

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

NOTICE OF DECISION

APPLICANT: Angelo J. Rispoli
516 Harmony Street
New Castle, DE 19720

NCC TAX PARCEL NO. 21-015.10-034
PUBLIC HEARING DATE: December 12, 2018
DATE OF DECISION: January 7, 2019

REQUESTED: Applicant requested dimensional variances from the City Zoning Code to permit the following at 516 Harmony Street, NCC Tax Parcel No. 21-015.10-034: (1) a lot width of 45 feet where 50 feet is required at the front of the lot; (2) a lot width of 25 feet where 50 feet is required at the rear of the lot; (3) to maintain a lot area of 4858 square feet where a 6000 square foot lot is required; (4) to permit 34.71% building bulk where 30% is permitted; (5) to permit a 3 foot set back on both sides of the structure where 5 feet on each side is required; (6) to permit an aggregate of 6 feet of side yard setbacks where 15 feet is required; (7) to maintain a rear yard setback of 4 feet where 25 feet is required.

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.

Council President Linda Ratchford chaired the meeting in lieu of Mayor Jimmy Gambacorta, as authorized by Section 12 of the City Charter. Also present as Board members were City Engineer David Athey and City Solicitor Daniel R. Losco. Mr. Jeffrey Bergstrom, New Castle Code Official, was present as well to respond to questions from the Board. Ms.

Ratchford read into the record the official notice of the hearing. That notice was timely published in accordance with the law and a copy of the notice was admitted into the record.

The subject property is an “L” shaped lot zoned Residential District R-2 and improved 1.5 story building originally conceived as a garage but currently used as a residence by the applicant.

William Rhodunda, Esq. entered his appearance for the applicant, Mr. Rispoli. Mr. Rispoli was sworn in as witnesses by Mr. Losco. Mr. Rhodunda submitted a series of exhibits including the following:

1. Lines and Grades Plan of the property dated 4/12/18;
2. 5 photographs showing front side and rear views of the property;
3. A copy of the County tax map identifying 6 neighboring properties whose owners support the application for variances along with form letters of support signed by each of the neighboring owners;
4. A flood elevation certificate for the property; and
5. A copy of the July 5, 1983 Board of Adjustment decision and exhibits thereto approving a 13.5 ft. rear yard variance and a 12.5 ft. front yard variance for a proposed home on the property that was never built.

Mr. Rhodunda referred to the property as an “odd shaped” lot and confirmed that the covered storage building and building materials and tools referenced on the survey plan have been removed from the site. He confirmed that he applicant had no plans to build a structure of the site of the removed covered storage building. The wood deck referenced on the survey remains on the property and Mr. Rhodunda made clear the variances requested include allowing the shed to remain in its present location in the front yard as an accessory use. He explained that the configuration of the lot and existing improvements allows for no other placement of the shed. He indicated that the shed will only hold yard utility equipment to maintain the property.

As to the requested variance for a 45 ft. lot width where 50 ft. is required, Mr. Rhodunda stated that the irregular sized lot is a pre-existing, non-conforming lot the applicant desired to legitimize by means of the requested variance. In discussion, Mr. Rispoli stated that he purchased the parcel with an existing garage located at the rear in 2002 and received a building permit to expand the garage in 2003. He stated that the front of the garage addition was outfitted as a residence over a long period of time. He and his family moved into the former garage as a full time residence in 2011.

Mr. Rhodunda then referenced the rear of the lot being only 25 ft. wide where 50 ft. lot width is required. He again referred to this as a pre-existing, nonconforming condition that his client is seeking to legitimize by means of a variance. Similarly, he referenced the existing lot area (4858 sq. ft.) and the existing building bulk (34.71% where only 30% is permitted) as a pre-existing, nonconforming conditions his client seeks to legitimize via the present variance application. On questioning from Mr. Athey, it was confirmed that the applicant is seeking the present variances to legitimize the current improvements after having already converted the garage structure to a residence. Mr. Rhodunda explained that the side and rear yard setback variances (3 ft. where 5 ft. is required plus a side yard aggregate of 6 ft. where 15 ft. is required) are sought based on the original pre-existing garage structure prior to its expansion and conversion to a residence. He noted that the parking lot to St. Peter's Church is directly behind the subject property.

Mr. Rhodunda further explained that the property is no longer in Flood Zone AE so that the variance request relating to construction in the flood zone is withdrawn.

Mr. Rhodunda stated that no additional construction is proposed for the property. In response, Mr. Losco asked why variances are being sought for what amount to pre-existing, nonconforming conditions. Mr. Rhodunda responded that the Building Official could not issue a certificate of occupancy for the property as a residence. Mr. Bergstrom explained that the addition of a bath and sink to the original garage was permitted by Code, but the full conversion of the expanded garage to a residence was illegal and a building permit would not have been granted due to the various setback shortfalls, which would require Board of Adjustment approval. Without a certificate of occupancy as a residence, the property structure may not be utilized for that purpose. The 1983 variance did relate to the construction of different residential structure to be located toward the front of the property, but the prior owner never followed through with construction.

On the issue of lot area, Mr. Athey noted that other properties in the vicinity were less than 6,000 sq. ft. and Mr. Bergstrom confirmed that fact stating that they are nonconforming lots that also have similar set back issues to the subject property.

Addressing the legal standard for dimensional variances, Mr. Rhodunda argued that the use of the property as a residence rather than an oversized garage is more in conformity with the surrounding area. He noted exceptional practical difficulty created by the awkward shape of the lot and the fact that the current building does not permit any further construction in the rear area. He further referenced financial difficulty to the applicant if he can no longer use the improved

structure as a residence. The implication is that the applicant or a subsequent purchaser cannot secure a mortgage on the property without a certificate of occupancy as a residence. The property has in fact been used as a residence since 2011 and so is now firmly part of the fabric of the neighborhood. He argued that the applicant has cleaned up the site removing the covered storage building and outdoor storage of building materials making it more acceptable to the neighbors.

Mr. Losco expressed his concern that the applicant's problems are self-created by converting the permitted garage into a residence without a proper building permit. In response, Mr. Rhodunda stated that at least one Delaware Supreme Court decision has found that self-created hardship is one factor for the Board to consider but is not in and of itself a prohibition to the grant of a variance. He argued that while the use of the expanded garage changed, the actual structure itself did not change. He said the applicant's change of use to a residence was promptly by changing personal circumstances necessitating the use of the structure as a residence. He added that a residential use of the property rather than its prior use as an industrial workshop is beneficial to the neighborhood and supported by the immediate neighbors. Mr. Rhodunda also stated that the structure and wood shed are well screened from neighbors by 20 ft. high arborvitaes as shown on his photo exhibits.

The Board then invited comments from the public. Connie L. Peck, 518 Harmony Street, stated that she is the immediate neighbor to the applicant. Her only concern with the property was water run-off from the roof and yard that spills onto her property. She did note that she wrote a letter of support for the application. Mr. Rispoli testified that while storm water is directed to Harmony Street, clogged gutters will cause an overflow. He stated he is willing to install gutter-guards to all gutters on the house to alleviate water flow on to Ms. Peck's property.

The Board votes to grant all of the requested dimensional variances subject to the following conditions: (1) that there be no exterior storage of building materials, tools, equipment or other debris; (2) that there be no additional structures, including temporary structures, erected on the site; (3) that the variances granted pertain only to the existing structures and will not extend to any proposed future development of the site of any nature; and (4) that the applicant install gutter guards on all gutters of the existing structure within three months of the grant of the variance. In granting the requested variances, both Mr. Losco and Mr. Athey expressed their general displeasure with the self-created nature of the hardship claimed by the applicant. Despite his personal challenges, he converted an oversized garage to a residence without securing property building permits, inspections and a certificate of occupancy. The applicant comes to the Board asking for forgiveness rather than permission. Despite this fact, the Board recognizes that

no additional structures are proposed, the neighbors support the application and the lot is irregular in shape causing exceptional practical difficulty. Mr. Athey added that had the applicant come before the Board requesting relief prior to converting the structure to a residence, he likely would have voted in favor of it. The residential use is clearly more consistent and in harmony with the surrounding area and other lots in the area have similar set back and lot width non-conformities. Thus, granting the variances to permit residential use is reasonably consistent with the character of the area and grants no special privileges to the applicant. In fact, denial of the variances would result in depriving the applicant of a residential use enjoyed by other property owners in the area. The inability to secure a Certificate of Occupancy, and thus the inability to mortgage the property, may also create a liability for the community if the applicant were forced to vacate the property as a residence and the property fell into disrepair or abandonment due to no legitimate permitted use. The Board finds that 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 and that 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: Ratchford, Athey and Losco)

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE



Linda Ratchford, Acting 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