

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

**NOTICE OF DECISION**

APPLICANT: New Castle Sailing Club, Inc.  
PO Box 46  
New Castle, DE 19720

OWNER: New Castle Sailing Club, Inc.  
PO Box 46  
New Castle, DE 19720

NCC TAX PARCEL NO. 21-014.00-392  
PUBLIC HEARING DATE: July 15, 2020  
DATE OF DECISION: August 4, 2020

REQUESTED: Applicant requested a special exception under §230-21.1 E (1) of the City Code to permit construction of a 6 foot fence on property located in the Downtown Gateway District known as 614 South Street, New Castle, Delaware, Tax Parcel No. 21-014.00-392 (the "Property"). The applicant further requested a variance under City Code §230-57 C to permit the proposed fence to extend into the front yard of the Property despite the limitation contained in §230-21.1 E (1) (d).

The Board of Adjustment (the "Board") may grant a special exception for construction of fencing or wall structures on DG (Downtown Gateway) zoned properties that were formerly zoned SC (Service Commercial) or I (Industrial) under §230-21.1(E) (1) of the Code where the Board determines that special circumstances, privacy or security concerns exist that cannot be practically addressed through other reasonable alternatives. In ruling on such applications, this section requires the Board to consider, among other things:

- (a) Whether the size or configuration of the proposed fence provides a reasonable fenced area for the owner's proposed use or purpose without creating significant harm to adjacent properties or the neighborhood.
- (b) Wood, vinyl or iron fencing shall be preferred. Walls shall be constructed of brick or stone. Where chain-link or similar forms of security fencing are required they should be reasonably screened from the view of adjoining streets, open space and properties by landscaping which is primarily evergreen.
- (c) The height of the fence or wall must not exceed six feet. Any wall or fence must be constructed so the finished side (i.e., the side that does not contain the horizontal fence supports and the in-ground fence posts) faces adjacent streets and/or properties.

- (d) A fence or wall must be constructed so that it does not extend into the front yard of the property beyond the face of the building erected thereon.
- (e) All other provisions of Chapter 230, Article VIII, of the City Code pertaining to special exceptions and hearings before the Board of Adjustment not in conflict with §230-21.1 E (1) shall apply. Specifically, Article III, §230-57 B requires the Board to determine that the special exception is in harmony with the purpose and intent of the Code and will not adversely affect the public interest, and permits the Board to impose conditions and safeguards as the Board deems appropriate.

The Board of Adjustment may also grant a variance from the requirements of Chapter 230 of the City 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 Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the 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 Code to other lands, structures or buildings in the same district.

The meeting was conducted using Zoom technology. Mayor Michael J. Quaranta chaired the meeting. City Engineer David J. Athey and City Solicitor Daniel R. Losco comprised the remaining members of the Board. The Mayor read into the record the official notice of the hearing. That notice was timely published in accordance with the law and affidavits of publishing in both *The New Castle Weekly* and *The News Journal* were entered into the record.

Pamela Scott, Esq. appeared on behalf of the applicant. Steve Constable, Commodore of the New Castle Sailing Club (NCSC) was sworn in as a witness by Mr. Losco.

Ms. Scott stated that the subject Property was formerly zoned SC (Service Commercial) and is now zoned DG (Downtown Gateway). The Property is used as the NCSC's headquarters. The Property is located at the corner of South Street and West 7<sup>th</sup> Street thus has two front yards per Code.

Mr. Constable testified that the NCSC is a non-profit organization that has sailed out of New Castle since 1952. The Property current has an existing vinyl fence that runs approximately 87' along an old railroad right of way and 73' of existing hedgerow along 7<sup>th</sup> Street, and turning toward the interior of the Property where it terminates at a 1 story stone and frame structure as

illustrated by four photographs and a survey plan exhibit introduced in the record by the applicant. Ms. Scott explained that the applicant wishes to remove the existing hedgerow, including a 16' section of stockade fence and replace it with a 6' high white vinyl fence. NCSC intends the fence to improve the safety and security of the Property, and to improve the aesthetic appearance and pedestrian access along 7<sup>th</sup> Street. Mr. Constable testified that the hedgerow is difficult to maintain being plagued by invasive species such as poison ivy that can't be removed without killing the hedgerow itself. The hedgerow also intrudes on pedestrian access along 7<sup>th</sup> Street, and does not provide sufficient security for the boats and equipment that are stored on the Property. He stated the proposed fence will match the existing vinyl fence along the railroad right-of-way.

Ms. Scott noted that the Planning Commission has voted to recommend approval of the present application. She argued that the proposed fence is consistent with the statutory intent of the DG zoning ordinance as described in §230-21.1 A (1)-(8) as well as the criteria for a special exception under §230-21.1 E (1) (a)-(c) and (e). However, a variance is required to satisfy the requirement of §230-21.1 E (1) (d) which requires a "fence or wall must be constructed so that it does not extend into the front yard of the property beyond the face of the building erected thereon." Ms. Scott argued that the applicant is suffering an unnecessary hardship in meeting the terms of the Code since this corner property has two front yards and the front yard is the only area available for the storage and security of boats. Mr. Constable added that NCSC has no other site to store boats off season other than on the Property.

Mr. Constable testified that the fence will not substantially injure or detract from the use of neighboring properties or the character of the neighborhood. He stated the removal of the hedgerow and installation of the fence will facilitate pedestrian traffic on 7<sup>th</sup> St. There will be no adverse impact on public services and facilities and no impact on vehicular traffic. Mr. Constable noted that DelDOT has been consulted and has no objection to the proposed fence. He further stated that the NCSC property Director spoke to the next-door neighbor (612 South Street) and she had no objection to the proposed fence.

Mr. Losco asked whether NCSC had experienced any security problems at the Property. Mr. Constable stated that they have not had any theft, however foot traffic has increased due to a new bus stop at the intersection of South Street and 7<sup>th</sup> Street so safety has become a concern. Mr. Losco then asked why the NCSC doesn't instead replace the hedgerow. Mr. Constable replied that NCSC members don't want to constantly trim hedges. Mr. Clay Greer, NCSC Safety and Instruction Director then requested permission to speak and was sworn in by Mr. Losco. Mr. Green stated that NCSC is concerned for security and safety noting that trespassers climbing into boats stored on site may damage fragile parts of boats and may harm themselves in the process creating liability concerns.

Mr. Athey asked if NCSC had considered landscaping in front of the proposed fence and noted that there is a grassy area that could be landscaped. Mr. Constable instead offered to paint a mural on the proposed fence.

Mayor Quaranta opened the meeting up to public comment and noted that Mr. John DiMondi had submitted a letter in opposition to the application. Mr. Losco summarized the letter's contents as stating that the NCSC has over 50 members, many from out of state, and that the Code requires 8-10 parking spaces and none are provided on-site. Mr. DiMondi referenced a prior agreement between the City and the applicant concerning off-site parking and asserted that the NCSC had not abided by that agreement. He argued that a solid vinyl fence is not as aesthetically pleasing as a hedgerow and that by cutting back the hedgerow recently the NCSC had actually compromised site security.

Mayor Quaranta provided the applicant's counsel with time to consider the contents of Mr. DiMondi's letter to formulate a rebuttal. After due consideration, Ms. Scott argued that the number of club members, their residence locations, and any 20 year old agreement concerning parking are irrelevant to the present application. Mr. Constable also offered that the NCSC would be open to adding landscaping to provide visual relief from the fence.

The Board then adjourned to its business meeting.

Mr. Losco noted that the applicant, per Mr. Greer's testimony, had provided reasonable evidence of the privacy or security concerns required to justify a special exception under §230-21.1 E (1). He stated that the Board has authority under §230-57 to grant variances "from the terms of this Chapter" and that would include the front yard prohibition under §230-21.1 E (1) (d). The Property's corner lot configuration, and the resulting two front yards, create circumstances peculiar to this Property not applicable to other lands in the same district. He felt that these unique circumstances justify a variance in this case. However, he was concerned that there is already a long 87' solid fence on one side of the property that would now be joined by an additional 73' length of solid fencing along 7<sup>th</sup> St. creating an imposing edifice at a prominent intersection. He agreed with Mr. Athey's suggestion that landscaping should be added in front of the proposed fence to break up the visual impact. The Mayor agree with the idea of landscaping and suggested Holly bushes or other evergreen planting to screen the fence.

Mr. Losco made a motion to approve the special exception and the variance requested subject to the following conditions:

1. The fence be no more than 6' in height;
2. The fence be white vinyl, substantially matching the existing white fence on the Property;

3. The street side of the fence shall be landscaped pursuant to a landscape plan approved by the Building Official that extends from the point where the fence reaches the house on the Property all along 7<sup>th</sup> St. to the existing gate; and
4. That the landscape plan shall include non-deciduous plantings that will reasonably screen the fence.

The Motion was seconded by Mr. Athey and approved by unanimous vote of the Board.

Mr. Losco stated his reasons as follows:

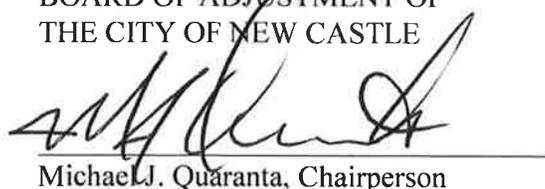
- the applicant has shown unique circumstances to justify the variance;
- the applicant is suffering some exceptional practical difficulty in providing privacy and security on site, which also supports the application for a special exception;
- the applicant has met the other requirements of §230-21.1E for a special exception in this zone; and
- the landscaping plan softens the harsh effect of a continuous 6' high vinyl fence that will surround the corner of the Property.

Mr. Athey concurred with Mr. Losco's rationale for the vote and added that the applicant had both demonstrated a need and met the requirements of the Code, and the conditions imposed addressed his reservations concerning a lack of screening.

Mayor Quaranta agreed and added that the applicant had met the security and privacy test and noted that the look of the area will be substantially improved with the removal of the invasive species. His expectation is that a "robust and thoughtful" landscape plan will be submitted to the Building Official worthy of this important, high-traffic corner of the community.

**Vote: 3-0 (To approve application special exception and variance subject to conditions: Quaranta, Athey and Losco)**

BOARD OF ADJUSTMENT OF  
THE CITY OF NEW CASTLE



Michael J. 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.