

A New Castle City Board of Adjustment Hearing took place on May 3, 2006 at 7 p.m. in the City of New Castle's Town Hall.

Members Present: Mayor John F. Klingmeyer
David Athey, City Engineer
James Harker, City Solicitor
Robert Appleby, New Castle Senior Center (applicant)

The meeting was called to order at 8 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 the New Castle Senior Center for property located at 402 South Street, New Castle, Delaware, Parcel Number 21-015.00-057, seeking a special exception to permit the construction of an addition to the existing building for a club and lodge in the historic residence – HR zoning district.

For the purpose of considering this application, the Board of Adjustment will hold a public hearing on May 3, 2006 at 8 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Street, New Castle, Delaware."

Affadavit of publication was filed in the NewsJournal and Jeff Bergstrom confirmed it has been posted properly.

Mr. Bergstrom provided a background. The senior center is proposing an addition and is changing ownership from the State of Delaware Colonial School District to the New Castle Senior Center Foundation. They are anticipating an expansion of the building. They have appeared before the HAC and been approved. With the change in ownership it is evident that the HR zoning requires clubs and lodges to be a special exception by the Board of Adjustment. The Mayor asked if the State owned the property would it be required to appear before the Board of Adjustment. He deferred the question to Mr. Harker.

Mr. Harker responded that the doctrine of sovereign immunity when it comes to zoning are not easy to decide. Cases seem to indicate that it comes down to determining whether the State intended to waive their sovereign immunity by allowing the submission of the project to zoning requirements to a particular municipality, thereby making it a case by case basis. The government is not immune from local zoning ordinance unless it makes a determination that it usurps that immunity. He does not know if that is the case here.

The Mayor asked prior to the property being converted from a used school property to a senior center, were there any applications to the city for a change in use from a school property to school or lodge. Mr. Bergstrom indicated there was an application to the HAC for a change in the physical structure of the property for building permits. The Mayor said the State didn't apply to the city; it was there under sovereign immunity. Mr. Bergstrom confirmed this.

Mr. Robert Appleby informed attorneys for the school and the Trustees have agreed that if the senior center fails, the New Castle Trustees will take it over.

Mr. Harker made it clear to the Board and audience that nothing is before us tonight that deals with the expansion of the senior center. That is a matter that is to be taken up at a later date when that proposal is made to HAC. We are only dealing with whether we would grant this as a special exception in an HR district.

Public Comments

Richard Evans, 419 South Street – He is concerned that he would like not to have events serving alcoholic beverages being served across the street from the fire house and his residence. He has spoken with Mr. Appleby about his concern. (The Mayor added he doesn't think this issue is pertinent to this hearing.)

Mr. Harker said a special exception is different from a variance. A special exception is a use that actually is permitted in that district and the standards for granting a special exception are much easier to meet than a variance. It only requires that we indicate it is appropriate use for that district and it will not be injurious or harmful to the neighborhood. They do not need to show exceptional difficulties or hardships.

Mary Ann Caven, West 3rd Street – She is concerned about the size of the expansion and whether it might be turned into a community center later.

Mr. Appleby said they currently have one room. They can't accommodate more than one class because of this. It has never been their intent to make it into a community center. If the senior center fails, it would be up to the Trustees to determine its use.

Mr. Athey asked if we have a definition for senior center. Mr. Harker said there is nothing in the code or the NAICS (national code) definition as to a club or lodge or senior center that he found. Mr. Appleby said that 55 and over is in their bylaws. Mr. Athey suggested attaching the condition that members must be 55 and over. Mr. Harker said the Board is permitted under the code to make conditions on various restrictions. Mr. Athey asked if the club changed ownership would that mean the club would still be permitted or does the decision get revoked? Mr. Harker responded that the use would continue to be permitted as long as it remained that use. They can't change the use to another use other than a club or lodge.

Mr. Appleby said the deed will state the property is not to be used to make money.

Mr. Harker asked Mr. Appleby if it is intended that the owner be a qualified tax-exempt charitable organization? He responded that they qualify but the Trustees do not. Mr. Harker said that under those circumstances any property of a defunct charitable organization must go to another 501(c) charitable or government organization.

(Audience) – Noted that presently the membership is open to those 50 years and over. She wanted to make this clear.

Chandler Gebhart – He identified himself as a past president and current vice president of the New Castle Senior Center. He wanted to make it clear that at no point have they ever talked about becoming a community center. It is strictly a senior center providing services to people 50 years and up. Concerning alcohol, he hears the community's concerns and encourages residents to contact himself or Mr. Appleby at any time.

John DiMondi – This deed could change and he doesn't feel it would be detrimental if a condition to the exception was made that the exception remains in place as long as it remains an age-restricted usage or lose its usage.

Mr. Harker made a motion to approve the special use exception of the New Castle Senior Center subject to a condition as permitted by the code that membership be restricted to members 50 years of age or older and that ownership of the building remain with a qualified charitable organization. Mr. Athey seconded the motion. The Mayor said that if the senior center fails and the Trustees find a use not based on age, he is confident in the Trustees making a wise decision and he is opposed to adding an age restriction. Mr. Athey added that none of us has a crystal ball and he is not casting disparaging comments towards the Trustees. He does not feel it is a major problem because it could be changed in the future. The Mayor changed his thoughts on this matter since it would not be permanent.

Mr. Harker read Section 230-57 of the Code, The Powers and Duties of the Board of Adjustment.

Mr. Harker's reasons for his vote would be because there has been no evidence presented to show it is harmful to the neighbor, it is in harmony with this district and consistent with the fact the building was a former school and is a good use for this facility. Mr. Athey said the only partially negative comments we have heard we have addressed. The Mayor also agrees with Messrs. Harker's and Athey's comments.

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Adjournment

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Debbie Turner
Stenographer

Applicant Exhibit 1 – Plan with the amended application
Applicant Exhibit 2 – Deed
Applicant Exhibit 3 – Plans submitted with the original application
Applicant Exhibit 4 – As built submitted to Historic Area Commission