

A New Castle City Board of Adjustment Hearing took place on June 23, 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. He introduced City Engineer Dave Athey and City Solicitor Clifford Hearn. Notice of this hearing was posted June 18, 2005, affidavit of publication in the News Journal on June 8, 2005 and the New Castle Weekly on June 8, 2005.

The Mayor read the Notice of Public Hearing that states, "An application has been filed by William J. Barthel, 72 West Fifth Street, New Castle, Delaware on properties located: 1) 79 West Fifth Street (parcel number 21-015.30-101) for a variance from the off-street parking requirements; 2) a property adjoining 419 South Street (also parcel number 21-015.30-101) for a variance from the off- street parking requirements. For the purpose of considering this application, the Board of Adjustment will hold a public hearing on Thursday, June 23, 2005, at 7 p.m. in Old Town Hall located at 201 Delaware Street, Second Floor, New Castle, Delaware."

Mr. Barthel, representing himself, spoke to the Board about the property at 79 W. Fifth Street. He was told he needed to address the current ordinance that requires when any change is made you must apply for a variance for off-street parking, but in this case this is an existing dwelling. The property has been there over 150 years and we are not affecting anything adversely on Fifth Street. By building next to the house we are not creating any new off-street issues; the lot we are going to build on next to it will have its own off-street parking that will be available through South Street. *(All parties then reviewed a drawing of the area. Entered as Exhibit 3.)* There is no additional parking being created on Fifth Street.

Mr. Athey questioned data shown under "off-street parking" on the drawing. Mr. Barthel concurred that the data was incorrect. Corrections to the column "off-street parking" were made on the drawing as follows: Lot #1 is 0, Lot #2 is 0, Lot #3 is 2 and Lot #4 is 2. In addressing Lot #1 he considers it a financial hardship by having to put in additional parking for an existing property whereas no other properties on that street has that situation. On Fourth Street the Board of Adjustment approved a variance for a property that was building an addition. If you are adding to your property there is a better chance you will have more people using off-street parking than if you aren't doing anything to the property. If it's approved for an existing dwelling that is adding on and we are simply maintaining a property, it adds to the hardship. Lot #1 should be grandfathered because it is an existing building. We are providing off-street parking for Lot #4. Mr. Hearn asked if Lot #4 is an existing building. He was informed it is proposed, as are Lots #2 and #3. The drawing does not indicate this and will be corrected.

Mr. Barthel is asking for a variance for Lot #2 not to have to provide off-street parking. Based on the code as he understands it, no additional parking burden shall be created for homeowners in the immediate area. He believes that the location of this lot allows a special circumstance to exist that is not applicable to other locations in the historic area where off-street parking is required. The area surrounding this lot only affects one person, Mr. Evans, who will speak to this body tonight. He presented a picture taken from Lot #2 showing Fifth Street as it currently

appears. (*This picture is entered as Exhibit 4.*) Parking at the Senior Center and the Brosius & Eliason parking lot has been utilized for a long period of time in this area and available to the public. He produced another picture taken showing 70 ft. of existing off-street parking. (*This picture is entered as Exhibit 5.*) Mr. Evans has a two-car garage attached to his home. The hardship he feels he will be forced to endure is that the ordinance says we are not to increase parking on congested streets or already congested streets. He introduced a picture (*entered as Exhibit 6*) showing Fifth Street and his properties. He has a two-car garage in the rear. He does not use Fifth Street so he feels he is taking away from any congestion that might exist there.

Mr. Athey informed he had seen the plans twice for this area. He questioned the first plan that showed parking issues; the second plan you widened the gap between Mr. Barthel's lot and Mr. Evans' lot so you have room for two spaces.

Mr. Barthel agreed and said that he and Mr. Evans are working together.

Mr. Athey said that there is vagueness in the code concerning Lot #1; Lot #2 is much clearer. (*He then read Section 330-28A of the code.*) The code could be interpreted to mean there is no off-street parking required for Lot #1. He suggested this Board should resolve the code interpretation issue before the Planning Commission has to deal with it. The structure does not meet any of the four categories that were mentioned in the code; however, two new buildings are going on the existing lot, but they are being sub-divided. Are they being sub-divided and this wouldn't apply, or are they being built on in which case it would apply.

The Mayor asked Mr. Barthel if his original application included off-street parking. Mr. Barthel said that it did include off-street parking.

Mr. Richard Evans – 419 South Street – Mr. Evans doesn't have a problem with building on the lot. He has serious concerns that off-street parking will create tremendous problems for himself and others. He referred to a picture (*Exhibit 7*) showing the rear of his property. If Mr. Barthel builds a driveway we can't estimate how many trees will have to be taken out. One of the reasons Mr. Evans likes the area is because of its aesthetic appeal. He is also concerned there may be a significant chance of water in his basement if the trees are removed to make way for the driveway. His property is about two feet from the property line. The occupancy of the dwellings would be better served by having a driveway than parking on the street. He is very concerned about the effect on his gardens and trees. He added that if he were to buy this property, he would prefer not to have the driveway and park out front. He would rather have the aesthetics.

The Mayor questioned about the existing parking lots referenced earlier, specifically the Senior Center and the Brosius & Eliason parking lot. Some time in the future development may change the complexion of the Brosius & Eliason property. This property is private property.

Mr. Barthel asked for an interpretation of the code on South Street. His understanding is not to create further congestion or parking issues.

Mr. Hearn informed the ordinance reads residence, new construction, increasing and existing, no off-street parking, two spots. Mr. Barthel suggested this Board issue an exception to this. The Mayor said the issuance of a variance is strictly regulated.

Sally Monigle, representing the HAC, stated their preference is not to require off-street parking. Not to incur a burden to a neighbor, but in general we prefer not to have the requirement of off-

street parking because of the curb cuts that is required, reserves that space instead of open parking there. In reviewing Mr. Barthel's plans they included six parking spaces, and we did approve it, but our preference would always be to not require off-street parking in the historic district.

Mr. Athey said the purpose of the Board of Adjustment is to allow variances or relief of code in certain situations. The code can't envision every scenario. He said that Mr. Barthel already submitted a plan showing that parking is there and can physically be done. Our decision could set precedence.

The Mayor added that our code is very specific on what you can allow and what you can't allow when making decisions. Mr. Hearn said Mr. Barthel is creating an activity. You have two lots, one house, and you want to put three additional structures on those two lots. Therefore, you are generating activity. It would be different if you have odd shaped lots and couldn't put in off-street parking.

The Mayor said in the past the Board has seen many lots that don't conform to our code. They were developed many years ago and as long as they are in single ownership, even though they are sub-standard by the code, they are allowed to build on that. However, if the person owns one lot and the adjoining lot, then they must treat both lots as one and must conform. We have been consistent.

Ennio DiAlessandro, 38 West 7th Street, stated that about three years ago Mr. McGrory put a house up at Fourth Street and Chestnut and he was granted a variance for no off-street parking. He had room for off-street parking. The Board of Adjustment approved Fourth Street parking. The Mayor was unfamiliar with this decision.

Mr. Athey asked Mr. Barthel if he had exhausted all possible scenarios as far as lot configurations with his engineers? He confirmed that he had.

Mr. Hearn moved to accept the variance for off-street parking for the Fifth Street property; Mr. Athey seconded the motion. Mr. Athey then expressed concern with approving one part now. If Lot #2 is still unresolved we still leave the door open for some plan change, so it may be premature to approve one and not the other. Mr. Hearn withdrew his motion.

Mr. Athey moved to table both variances pending review of a prior Board of Adjustment decision regarding a property at or about Fourth and Chestnut Streets. This Board will reconvene once we have had an opportunity to review it. Mr. Hearn seconded the motion which was approved unanimously.

The Mayor informed we are not required to re-advertise this hearing since it is a continuance. It was agreed that the next meeting of the Board of Adjustment to address this continuance will be Wednesday, July 6, 2005, at 7 p.m. Notices will be sent to appropriate parties.

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The hearing was adjourned at 8 p.m.

Exhibits:

- #1 -- Affidavit of Publication, News-Journal
- #2 -- Affidavit of Publication, New Castle Weekly
- #3 -- Drawing
- #4 -- Picture
- #5 -- Picture
- #6 -- Picture
- #7 -- Picture