



Department of Land Use

NOTICE OF DECISION

REFERENCE: Application 2010-0316-A DATE DECISION FILED: July 9, 2010

APPLICANT: **James Mitchem Jr.**

PUBLIC HEARING DATE: June 24, 2010

DATE OF DECISION: July 8, 2010

REQUESTED: 1. Area variances to expand an existing garage one foot from the rear property line (3-foot setback for accessory structures), 2. to permit 63 percent of the rear yard setback to be covered by the detached garage (30 percent maximum coverage); and 3. to maintain the existing detached garage one foot from the rear lot line and 0.6 foot from the side lot line (3-foot setback).

1712 St. Mihiel Avenue

Parcel Number 08-050.20-333

Zoned NC6.5

CD 1

The Board of Adjustment may grant a variance from the area or dimensional or other requirements of the New Castle County Unified Development Code [hereinafter "UDC"] where it finds the applicant or property owner is experiencing exceptional practical difficulty, rather than routine difficulty, in complying with the specific provisions of the UDC applicable to the subject property.

The Applicant appeared with Patricia Mitchem. Collectively they testified to the following. The existing garage has been in place for many years, likely before the adoption of the 1954 zoning code. Recently, the Applicant began construction on the garage to expand it. He did so without a building permit, and without obtaining a variance, because he was told that he did not need one on "bad advice." The Applicant stated that the purpose for the expansion is to house several classic cars, which are now stored in other locations. He stated that he would have to tear down the garage if the variances were denied in their entirety, and would have to tear down the expansion, if the variances were denied in part.

The Department of Land Use received a telephone call from a neighbor, stating that the Applicant is operating a car repair business at the subject property; however, the Department could not substantiate the claims. The Department also noted that there are accessory structures in the rear yards of other nearby properties, but none that are the size of the garage on the subject property. The Department recommended that the Board deny the requested variance, in part because the Applicant had not presented an exceptional situation or special condition inherent in the subject property.

The Board votes to deny the variances to expand the existing garage one foot from the rear property line (3-foot setback for accessory structures), and to expand the existing garage to permit 63 percent of the rear yard setback to be covered by the detached garage (30 percent maximum coverage).

The Board votes to grant the variance to maintain the existing garage one foot from the rear lot line and 0.6 foot from the side lot line (3-foot setback).

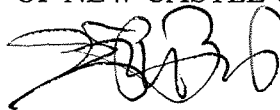
The effect of the Board's decision is to allow the Applicant to maintain the pre-existing garage, but not to expand it in any way.

The Board agrees with the Department that the Applicant did not present an exceptional practical difficulty or special condition inherent in the land. The Applicant created his own hardship by building the garage without a permit, and, while this alone is not a decisive factor, the Board finds it weighs heavily against the Applicant. Furthermore, the Board finds that the garage is already large in comparison with other accessory structures, and its expansion is unwarranted and will have a negative impact on the community, and is also out of character with the community. The land itself is not burdened by restrictions of the UDC, and the owner's burden appears to be entirely personal. "A literal interpretation of the zoning law results in exceptional practical difficulties of ownership." Kwik-Check Realty, Inc. v. Board of Adjustment of New Castle Cty., 369 A.2d 694, 698 (Del. Super. 1977), aff'd 389 A. 2d 1289 (Del. 1978).

If the Board were to grant the variance to expand the garage, and remove the restrictions, the neighboring properties would be seriously affected. The restrictions do not create "exceptional practical difficulty for the owner in relation to his efforts to make normal improvements on the character of that use of the property which is a permitted use under the use provisions of the ordinance [involved]." Board of Adjustment of New Castle Cty. V. Kwik-Check Realty, Inc., 389 A.2d 1289, 1291 (Del. 1978).

VOTE: 5-0 (Deny: Burt, Ciabattoni, Collins, Whalen, Hudson)

BOARD OF ADJUSTMENT
OF NEW CASTLE COUNTY



David H. Burt
Chair

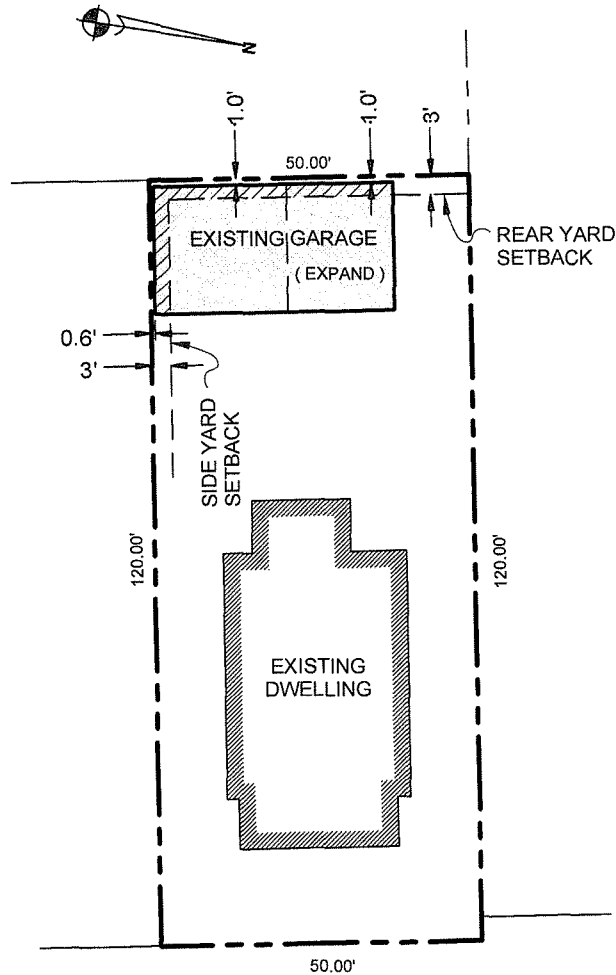
NOTE: Variances are neither building permits nor Certificates of Occupancy. Appropriate permits must be obtained from the Division of Development and Licensing prior to construction or establishment of the use. This decision should be kept in a safe place with the property deed. This decision may be 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.

NOTE: A variance becomes void if the variance is not put into effect within two (2) years of the filing date of this decision.

PUBLIC HEARING DATE: June 24, 2010
COUNCILMANIC DISTRICT: 1

ZONING: NC6.5

APP. NO. 10-0316-A
TAX PARCEL: 08-050.20-333



ST. MIHIEL AVENUE

**BOARD OF ADJUSTMENT
NEW CASTLE COUNTY, DELAWARE**

Applicant: James Mitchem, Jr.
Address of Subject Property: 1712 St. Mihiel Avenue
Wilmington, DE 19804

Applicant seeks: VARIANCE:

1. To expand an existing garage 1 ft. from the rear property line (3-ft. setback for accessory structures), which will cover 63% of the rear yard setback (30% maximum coverage);
2. to maintain an existing garage 1 ft. from the rear lot line & 0.6 ft from the side lot line (3-ft. setback).

DECISION:
DATE OF DECISION:

SCALE: 1" = 30'