

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

NOTICE OF DECISION

APPLICANT: Cynthia L. Brooks & Norman H. Brooks
118 E. 2nd Street
New Castle, DE 19720

NCC TAX PARCEL NO. 21-015.20-053

PUBLIC HEARING DATE: May 22, 2019

DATE OF DECISION: May 29, 2019

REQUESTED: Applicants requested dimensional variances from the City Zoning Code to permit the following at 118 E. 2nd Street, NCC Tax Parcel No. 21-015.20-053, zoned HR: (1) construction of a 14 ft. by 13 ft. rear addition 3 feet from the rear property line (25 ft. rear setback required per §230-13); and (2) construction of a 9 ft. by 16 ft. tool shed accessory building 0 ft. from the right side property line and 3 ft. from the left side property line (5 ft. side yard setbacks required by §230-33).

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.

Mayor Michael J. Quaranta chaired the meeting. 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. Mayor Quaranta read into the record the official notice of the hearing. Mr. Losco confirmed that the property was properly posted with the hearing notice, and that notice of the hearing was timely published in accordance with the law. A photo of the posting and an affidavit of publication were admitted into the record.

Norman H. Brooks, Esq. represented his sister, Cynthia L. Brooks, at the hearing. Ms.

Brooks was sworn in as a witness by Mr. Losco. Mr. Brooks explained that the applicant wishes to construct a 14 ft. by 13 ft. addition on the rear of her property to house a 1st floor bathroom, laundry area and some additional living space. The property currently does not have a first floor bathroom. In addition, the applicant desires to build a 9 ft. by 16 ft. tool shed at the rear of her property as currently, she has tools laying outside in her yard exposed to the elements and unsightly. He referred to a portion of a survey plan (Exhibit 1) illustrating the unusual dimensions of the lot in question. The property is 32.42 ft. wide as it fronts E. 2nds Street, but only 12 ft. wide at the rear. The left side lot line tapers to a point approximately 73.35 ft. in a northwesterly direction where it approaches the ruins of a small structure on the adjacent property, and then turns nearly 90 degrees creating a rear lot line only 16.1 ft. from the existing dwelling. The property line then turns again 90 degrees to the northwest and proceeds approximately 73.78 ft. to the rear of the property. This portion of the rear yard is only 12 ft. wide at this point. Another copy of the survey plan (Exhibit 2) illustrates a “by right” rear yard building envelope in compliance with side and rear yard setback requirements that would be only 2 ft. wide. Mr. Brooks explained that the unusual shape of this lot resulted from a 1968 subdivision of the neighboring property at 114 E. 2nd Street. The “stepped” side yard line was created to navigate around a small garage-like structure existing on 114 E. 2nd Street that is now roofless and appears in a dilapidated state. Photograph submitted by the applicant (Exhibits 8 & 9) show this roofless structure with a red line painted on the ground to show how the applicant’s property line extends within 3 ft. of the structure and then steps around it. Mr. Brooks advised that the proposed addition on 118 E. 2nd Street would also be 3 ft. the rear property line. There would be a total of 6 ft. between the new addition and the roofless structure on 114 E. 2nd Street.

Ms. Brooks testified that the existing dwelling on 18 E. 2nd Street includes 1460 sq. ft. of living space on 2 floors. The proposed addition would add 182 sq. ft. of space. Mr. Losco noted that this represents approximately a modest 12.5% increase in floor area.

Mr. Brooks then turned to the request to construct a 9 ft. by 16 ft. tool shed along the rear setback line and the right side property line. Since the parcel is only 12 ft. wide at this point, the shed would lie 2 ft. from the left side property line. The proposed shed would be adjacent to a shed structure on 120 E. 2nd Street that also attaches to a wall that sits on the common property line. That adjacent shed is approximately 11 ft. deep so Ms. Brooks’ proposed shed would not perfectly match the depth of the shed on 120 E. 2nd Street but extend out toward the front of her parcel by approximately 5 additional ft. It was noted that the proposed shed would not be readily visible from East 2nd Street as only 3 ft. separate the existing residence from the right side lot line.

Mr. Brooks submitted two letters both dated March 23, 2019 signed by the adjacent

property owners at 114 E. 2nd Street and 120 E. 2nd Street consenting to the requested variances. Ms. Brooks advised that she was unsuccessful in efforts to contact the occupants of the property to the rear (115 E. 3rd Street) which includes a 3 rental units. Mr. Brooks also submitted minutes from the October 11, 2018 Historic Area Commission meeting where HAC approved the rear addition and shed subject to certain conditions. (Exhibit 10).

Other exhibits presented by Mr. Brooks included a series of photographs including Exhibit 3 (copy of County tax map for the subject property); Exhibits 4 & 6 (prior deeds for the property both before and after the 1968 subdivision); Exhibit 7 (front and side view of the subject parcel), Exhibit 9 (illustrating the shed on 120 E. 2nd Street); and Exhibit 11 (the applicant's current deed to the subject property).

No members of the public appeared to speak in favor or in opposition to this application.

The Board votes to grant the requested dimensional variances to permit the proposed addition 3 ft. from the rear property line, and to permit the proposed tool shed 0 ft. from the right side property line and 2 ft. from the left side property line. The Board finds that the irregular shape of the lot creates exceptional practical difficulty in making ordinary improvements to the property commonly enjoyed by other property owners, including a first floor bathroom and laundry, and the convenience of a tool shed. The proposed addition represents a modest 12.5% increase in floor area and will sit no closer to the property rear line as does the existing structure located on 120 E. 2nd Street. The proposed shed sited directly on the side lot line is similar in location to the existing shed on 120 E. 2nd Street and is not readily visible from the street. Thus the variances are minimal in nature and in reasonable harmony with surrounding properties. It will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the Zoning Code. The unusual lot shape and minimal rear yard building envelope exist due to no fault of the applicant and the grant of the variances requested do not convey any special privileges not enjoyed by other property owners in the area.

Vote: 3–0 (Grant: Quaranta, Athey and Losco)

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE



Michael J. Quaranta, 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 Adjustment.