

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

NOTICE OF DECISION

APPLICANT: Marty Mellinger
PO Box 289
Yorklyn, DE 19736

OWNER: Marty Mellinger
PO Box 289
Yorklyn, DE 19736

NCC TAX PARCEL NO. 21-004.00-025
PUBLIC HEARING DATE: April 30, 2019
DATE OF DECISION: May 20, 2019

REQUESTED: Applicant requested variances from the 20 foot aggregate side yard setback requirement referenced in Attachment 1 to Zoning Code Chapter 230 so as to permit an aggregate side yard setback of 17.5 feet for two recently subdivided lots on property located at **108 Brylgon Avenue, Tax Parcel 21-004.00-025**, (the "Property")¹. The Property is in the R-1 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.

City Council President Linda Ratchford chaired the meeting in the absence of Mayor Michael Quaranta. Also present at Board members were City Engineer David Athey and City

¹ At the time of this hearing, the subdivision of 108 Brylgon Avenue into two lots, to be known as 108 and 110 Brylgon Avenue, had been approved by the City, but the plan had not yet been recorded and separate tax parcel numbers and addresses had not yet been assigned.

Solicitor Daniel R. Losco. Ms. Ratchford read into the record the official notice of the hearing. Ms. Ratchford noted for the record that the property was properly posted and advertised in the newspaper. The Solicitor recused himself from deliberating in this decision due to a conflict of interest. His law partner represents the applicant in certain matters unrelated to this application.

William Rhodunda, Esq., represented the applicant at the hearing. Mr. Mellinger was sworn in to testify by Mr. Losco. The applicant introduced a series of exhibits labeled Exhibits 1 through 3 including: (1) a copy of the Board's Decision of December 21, 2018 granting a lot width variances on the subject property permitting it to be subdivided into two 50 foot wide lots where the Code otherwise would require a 60 foot width; (2) a photograph of the type of home the applicant wishes to build on each of the two lots created from subject property; and (3) three letters of support all dated in November, 2018 from neighboring property owners consenting to the prior lot width variance application. The applicant further submitted a "Board of Adjustment Plan" dated March 29, 2019 illustrating two proposed dwellings on the two lots created from the subject property providing for an 8.5 foot set back on the left side of each lot and a 9.5 foot side setback on the right side of each lot. Mr. Rhodunda explained that a 17.5 foot aggregate side setback is requested to provide a cushion in case the proposed homes are not in a perfectly square manner. Mr. Rhodunda stated that the applicant owns 112 Brylgon Avenue, the adjacent property to the southwest (shown on the Board of Adjustment Plan as Lot 44), and therefore has no objection to the requested variances. He further pointed out that the proposed homes the applicant intends to build are the same model presented to the Board and to neighboring property owners when it secured the prior lot width variances in December, 2018, hence the applicant is not attempting a "bait & switch" maneuver to change his original construction plans without the consent of his neighbors. Mr. Mellinger stated that he did not realize there was a 20 foot aggregate side yard requirement when his prior variance application was submitted or he would have requested it then. Mr Rhodunda noted that his client had already cleaned up the property as promised at the prior Board of Adjustment November, 2018 hearing.

Discussion ensued with respect to the precise distances the applicant seeks to have approved on either side of the two proposed dwellings. Carmine Casper, P.E. was sworn in by Mr. Losco to note that the side yard setback abutting the neighboring property at 106 Brylgon Avenue would be 9.5 foot and an 8 foot side yard setback would exist on the opposite side---the side separating the 2 proposed dwellings. Likewise, the proposed lot adjacent to 112 Brylgon Avenue would have a 9.5 foot side setback and an 8 foot side setback on the opposite side. Mr. Athey clarified that there would have to be at least 8 feet to the property line from each proposed dwelling between 108 and 110 Brylgon Avenue.

Mr. Rhodunda reiterated that Mr. Mellinger's intent is to try and improve the community with these new construction homes; that the requested variances are minimal in nature; that there is no negative impact on any properties in the neighborhood; and that what the Applicant is proposing is consistent with existing properties.

There were no comments from the public on this application.

On motion of Mr. Athey, seconded by Ms. Ratchford, the Board votes to grant the 17.5 foot aggregate variances requested on condition that there be 8 foot minimum side setbacks to the property line between two lots comprising 108 and 110 Brylgon Avenue. Mr. Athey noted while he is reluctant to give approval to after-the-fact variances which might create a precedent, 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 further noted that the variances requested are minimal in nature; that the new construction will likely improve area property values; that they will not negatively impact surrounding properties; and that the applicant has proven to be a good neighbor by clearing debris from the property as promised. Ms. Ratchford concurred in this reasoning in supporting the motion.

Vote: 2-0 (Grant: Ratchford and Athey; Not voting: Losco)

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE


Linda Ratchford, 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.