

New Castle City Board of Adjustment Meeting Minutes
April 30, 2019 – 6:30 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

Members Absent: **Mayor Michael Quaranta**

In Mayor Quaranta's absence, Ms. Ratchford acted as Chairperson and convened the meeting at 6:30 pm.

108 Brylgon Avenue, New Castle, DE 19720 – Tax Parcel 21-004.00-025

An application has been filed by Marty Mellinger, (Owner and Applicant), P.O. Box 289, Yorklyn, DE 19736, for a property located in the R-1 Zoning District at 108 Brylgon Avenue, New Castle, DE 19720, Tax Parcel No. 21-004.00-025, seeking a variance from the 20' aggregate side yard referenced in Attachment 1 to Chapter 230 of the City Code to allow an aggregate width of 17.5 feet.

Ms. Ratchford stated that in Mayor Quaranta's absence, as City Council President she is acting as Chairperson, as allowed by the City Charter. She introduced David Athey, City Engineer, Dan Losco, Esquire, City Solicitor, and City Building Officer, Jeff Bergstrom. She entered into the Record the Affidavit of Publication for publication of the Notice and the fact that signage was placed notifying neighbors of the proposed change.

Mr. Losco stated that his law partner represents Mr. Mellinger and recused himself from any decision or questioning on the Application. He will provide legal advice and take notes to prepare the final Decision.

Ms. Ratchford invited Mr. Marty Mellinger, Applicant, and William J. Rhodunda, Jr., Esquire, attorney for the Applicant, to come forward. Mr. Losco swore in Mr. Mellinger.

Mr. Rhodunda submitted exhibits to the Board Members. He explained that the Applicant had previously appeared before the Board for the purpose of seeking a variance from the 65 foot lot width requirement to a width of 50 feet for two lots, which was approved by the Board of Adjustment. The Applicant's original exhibit package did not include the footprint of the house on the lots. Mr. Rhodunda noted that the City Code aggregate side setback is 20'; however, the proposed house encroaches on that setback and the Applicant is seeking an 18' aggregate side yard setback. Mr. Athey noted that the Exhibit states a 17.5' aggregate side yard setback, and Mr. Rhodunda explained the 17.5' request is to allow for latitude in the event the house is not square. He added the Applicant is confident an 18' aggregate side yard setback will be attained.

The two lots in question are 108 and 110 Brylgon Avenue. The Applicant is proposing an 8.5' side setback on one side and 9.5' side setback on the other side. Mr. Mellinger spoke with the owner of 106 Brylgon Avenue, who is not opposed to the requested variance. The Applicant proposes to allow a 10' side setback on the side adjoining 106 Brylgon Avenue and an 8' side setback on the side adjoining 110 Brylgon Avenue.

Mr. Rhodunda noted that Mr. Mellinger complied with agreements made at the previous Board of Adjustment meeting with regard to trees and clean-up.

As a point of clarification for the Record, Mr. Losco stated the Application is for an aggregate 17.5' side yard setback; however, Mr. Rhodunda stated the Applicant proposes an 8.5' side yard setback on one side and a 9.5' side yard setback on the other, which is an aggregate total of 18'. Mr. Rhodunda explained the plan says 18'; however the request is for 17.5'. Mr. Losco clarified that the Applicant wants the ability to have a 7.5' side yard setback between the two proposed houses, and Mr. Rhodunda concurred; adding that they would not go closer than 10' to 106 Brylgon Avenue. He added that technically the Applicant is asking for an aggregate 17.5' side yard setback. Mr. Athey clarified that the exhibit shows what the side yard setbacks should be based on the width of the house, but the actual variance they are asking for is 17.5' to allow for latitude in the building footprint.

Mr. Rhodunda noted that at the previous Board meeting, the Applicant submitted pictures of the house he intended to build, which he felt would increase property values in the neighborhood; and he does not wish to decrease the size of the proposed house, thereby creating potential issues with neighbors who had approved the original design. Mr. Rhodunda added that Mr. Mellinger built the same model on Lot 144. Mr. Athey clarified that Mr. Mellinger intended to sell the two proposed houses. The side yard setback on the house on Lot 144 is 8' on one side and a variance was approved to be less on the other side. Mr. Athey noted that with regard to 112 Brylgon Avenue, the Minutes of the March Board meeting state "the combined side-yard setbacks must be 20'." Mr. Mellinger advised that he spoke with the owner of Lot 38, and he did not have any objection to the proposed variance. Ms. Ratchford clarified that he is comfortable with the 10' side yard setback.

Mr. Losco made a point of clarity for the Record that the Application refers to one tax parcel; however, the Board of Adjustment approved a subdivision to two 50' wide lots. Mr. Mellinger explained that the subdivision had not yet been recorded and a new tax parcel number has not been assigned yet.

Mr. Carmine Casper of Howard L. Robertson, Inc. came forward and was sworn in by Mr. Losco. Mr. Casper noted that the side-yard setback abutting 106 Brylgon Avenue could only be 9.5' in order to maintain an 8' side-yard setback on the opposite side. After discussion, it was agreed that any Motion to approve would be for a variance from 20' to 17.5', conditioned on a minimum distance from one of the properties. Ms. Ratchford clarified that the variance would be for 17.5', and the builder would ensure it is no less than 17.5' and he will work with his neighbor on the exact side-yard setback. Mr. Athey added that there would have to be at least 8' to the property line between 108 and 110 Brylgon Avenue.

Mr. Rhodunda reiterated that Mr. Mellinger's intent is to try and improve the community; there is no negative impact on any properties in the neighborhood; and that what the Applicant is proposing is consistent with existing properties. Mr. Mellinger has built two other exact houses in the neighborhood, and one of the proposed houses is already sold.

Mr. Athey made a Motion to move into the Business Meeting. The Motion was seconded and unanimously approved.

Mr. Athey stated that as a matter of policy, he is reluctant to give approval to after-the-fact variances which might create a precedent; however, Mr. Mellinger is not switching house plans and he feels if the issue had been brought up at the previous Board meeting, he feels quite certain he would have supported the Application. He added that the precedent issue notwithstanding, he is willing to support the variance to 17.5' with the condition that the proposed dwelling be 8.0' from the common lot line between 108 and 110, with an allowance of 1-2 inches of field error, with the opposite side being the difference in measurement to attain the agreed-upon 17.5' aggregate side yard setback. Ms. Ratchford clarified that

Mr. Athey's reasoning was to maintain a minimum 8.0' side yard setback between the two lot lines and to maximize the distance with the neighbor's lot line while still staying within the 17.5 aggregate setback.

Mr. Losco requested that Mr. Athey discuss his rationale on other conditions for variances, including that it is minimal in nature, and its relationship and effect on neighboring properties. Mr. Athey further explained his rationale, stating the requested variance of 2' is minimal, that he believes Mr. Mellinger is seeking to be a good neighbor; that he complied with the Board's previous condition to clean up the yard; that some neighbors were looking forward to the development on the two lots, which has the potential to increase their property values; and that it seems to be in harmony with the neighbors in both a property size and value sense. Ms. Ratchford concurred with Mr. Athey's position and stated her appreciation for the fact that Mr. Mellinger is working with the neighbors, that he has been consistent in meeting his obligations presented to the Board previously; and that the houses will be owner-occupied.

Mr. Athey made a Motion to grant the variance requested by the Applicant from the 20' aggregate side-yard setback to 17.5' on the condition that the proposed dwelling be sited 8.0' from the common lot line between lot 108 and 110 Brylgon Avenue. Ms. Ratchford seconded the Motion.

Mr. Losco noted a point of clarification that there is a proposed subdivision that is approved but not filed and asked if the intent is that the 17.5' aggregate side setback apply to both lots. Mr. Athey stated an amendment to the Motion that the variance would apply to both lots, but that the condition would apply only to the one lot.

The amended Motion is to grant the variance requested by the Applicant from the 20' aggregate side-yard to 17.5' for both lots, with the condition that the proposed dwelling be sited 8.0' from the common lot line between 108 and 110 Brylgon Avenue. Ms. Ratchford seconded the Motion as amended. On vote, the Motion was unanimously approved.

There being no further business, Mr. Athey made a Motion to adjourn the meeting at 6:59 pm. Ms. Ratchford seconded the Motion. On vote, the Motion was unanimously approved.

Kathy Weirich
Stenographer