

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

NOTICE OF DECISION

APPLICANTS: Francis J. DiSabatino
18 Baldt Ave.
New Castle, DE 19720

OWNERS: Francis J. DiSabatino and Patricia DiSabatino
18 Baldt Ave.
New Castle, DE 19720

NCC TAX PARCEL NO. 21-007.00-067
PUBLIC HEARING DATE: January 20, 2021
DATE OF DECISION: March 16, 2021

REQUESTED: Applicants requested (1) variances from the 8 foot side yard and 30 foot front yard setback requirements and the 25% maximum building bulk standard as referenced in Attachment 1 to Zoning Code Chapter 230; (2) permission, to the extent necessary, to expand a non-conforming structure; and (3) for reasonable accommodation to modify application of the City's Zoning Ordinance in accordance with the provisions of the Americans With Disabilities Act, so as to permit expansion of an existing residential structure at **22 Baldt Avenue, Tax Parcel 21-007.00-067**, (the "Property"). 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.

Mayor Michael Quaranta chaired the meeting via Zoom technology. Also present were Board members David J. Athey, City Engineer, Daniel R. Losco, City Solicitor, and Code Official Jeffrey Bergstrom. Mayor Quaranta read into the record the official notice of the hearing. Mr. Losco noted for the record that the property was properly posted and advertised in the *News Journal* and *New Castle Weekly* newspapers. The Applicant, Francis J. DiSabatino, was represented at the hearing by Brian Mclaughlin, Esq. In addition to Mr. DiSabatino, Rosalyn

Keesee, RA, LEED AP, a principal of Design Collaborative, Inc., Architects, was present. Both were sworn in as witnesses by Mr. Losco.

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 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 presented several exhibits, all of which were entered into the record. These included:

1. Declaration of Francis J. DiSabatino (7 pages);
2. Summary of legal arguments signed by Mr. McLaughlin (4 pages);
3. Existing Front Yard "Street Wall" aerial photo of the Property and surrounding area;
4. "Existing Conditions" photographs, 8 in number;
5. A "Building Bulk" exhibit contrasting existing lot coverage with proposed lot coverage;
6. 8 photographs of surrounding properties and the streetscape;
7. An "Existing Site Plan + Setbacks" diagram showing the current building footprint vs. the permissible building envelope; and
8. A "Proposed Site Plan" illustrating the proposed expanded footprint of the building vs. the permissible building envelope.

Mr. McLaughlin explained the purpose of the Application is to install an ADA compliant wheelchair ramp, a sheltered porch, and a driveway leading up to the ramp; and to add an addition to the home to make accommodations for the care and comfort of Mr. Gabriel DiSabatino, a physically disabled individual requiring around the clock care. The addition will exceed the 25% maximum lot coverage restrictions by 4.4% for a total of 29.4%. He noted that the Property is a corner lot with 2, 30' front set back lines and that the existing home footprint is almost entirely outside the permitted building envelope. The 1 bedroom/1 bath home's construction predates the adoption of the City Zoning Code and hence is a non-conforming structure. The use of the Property as a residence is fully permitted.

Mr. McLaughlin reference the aerial photo exhibit to note that the majority of homes on this portion of Baldt Avenue intrude similarly on the front set back line. He stated that the existing chimney on the 11th Street side of the Property will be removed, thus lessening the existing set back encroachment in a modest fashion. Otherwise, the proposed renovations will maintain the same 5.5' setback along 11th Street that exists with the present structure. Likewise,

the side porch footprint would continue the 14.52' front setback along Baldt Avenue that exists with the present structure. The expansion is intended to make the home wheelchair accessible and to create a bedroom on the 2nd floor to accommodate a caregiver.

In response to Mr. Losco's questioning, Mr. McLaughlin explained that they requested the 8' side yard setback variance in the event the hardscape driveway required approval since it will encroach into the 8' side setback. Mr. Bergstrom stated that merely paving an area would not require a variance, hence no variance is necessary for that purpose.

Mr. Losco also opined that approval for expansion of a nonconforming structure would not be required in this instance since the Board's jurisdictional ordinance, §230-57 D (1) (a), provides that "reference to structural alteration means a structural alteration resulting in the extension or enlargement of a structure *subject to a nonconforming use.*" (emphasis added). Since the use in this case is fully conforming, the request to approve expansion of a nonconforming structure is inapplicable. The applicant needs only front setback variances and the bulk area variance.

Mayor Quaranta questioned Ms. Keesee concerning water runoff issues that would be exacerbated by the expansion of the building footprint. Ms. Keesee explained that both landscaping and water runoff issues will be addressed by a civil engineer to ensure full compliance with all applicable ordinances and regulations. Mr. DiSabatino added that all water runoff will be directed to the street to mitigate water retention on the Property. Mr. Bergstrom noted the property is in the flood plain, the building cannot be a substantial improvement, that is no more than 50 percent of the existing structure's value, but considering that the proposed footprint will be less than double its present size he had no concerns that stormwater drainage off the site could not be successfully addresses.

Mr. DiSabatino added that the exterior of the resident will be completely new, including new windows, doors, siding and room. The Property will not be utilized by any program managed by a non-profit or the State as a group home. It will be strictly for the use of his disabled son and a full-time caretaker.

Mr. Athey asked for clarification on the proposed second floor expansion. Ms. Keesee explained that the second floor will extend over the existing footprint and will extend back over the proposed sitting room addition; however, it will not extend over the new porch area or the proposed one-story addition for the new first floor bedroom. Mr. Athey was concerned about a significant change in view from 11th Street side. Ms. Keesee responded that the roof pitch will be a modest slop on the back side and that the general aesthetic from the front will be

maintained. Ms. Keesee did not have the exact square footage of the proposed 2nd floor living space but stated that it would be less than the entire footprint of the first floor. During discussion, it was noted that there are a number of full two-story homes in the neighborhood Mr. Bergstrom reminded Ms. Keesee that the Property is in the flood plain and so that a substantial addition would not be allowed unless the existing building was brought into compliance as part of the project.

The Mayor opened the floor for public comment and heard water runoff concerns from Councilman Michael Platt who lives in the area. Mr. Platt noted that the catch basin on 11th Street is insufficient and flooding in his yard may result. Mr. Bergstrom stated that a civil engineer will be employed by the applicant to do a lines & grades plan which will address water runoff issues and that Mr. Platt could review the plans prior to a permit being issued. Mr. Bergstrom further stated that water can be directed to catch basins on both 11th Street and Baldt Avenue.

Philip Gross suggested that building elevation drawings should have been submitted to the Board and it was agreed that those would have been helpful in considering the application.

There being no other comments from the public on this application, the Board adjourned from the public hearing and entered into its business meeting.

On motion of Mr. Losco, seconded by Mr. Athey, the Board votes to grant the variances permitting the 2 front yard setback variances (5.5' on the 11th Street side and 14.52' on the Baldt Avenue side), and the bulk area variance (29.4% maximum building bulk), to permit expansion of the existing residential structure as shown on the Applicant's proposed site plan.

Mr. Athey's reasons for approval included noting the unique circumstances of this being a corner lot subject to 2, 30' front setbacks and further noted that the proposed building footprint has been kept to a minimum. While floor plans and elevations would have been helpful, he expected structure and drainage issues to be dealt with once the civil engineer has completed his plans.

Mayor Quaranta agreed with Mr. Athey's reasoning and added his appreciation of the significant investment in the Property and urged the architect to be as creative as possible to maintain a style consistent with other homes in the neighborhood.

Mr. Losco reasoned that the Property's unique location on a corner with an existing structure built almost entirely outside of the permitted building envelope before adoption of the

Zoning Code deserved consideration. He noted that the proposed expansion will not protrude any further into the front setback than the existing structure does, that the proposed additional square footage is not excessive and that the bulk area variance is only 4.4% over the permitted maximum. Mr. Losco deferred to Mr. Bergstrom to ensure that water runoff concerns are properly mitigated by diverting water primarily toward Baldt Avenue. While elevation drawings would have been helpful in evaluating visual impact, he noted Mr. Bergstrom's comment that the property's location in the flood plain limits expansion to 49% of the existing floor area.

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.