

**THE CITY OF NEW CASTLE
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: Marty Mellinger
PO Box 289
Yorklyn, DE 19736

OWNER: Marty Mellinger
PO Box 289
Yorklyn, DE 19736

NCC TAX PARCEL NO. 21-004.00-025
PUBLIC HEARING DATE: November 20, 2018
DATE OF DECISION: December 21, 2018

REQUESTED: Applicant requested a variance from City Code Chapter 230 and Zoning Code Chapter 230 so as to permit the subdivision of a single lot into two lots each having a width of 50 feet, where a 65 foot lot width requirement would otherwise apply, on property located at **108 Brylgon Avenue, Tax Parcel 21-004.00-025**, (the "Property"). The Property is in the R-1 zoning district.

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 exceptional practical difficulty or unnecessary hardship, 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. Mayor Gambacorta read into the record the official notice of the hearing. The Solicitor recused himself from deliberating in this decision due to a conflict of interest. His law partner represents the applicant in certain matters unrelated to this application.

William Rhodunda, Esq., represented the applicant at the hearing. The Applicant introduced a series of exhibits labeled Exhibits 1 through 3 including a survey of the subject property showing the proposed property line dividing same into two, 50 foot wide lots, a copy of the County tax map showing the width of surrounding properties, photographs of the model homes the applicant seeks to build on the 2 proposed lots, and three letters of support from neighboring property owners.

Mr. Rhodunda noted that this 100 foot wide lot was originally divided into 5 lots prior to the adoption of the zoning code. An existing structure in dilapidated condition currently sits 18.5 feet from the Brylgon Avenue right of way line that the applicant intends to demolish. The applicant seeks to divide the lot into 2 equal 50 foot wide lots and build the same style of home as depicted in his photo exhibits on each. Mr. Rhodunda stated that the issue is whether 50 foot wide lots are appropriate in this area even though the Code requires a width of 65 feet. Mr. Rhodunda referred to the tax map exhibit to depict the character of the area. Most of the lots in this area are between 30 to 60 feet in width with 50 feet widths being the norm.

Mr. Rhodunda referred to the photo exhibits of the model home the applicant seeks to build. He stated that with the 50 foot width variance, no other variances will be needed to build these homes which will be priced in the \$240,000 range.

Mr. Mellinger was sworn in as a witness by Mr. Losco. He confirmed that he has built this same model home depicted in the photo exhibits on Moore Avenue as well as two more at the end of Brylgon Ave. The homes will have 3 bedrooms each with a garage and a single land driveway. Mr. Rhodunda added that the homes will actually be 40 feet from the Brylgon Avenue pavement, with the 10 foot street right of way included. The driveways will each accommodate 2 cars plus a 3rd car that could be parked in the garage.

Mr. Rhodunda referred to the support letters received from immediate neighbors who likely are in favor of the demolition of the existing dilapidated structure and the possible increase in property values from the construction of the two proposed homes. He argued that neighbors will not be adversely affected by 50 foot wide lots since most are the same size or smaller. He pointed out that no lots in the immediate vicinity were actually 65 feet wide. He argued that 100 foot wide lot is uniquely larger than others in the area.

Mr. Rhodunda further argued that disapproval of the application would work a financial hardship on the applicant if he can only build one home on a 100 foot wide lot. Mr. Athey questioned when the applicant purchased the property and was told it was in the summer of 2018

at a foreclosure sale. Mr. Athey stated that the more normal approach would have been to condition the purchase of the property on variance approval, but Mr. Losco confirmed that at a sheriff's sale a buyer does not have the ability to submit a conditional bid to purchase.

Mr. Athey further inquired about what "special conditions" merited the grant of a variance if the applicant knowingly purchased a lot that required a variance to subdivide. Citing Delaware case law (*CCS Investors LLC v. Brown*, Del. Supr., 2009), Mr. Rhodunda argued that a self-created hardship in itself does not make a variance non-approvable, though it is a factor to consider.

Mayor Gambacorta then asked for comments from the public.

Dan Young, 203 Moore Avenue, testified that he supported the application since the current condition of the property is poor and new homes will improve the area, but he was concerned about large fruit bearing trees to the rear that draw nuisance animals to the area. The trees in question are not on the applicant's property other than one at the rear corner of 205 Moore Avenue. Mr. Mellinger would address overhanging limbs from this tree. Otherwise, Mr. Young agreed to contact Mr. Bergstrom for assistance with respect to other trees outside the applicant's control.

John Wipf, 109 Brylgon Avenue, also spoke in support of the application but noted his concern with parking. It was explained that the applicant's proposed homes both include driveways and garages for off street parking.

No other members of the public were present either to support or oppose the application.

Mr. Losco noted for the record that the property was properly posted and advertised in the newspaper.

On motion of Mr. Athey, seconded by the Mayor, the Board votes to grant the variance requested. Mr. Athey noted the proposed home would be a vast improvement over the current lot condition. He noted the applicant's good faith effort to reach out to neighbors, several of whom as supportive of the application. He believes the variance would be in harmony with the width of other lots in the neighborhood and his concern regarding self-created hardship had been allayed. The Mayor concurred in this reasoning and further noted having spoken with approximately seven families who live on Brylgon Avenue and that he heard no objection to the application.

Vote: 2-0 (Grant: Gambacorta and Athey; Not voting: Losco)

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE



Jimmy Gambacorta, Chairperson

NOTE: This decision 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.