

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

NOTICE OF DECISION

APPLICANTS: Frank C. and Leigh Anne Moriarty
108 West Seventh Street
New Castle, DE 19720

OWNERS: Frank C. and Leigh Anne Moriarty
108 West Seventh Street
New Castle, DE 19720

NCC TAX PARCEL NO. 21-014.00-364
PUBLIC HEARING DATE: January 7, 2020
DATE OF DECISION: January 16, 2020

REQUESTED: Applicants requested a variance from the 20 foot front yard setback requirement referenced in Attachment 1 to Zoning Code Chapter 230 so as to permit construction of a garage structure 12 feet from the Clayton Street right of way line for property located at **108 West Seventh Street, Tax Parcel 21-014.00-364**, (the “Property”). The Property is in the R-2 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 Michael Quaranta chaired the meeting. Also present at Board members were City Engineer David Athey and City Solicitor Daniel R. Losco. Mayor Quaranta read into the record the official notice of the hearing and noted for the record that the property was properly posted and advertised in the newspaper. Applicants Frank and Leigh Anne Moriarty and their counsel were called forward and the Solicitor swore them in as witnesses.

Brian McLaughlin, Esq., represented the applicant at the hearing. He introduced a declaratory statement and a series of exhibits and photographs labeled Exhibits A through U

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including a survey plan of the property in question, a revised survey showing the proposed location for the garage and 19 photographs of the applicants' property and the surrounding environs.

Mr. McLaughlin explained that the property is a corner lot at the intersection of W. Seventh Street and Clayton Street. As a result, the Zoning Code considers the property to have 2 front yards, one facing W. Seventh Street and another facing Clayton Street. The Zoning Code requires a 20 foot set back for both front yards. The applicants desire to build a two bay garage 8 feet into the 20 foot front setback facing Clayton Street. The proposed garage would be a one story structure with a peaked roof 28 feet wide by 24 feet deep. It would be constructed so that the front of the garage would be in line with the side of the house facing Clayton Street, 12 feet from the property line and approximately 20 feet from the Clayton Street pavement. Mr. McLaughlin stated that the existing home has no garage and is located on an over-sized, rectangular lot approximately 79 ft. wide and 190 ft. long. The long and narrow configuration of the lot creates a hardship in locating a detached garage 20 feet from the Clayton Street right of way line. Doing so would effectively cut the lot in half and seriously impair the use and enjoyment of the rear yard. Mr. McLaughlin noted that Clayton St. dead-ends into railroad tracks that border the rear of the property. This means that there is minimal traffic on Clayton St. at this location and no other dwellings exist adjacent to the applicants' property. The result is that there are no safety issues with the proposed garage and the grant of the variance would not be injurious to neighboring properties or the general public. Mr. McLaughlin argued that the need for the variance is due to no improper actions on the part of the applicant and noted that the applicants' dwelling was constructed prior to the adoption of the Zoning Code. Mr. McLaughlin concluded by arguing that a literal enforcement of the Zoning Code's set back requirements in this case would deprive the applicants of rights commonly enjoyed by those other owners in the area who have garages, including their neighbor at 106 W. Seventh Street immediately across the street from where the proposed garage would be sited. Upon questioning from Mr. Losco, the Moriartys confirmed the factual accuracy of all statements made by their counsel.

Discussion ensued with respect to the height of the proposed garage and whether it would be heated, plumbed or would have usable 2nd story space. Mr. Moriarty confirmed that the garage would not be heated or plumbed, and there would only be a crawl space area under the peaked roof for storage purposes. Upon questioning from Mr. Athey, Mr. Moriarty indicated that the garage would have grey vinyl siding that matches the siding of the existing dwelling. Mr. Losco asked if the applicants had contacted their neighbors concerning this application. Mr. Moriarty indicated that he had done so and that no neighbor registered any objections.

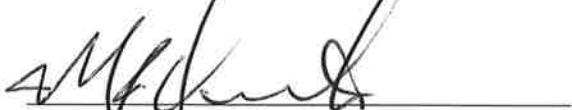
There were no comments from the public on this application.

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On motion of Mr. Athey, seconded by Mr. Losco, the Board votes to grant the variance permitting the 2 bay garage to be constructed no closer than 12 feet from the property line adjacent to Clayton St., conditioned upon the structure being a standard one-story in height (with a peaked roof) and no greater than 24 feet by 28 feet in size. All Board members concurred that this over-sized, corner lot adjacent to a dead-end on Clayton Street presented unique circumstances resulting in exceptional practical difficulty for the applicants to construct a natural improvement to their property (a garage) commonly enjoyed by other City residents with lots of similar size. If this were an interior lot, the side yard set-back would only be 5 feet, thus illustrating that a 12 foot set-back represents a relatively minimal variance in this specific case. The difficulties presented are not of the applicant's own making and the grant of the variance will not covey any special privileges to them. Minimal traffic exists on this portion of Clayton Street and the neighbor immediately across Clayton Street from the subject property has its own two car garage indicating that the variance is in harmony with the character of the neighborhood and will not negatively affect third parties.

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

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE



Michael Quaranta, 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.