

A New Castle City Board of Adjustment Hearing took place on July 6, 2005 at 7 p.m. in the City of New Castle's Town Hall.

Present: Mayor John F. Klingmeyer
David Athey, City Engineer
Clifford Hearn, City Solicitor
Jeff Bergstrom, Building Official
William Barthel, Applicant

Mayor Klingmeyer called the meeting to order at 7 p.m. This hearing is a continuance from the hearing of 6/23/05. At that meeting precedence on Fourth and Chestnut Streets was raised. The hearing was continued to allow the Board of Adjustment time to research that decision.

Mr. Hearn reviewed information he received by fax. The first case was the Binkley case that was brought before the Board of Adjustment in April. They were putting on an addition to an existing residence. The other case was the Healy case. This case was heard twice. The first dealt with giving setback and doesn't apply. The second hearing (1993) they cited the variance where you can prescribe certain conditions that safeguard the ordinance so we have some authority to put some conditions on it to protect the community. This may have some applicability to this case.

Minutes of 6/23/05 Hearing – Added the word “six” in the first paragraph of page 3 and the addition of the word “room” in the fifth paragraph of page 3. Mr. Hearn made a motion to accept the minutes as amended; Mr. Athey seconded. The minutes were approved unanimously.

Mr. Athey – In reviewing the minutes my motion to table to reconvene was based on a specific decision that we are not in receipt of. Legal question, should we be sitting here?

Mr. Hearn – It leaves us with an open proceeding without the information supplied to us.

Mr. Athey – Should we grant the applicant another extension?

Mr. Hearn – The City would need to locate the information. We have been advised it is relevant to this case and provides precedence. We should have the decision before making our final decision. I would not like to make a decision after having a neighbor appear before us to grant this because it would destroy part of his property.

Mr. Athey – If that precedence has already been set, what amount of weight does that have in this conversation?

Mr. Hearn – You look at the facts in that case and the facts in this case.

Mr. Athey -- The applicant has demonstrated he can comply with code. If there is a precedence from a previous applicant, I still have a problem approving it.

Mr. Hearn – The courts or Board can look at an issue again in a different case and decide to ignore precedence because they think the previous Board made a bad decision. We can decide a case differently based on the facts before us.

Mayor – Should we continue or not? Can we come to a decision?

Mr. Hearn – You can continue, but it wouldn't be fair to us or Mr. Barthel.

Minutes for the Fourth & Chestnut Street meeting have not been located.

(A brief discussion took place about the property's owner at Fourth & Chestnut Street.)

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Jeff Bergstrom -- The problem with some older decisions is that there was nothing in writing.
(Discussion about scenarios; denying or approving the application then took place.)

It was agreed to tentatively reconvene on 7/14 at 7 p.m. or during the day. All parties will be notified accordingly. The Mayor informed we are not required to re-advertise this hearing since it is a continuance.

Mr. Barthel requested a copy of whatever the Board is able to locate. The Mayor said he would take care of this.

Mr. Barthel was asked if he had any further communication with Mr. Evans. He stated that he and Mr. Evans had briefly discussed the utilization of his driveway. We wanted to wait to see how the Board of Adjustment acted. The Mayor asked Mr. Barthel to notify Mr. Evans about the continued hearing.

Mr. Athey moved to continue this hearing again pending receipt of prior Board of Adjustment decision. The motion was seconded and approved unanimously.

The hearing was adjourned at 7:30 p.m.