

New Castle City Board of Adjustment Meeting Minutes
January 7, 2020 – 6:30 p.m.
City of New Castle Town Hall

Members Present: **Mayor Michael Quaranta**
 Daniel Losco, Esq., City Solicitor
 David J. Athey, City Engineer

Mayor Quaranta convened the meeting at 6:30 pm. Roll call followed and a quorum to conduct business was declared.

108 West Seventh Street – Frank C. and Leigh Anne Moriarty – Tax Parcel No. 21-014.00-364

An application has been filed by Frank C. and Leigh Anne Moriarty (Owners and Applicants), for a property located at 108 West Seventh Street, New Castle, DE 19720 Tax Parcel No. 21-014.00-364, seeking variances from Chapter 230 of the City Code as follows: a variance from the 20 foot front yard setback requirement provided in §230-13 Supplementary District Regulations and §230-33A, Accessory Buildings to allow the construction of a detached two-bay garage 8 feet into the required 20 foot front yard setback at the rear of the home, leaving a 12 foot setback from the Clayton Street property line.

Mayor Quaranta stated that the appropriate notices were made public and posted.

Mayor Quaranta invited the Applicants and their attorney, Brian J. McLaughlin, Esquire, to come forward. Mr. Losco swore in Mr. and Mrs. Moriarty.

Mr. McLaughlin introduced himself and stated that along with the Application the Applicants have submitted their sworn Declaration including photographs and drawings. Mr. McLaughlin asked that the Declaration and accompanying Exhibits be entered into the Record. There being no objections, the Declaration and Exhibits were so entered into the Record.

Mr. McLaughlin explained that he would submit the testimony by Attorney proffer, and Mr. Losco stated that the Board would look to the Applicants to verify the information testified to by Mr. McLaughlin.

Mr. McLaughlin explained that the Applicants are the owners of property located at 108 West 7th and Clayton Streets. Their home fronts West 7th Street and they wish to construct a detached two-bay garage adjacent to the right side of the home fronting Clayton Street, which is the side of their property but is considered a front of the property. The Applicants are seeking a variance from the Code requirements relating to the 20' front yard setback; specifically, they are seeking an area variance 8' into the 20' set back on the right side leaving a 12' setback to the property line. Mr. McLaughlin stated the garage will sit 32' from the edge of Clayton Street. He added that the placement of the garage will place it even with the side of the home, which already extends 8' into the front yard setback.

Mr. McLaughlin described the home as a detached cape-code style residence located on a 14,418 square foot lot with an approved full privacy fence along the Clayton Street property line. The residence was built in 1955 and the Applicants believe it was built in accordance with the Zoning Codes in place at that time and prior to the 1968 Amendments. The Applicants understand that as a consequence of the Amendment to the Zoning Code their residence encroaches 8' into the Clayton Street front yard setback. The front of the residence conforms to the Amended Zoning Code setback requirements. The lot is rectangular in shape with a length of 187.57' along Clayton Street and a width of 79.15' along West 7th Street, and there is insufficient space to locate the front of the garage on West 7th Street. Mr. McLaughlin explained that the placement of the proposed garage at the 20' front yard setback would "cut off" the front portion of the back yard from the remainder of the back yard, creating an unnecessary hardship or

exceptional practical difficulty which would deprive the Applicants of the full use, view and enjoyment of their property.

Mr. McLaughlin further explained that Clayton Street is a one-block street that ends at a T-intersection at the corner of West 7th Street at one end and dead-ends at a rail road right-of-way at the other end. There is no other lot or structure existing on the Applicants' side of Clayton Street, and only two structures existing on the opposite sides. Both structures are residential buildings. The structure closest to the Applicants' home is a detached single-family residence with a garage fronting Clayton Street. The other property appears to be a semi-detached duplex which encroaches into the 20' front yard setback along Clayton Street. Clayton Street is a one block dead-end street approximately 60' wide with no through traffic and very little vehicular or pedestrian traffic along Clayton Street. The front of the proposed garage will not extend any further into the front yard setback along Clayton Street than the Applicants' existing residence. The requested variance is minimal and even with the approval of the requested area variance, 12' of open space will continue to exist between the proposed garage and the property line and approximately 32' from the garage to the edge of Clayton Street.

The proposed area variance is not contrary to the public interest, and a number of homes and other accessory structures located within the city of New Castle built before the adoption of the Amended Zoning Code extend beyond the setback requirements; including the duplex on the opposite side of Clayton and the garages located on West 7th Street, Deemer Place and Tremont Street. The proposed area variance allowing for the construction of a garage 8' into the 20' setback is not injurious to the neighborhood or otherwise detrimental to the public welfare, and is the minimal variance that will allow reasonable use of the property. It was reiterated that a substantial amount of open space will remain from the front of the proposed garage to the street (approximately 32') and approximately 20' from the property line to the edge of Clayton Street. This will leave ample room for the passage of air and light between the front of the garage and the street and any other properties within the vicinity.

Mr. Losco asked for clarification of Mr. McLaughlin's statement that there would be 32' of open space from the outer edge of the garage to the edge of Clayton Street, stating that Exhibit B indicates the 32' goes to the centerline of Clayton Street. Mr. McLaughlin stated that the measurements on the plot plan were incorrect. Mr. Losco restated his understanding that the measurements would be 20' from the front of the proposed garage to the property line, and 32' from the front of the proposed garage to the centerline of Clayton Street. Mr. Moriarty stated that he added the dimensions in red on Exhibit B. Mr. Athey disputed the measurements, and after discussion it was clarified that the front of the proposed garage is 12' to the property line and an additional 20' to the pavement edge of Clayton Street. Mr. McLaughlin added that he had a Lines and Grades Plan that shows in better detail the location of the proposed garage in relation to Clayton Street.

Mr. McLaughlin added that the literal enforcement of the provisions of the Code will deprive the Applicants of rights commonly enjoyed by other properties in the District. The special conditions and legal circumstances impacting the property do not result from the Applicants' action; but rather result from the adoption of the amended Zoning Code and the imposition of setback standards on pre-existing structures. Granting the area variance request will not convey any special privileges denied by the Code to other lands and structures in this District as many other buildings in this District encroach into the front yard setback.

Mr. McLaughlin ended his testimony and invited the Board to ask questions.

Mr. Losco noted that Mr. McLaughlin's presentation was largely a recitation of the Applicants' Declaration and asked Mr. and Mrs. Moriarty if everything Mr. McLaughlin said was true and correct. The Applicants stated that Mr. McLaughlin's presentation was true and correct.

Mr. Losco asked how tall the garage will be, and Mr. Moriarty stated that the house is a 2-story home and the garage will be a one-story two-bay garage with a peaked roof. Mr. Losco asked if there was an expanded area to the left or right of the two-bay garage area, and whether there was a second floor to the garage. Mr. Moriarty stated there is no extended areas to the left or right, there is only a crawl space created by the peaked roofline and no second story. Mr. Losco further asked if the Applicants had plans to have the garage heated or plumbed, and Mr. Moriarty stated there were no such plans. Mr. Moriarty added that they wish to change the siding on their residence to match the siding to be placed on the garage. Mr. Losco asked if the garage would have any brick to match the house, and Mr. Moriarty stated the garage would have siding.

Mr. Athey asked what color the Applicants intended to use for the siding, and they responded that they would use a grey and perhaps a brick façade trim. Mr. Athey reiterated that the garage would be a one-story structure with a peaked roof, and confirmed that the storage would be within the peak of the roofline. Mr. Athey asked Mr. McLaughlin for clarification of Item #11 of the Applicants' Declaration regarding the statement that the "duplex encroaches into the Clayton Street 20' front yard setback", and asked if the area from the duplex to the street had been measured. Mr. McLaughlin advised that the duplex encroachment had not been measured and referenced Exhibit G for a visual of the area. Mr. Athey confirmed that the garage would be farther from Clayton Street than the duplex, and the Applicants concurred.

Mr. Losco asked if the Applicants had spoken to neighbors to determine if they had any objection to the proposed garage, and Mr. Moriarty advised they had spoken to everyone in the immediate area and no one had any objection to the garage.

Mayor Quaranta asked Mr. Athey if the lot was large enough to subdivide the property if the Applicants so desired. The lot area for a one-family dwelling is 6,000 square feet so the lot could be subdivided; however, Mr. Athey explained that there are other factors to consider, i.e., front yard setback, lot width requirements, etc., and regardless of the square footage meeting Code, additional variances might be required to subdivide. Mayor Quaranta asked the Applicants if subdividing the property to create a different opportunity for them was something they might be interested in pursuing. The Applicants responded that subdividing had been suggested to them; however, they enjoy the yard and do not wish to create another building lot to the rear of their house.

There being no additional questions from the Board and no one in attendance to add additional comments, the Mayor asked for a Motion to close the hearing and move into the Business Session.

A Motion to close the public hearing and move into the business session was made, seconded, and unanimously approved.

Mr. Losco stated that he did not see any issues, noting that it is a corner, oversized lot adjacent to a dead-end street with minimal traffic and minimal other properties in the area that might be impacted by the construction of the garage. He added that unique circumstances are created that are not experienced by most other residents of New Castle. Because it is a corner lot, according to the Code it has two fronts. If this were an interior lot, the setback for the garage would only be an aggregate of 15'. He added that the

shape of the lot is also unique as it is more than twice the length of its width. Mr. Losco noted that Mr. McLaughlin had pointed out that if the garage is centered more toward the middle of the lot the front yard would be severed from the back yard resulting in an unsightly situation that would limit the utility of the rear yard, thereby depriving the Applicants of the use of a rear yard other residents enjoy. He added that there were no objections from the public, the Record is devoid of any written objections from property owners, and the garage as described will fit in with the character of the neighborhood. The proposed garage is a one-story peaked building that is not heated or plumbed so there is no risk of it being turned into living quarters. Mr. Losco stated his opinion that the Applicants have met the standard of the Code and he would vote to support the Application on appropriate Motion.

Mr. Athey stated that he agreed with everything Mr. Losco stated. He noted that the Application was well prepared and provided all pertinent documentation and details for the Board to review. He asked if the Motion should include the condition that the garage be a one-story two-bay structure with a peaked roof not to exceed the standard height of a one-story building. Mr. Losco noted that what the Board is deciding is whether the structure can encroach into the 20' front yard setback by 8'; however, he felt it was reasonable to include a condition as to the height of the structure. Mr. Athey suggested that the Motion include the condition that the garage be a one-story structure with a peaked roof. Mr. Losco asked what the typical height of a one-story building is, and Mr. Athey explained it would depend on the slope of the roof. Mr. Athey suggested that an actual height not be stated in the Motion, and felt the Motion could be crafted with language that would negate the possibility of a two-story structure.

Mayor Quaranta stated that he concurred with the comments made by Messrs. Losco and Athey, and asked Mr. Losco if his view is that the precedent is a Kwik Check case and that the case made by the Applicants met the tests outlined. Mr. Losco stated that he felt the tests had been met for a Kwik Check case. The test is: exceptional practical difficulty and unique circumstances of the property involved (*corner lot with two frontages; the extended length vs the width; the dead end on Clayton Street, the fact that if it were an interior lot the side setback would be 5'; the unique circumstance of cutting off the rear yard*), all of which create that exceptional practical difficulty which is the paramount consideration. Mr. Losco added that Mr. McLaughlin argued effectively that the Applicants have done nothing to self-create this hardship and this is an artifact of the adoption of a Code that imposed the two-front setback requirement and not the actions of the Applicants. The Application is in harmony with the surrounding neighborhood, there is no harm to any member of the public, and there are no objections from the surrounding neighbors. Mr. Losco stated that Kwik Check has been adequately addressed by the Applicants by their submission.

Mayor Quaranta asked for a Motion.

A Motion was made to grant the Application as submitted to allow the construction of a detached one-story two-bay garage to be no closer than 12' from the Clayton Street right-of-way line, i.e., encroaching 8' into the setback, conditioned upon the structure being no greater than 24' x 28', which are the dimensions submitted, and being a structure of a standard one-story with a peaked roof in nature. The Motion was seconded. On vote:

Mr. Athey – yes, in consideration of the reasons cited previously.

Mr. Losco – yes, for all the reasons provided earlier.

Mayor Quaranta – yes, having heard the testimony, looking at the Application, hearing no objection from neighbors, and understanding the challenges and hardships that address the Kwik Check case.

The Motion was carried unanimously.

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There being no further business, Mayor Quaranta made a Motion to adjourn the meeting at 7:08 pm. The Motion was seconded by Mr. Athey. On vote, the Motion was unanimously approved.

Kathy Weirich
Stenographer