenographer