

# *Board of Adjustment Public Hearing*



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

Present: Mayor John F. Klingmeyer  
David Athey, City Engineer  
Gerard Kavanaugh, City Solicitor  
Jeff Bergstrom, Building Official  
William Manning representing Family Foundations Academy, Inc.,  
Applicant

Mayor Klingmeyer called the meeting to order at 6:05 p.m. by Mayor Klingmeyer. Roll call was taken. Mayor Klingmeyer read the Notice of Public Hearing that states, "An application has been filed by Family Foundations Academy, Inc., P.O. Box 1045, New Castle, Delaware for a special exception to permit operation of an educational institution pursuant to 230-218(B)(2) on property owned by the Trustees of the New Castle Common and located at 0 Delaware Street, New Castle, Delaware, Parcel #21-010.00-072 (located between Carrie Downie School and New Castle Middle School). For the purpose of considering this application, the Board of Adjustment will hold a public hearing on Tuesday, December 6th, 2005, at 6 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Street, New Castle, Delaware."

This was advertised in the New Castle Weekly and the News-Journal. Bill Manning, representative for the applicant, was then called to make their presentation. He introduced Tennell Brewington who represents the Board of Family Foundations Academy and David Sills who will answer questions concerning the construction plan. The property is zoned R3 and in that zoning district an educational institution can be constructed with a grant of special exception by the Board of Adjustment (Mr. Manning then described what Family Foundations is and what they are proposing to do.) From the State's point of view this is a public school ready to open in 2006 if they have the facilities to do so. It will be situated on a three-acre parcel of land and will be a 38,500 square foot structure. It will house 420 students. It will open with 260 students and grow over a four-year period. Grades 1-4 will be provided. Students will be selected through a lottery process that is run by a computer. The site is between two current educational facilities (Carrie Downie and the middle school). The impact on the infrastructure will be modest. He presented a plot plan of the school and will leave that plan for public inspection.

Mr. Athey (to Jeff Bergstrom) asked if Planning Commission approval is still

required. We are approving the use? Mr. Bergstrom said they must also go through the Plus process and under ordinance 429 they still must go through the Planning Commission. Mr. Manning said all that is being done tonight is whether the Board of Adjustment grants a special exception to permit this use. You are not approving this plan. The Plus process has been commenced.

Mr. Kavanaugh explained to everyone that our zoning ordinance provides that the Board of Adjustment can hear applications for special exceptions and grant them.

New Castle City Board of Adjustment Hearing

December 6, 2005

Page 2

The Board of Adjustment can deny applications when they are not in harmony with the purposes and intent of the zoning code. It would appear to me that there are at least two prerequisites that have to be met; the approval of the Plus proposal and the Planning Commission. (Discussion about what is involved with the Plus process took place.)

Mr. Athey asked what would happen if the school loses its charter in the future. What happens to the building; does the special exception go with the project or with the land? Mr. Kavanaugh said it would go with the land. Mr. Manning said lenders would want to know the use of a school could continue assuming they comply with all of New Castle's other requirements. Mr. Kavanaugh added that if the use were to change, they would have to return to see us.

(Mr. Kavanaugh expressed more interest in the Plus process. Mr. Manning provided additional information about the process.)

Mr. Kavanaugh asked what this municipality does when it gets a Plus recommendation letter. Mr. Manning informed it can follow the advice, follow some of it, or ignore it. The town still has control over its land use. It is the State offering its comments so the town can make its decision. (The Plus letter will go to the Planning Commission.)

The Mayor opened the discussion to the audience.

Councilman John DiMondi feels the application is premature. It is not a subdivision application. The only people who will hear for the public good are this committee, not City Council. It is important they go to Plus before it comes to you. We will not hear this in Council. You can't rule on the public good until you know what the Plus program says.

Mr. Kavanaugh said our authority is to grant special exceptions with such conditions and safeguards as are appropriate. (Mr. DiMondi asked him to look under Chapter 230-57(E)(1) after which more discussion took place about Mr. DiMondi's concern.)

David Bird commented that charter schools are generally good for our community and for our school system. Another piece of good news is the City's Comprehensive Plan (page 28) for this piece of land recommends institutional use for this parcel. One of the main concerns is the volume of traffic on 273 and the impact this additional institution will have on that area. That is one of the things

the State would be concerned about and would address during the Plus process. He doesn't know that there needs to be a decision by the Board of Adjustment tonight. You can table it.

Ann \_\_\_\_, 26 East 3rd Street, agreed with Mr. Bird and Councilman DiMondi. She would like to wait until after the Plus decision before making a decision. Mr. Kavanaugh reiterated that the City retains final decision-making authority. The Memorandum of Understanding between the State and the City leaves the final decision-making with the municipality.

Mayor Klingmeyer said the Planning Commission must grant approval also. If we decided to grant approval it would be subject to Planning Commission approval with input from the Plus proposal.

New Castle City Board of Adjustment Hearing

December 6, 2005

Page 3

Mr. Kavanaugh said if we decide to vote in favor of granting a special exception we could make it subject to approval of the Planning Commission in light of the recommendations of the Plus group.

Ginny Appleby, New Castle, is wondering what group of children would be impacted and what area would the children come from.

Mr. Manning responded that a charter school does not pick its students; students pick the school. If more applicants apply than is space, a lottery system is put in place. There is no admissions test to get in. Families choose charter schools for various reasons; i.e., location, discipline, uniforms and many more. He added the applications is a matter of public record and can help to clarify concerns.

Thomas Whitehead questioned the issue of safety; whether a new or bigger intersection could be put in. Currently there are four different entrances for the two schools. He thinks the Board of Adjustment should wait and hear what DelDOT has to say.

Joseph DiAngelo, 753 West 12th Street, said the Planning Commission doesn't approve anything; they recommend. This should have been done and it has not happened. Page 230-45, paragraph 23057.

(Interpretation of language was discussed.)

Nancy Coning (?), 54 East 4th Street, asked when the Plus meeting is scheduled. Councilman DiMondi responded that it is 12/28/05. She said she has attended two Trustees meetings where it was discussed that it would be 1-4 initially and a year added until it became 1-12. Is that true? Mr. Manning said the only authority they have is grades 1-4; that is its limit. (Discussion about the school's Board's responsibilities and how a charter school operates took place.)

Dick Appleby asked Mr. Kavanaugh to explain the R3 area. He responded there are certain permitted uses in an R3 area. There are also certain uses allowed by special exception if approved by this Board. If the Board of Adjustment grants the special exception you can have an institution of an educational, religious, medical, charitable or philanthropic nature. (Discussion about curb cuts at this location took place.)

Mr. Athey asked to explore the timeframe. Are you on the Planning Commission's agenda for December? (They were unsure.) The Planning Commission meets on 12/19/05, before the Plus letter. The earliest would be in January 2006. He doesn't see why we can't table this matter until we do get something from Plus because we aren't on a critical path.

Mr. Manning responded we should do what the Memorandum of Understanding calls for us to do. If you add "special exceptions" to the list of things in your Memorandum of Understanding that require prior review by Plus, you would be changing without whatever process led to this agreement in the first place. Property owners generally are required to look at the process that they should follow. There is no requirement right now that the town seeks Plus review before considering a special exception. You have said the ultimate authority to build this building is not going to happen until after Plus input has been received. It would be a departure from your Memorandum of Understanding and unfair to the applicant to decide now that even though your memo doesn't call for it, you are going to invoke the Plus process outside of that which you have already agreed to.

New Castle City Board of Adjustment Hearing  
December 6, 2005  
Page 4

Mr. Athey asked how he is being unfair to the applicant if his timeline is accurate. Mr. Manning responded he doesn't understand the need for this Board to have Plus input when what you are charged with doing is essentially a zoning question. Mr. Athey said if we met in early January after knowing what Plus has to say, how are we being unfair?

Mr. Manning feels it is unfair to depart from the agreement you struck with the State Planning Office. You decided what actions would trigger Plus review. You didn't include application for special exception.

(Discussion between the Board and Mr. Manning about interpretation of language in the Memorandum of Understanding took place.)

Mr. Kavanaugh asked Mr. Bergstrom if under ordinance 429 the Planning Commission has to review this project. He said 'yes'. Mr. Kavanaugh then reviewed the criteria needed. The Planning Commission or the Historic Area Commission has reviewed the application and forwarded a favorable recommendation to the Board where such review is required and that has not occurred, but since we can grant special exceptions with such conditions and safeguards as are appropriate, we can require that Subparagraph B be complied with.

Melissa Pavonne, 1589 East 2nd Street, questioned how the Board can make a decision without having all information concerning the impact on the community from the Plus meeting. Do you draw upon the Planning Commission's recommendation to make your decision? The Mayor said if we get a favorable recommendation we can act; if they disapprove it, it won't happen. She asked if their recommendation is based on the Plus meeting. The Mayor said we would specify that they review Plus then make their recommendation.

Mr. Athey is uncomfortable acting because we are lacking a key piece of information. Can we make it a condition that the Planning Commission base their recommendation upon a review of the Plus input?

Mr. Kavanaugh does not want this municipality to give up what is going to be done in this city. Mr. Athey does not feel we are giving anything up it is a recommendation only. Mr. Kavanaugh does agree that there does need to be a favorable recommendation after the review of the Plus letter.

Mr. Kavanaugh made a motion that the special exception be granted subject to approval, that is, a favorable recommendation of the Planning Commission after that Commission has reviewed the Plus letter of recommendation. Mr. Athey seconded the motion which passed unanimously.

Adjournment

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

Respectfully submitted,

Debbie Turner  
Stenographer