

**A New Castle City Board of Adjustment Hearing took place on November 29, 2006 at 7 p.m. in the City of New Castle's Town Hall.**

Present: Mayor John F. Klingmeyer  
James F. Harker, City Solicitor  
David Athey, City Engineer

Mayor Klingmeyer called the meeting to order at 7 p.m. He introduced City Solicitor James Harker and City Engineer David Athey.

The Mayor read the Notice of Public Hearing that states, "An application has been filed by Regina Marini for property located at 101 West Third Street, New Castle, Delaware, parcel number 21-018.00-009, seeking an interpretation of the city code and/or a variance from the required 25 foot minimum rear yard setback to allow construction of a residential dwelling 2 feet, 6 inches from the rear property line. For the purpose of considering this application, the Board of Adjustment will hold a public hearing on November 29, 2006 at 7 p.m. in Old Town Hall, 2<sup>nd</sup> floor, located at 201 Delaware Street, New Castle, Delaware."

A check for \$600 has been received from the applicant and notices were advertised in the NewsJournal papers. Mr. Jeff Bergstrom, City Inspector, confirmed that the property has been properly posted.

Mr. Harker informed he had received a call from Mr. John Tracey, counsel for the applicant. He said he would not be available for our meeting this evening. His client was in agreement to request a postponement. Dates to reschedule were then discussed. Mr. Harker feels we need to give at least two weeks or 15 days notice of the rescheduling of this hearing. As a result early January was agreed upon with Mr. Tracey.

Mr. Harker said there is at least one opponent to this project. **He made a motion to postpone this matter until early January. Mr. Athey seconded the motion.** The floor was opened for discussion.

Mr. John Wheeler supports postponement of this hearing. (He provided supporting documents to the Board for record.) He and his wife organized a group named "Save Battery Park". He requested the Board consider that January may be too soon. He asked the Board to consider 90 days or allow submissions to come in so a later date can be considered. He said a variance is a privilege, not a right, and that 90 days would allow the city to get all the facts.

Mr. David Bird, East Fourth Street, and former member of the Land Use Subcommittee. He agreed with Mr. Wheeler that factual information on the status of the property is important. He questioned the property's rezoning record. In the late 1990's it was rezoned from OSC to Historical Designation and if it is rezoned how long does that rezoning stay in effect. Were there any conditions placed on the rezoning which would support the additional time to gather information. He is also in favor of postponement.

Mr. Harker informed that when a property is rezoned it is rezoned forever unless Council chooses to change it through their process. He said we can check in the ordinance to learn whether any conditions were in place.

Mr. Harker said typically postponements are granted at the request of applicants. He is not aware of any precedent that allows postponement by an opponent but he has no problem with this either. He feels it is the Board's responsibility to reasonably schedule a hearing and this has been the past practice of this Board. He is in favor of rescheduling in early to mid January 2007.

Mr. Athey is curious as to why the additional time period is needed. Mr. Wheeler addressed his concern. He feels there is a possible court liability issue involving the sidewalk issue. He said they are also interested in process and preserving open space.

Mr. Harker said he prefers to set a date tonight. He has not heard any argument to support further delay. If the city wants sidewalks on this property that it does not own, it doesn't have a right to put in a sidewalk or demand action of the landowner without compensating the landowner. He feels a rescheduled date should be set in a public hearing.

Mr. Athey asked what the applicant's wishes were. Mr. Harker said they wanted it done in December but were informed that is too early. It needs to be re-advertised in a manner that is fair to both sides of this issue. (*Discussion about dates followed.*)

Mr. Bird asked for clarification on the rescheduled meeting. He was informed that this would be the public hearing as well as the Board of Adjustment's consideration of the variance. Mr. Harker said deliberations are made directly after the hearing unless we feel a decision cannot be made or a continuance is requested.

**Mr. Harker made a motion to reschedule the hearing for January 10, 2007; Mr. Athey seconded the motion. The motion was approved by unanimous vote.**

Mr. Wheeler referred to the petition he presented to the Board. Will the Board look at documentation and the new FOIA information and is public endangerment an issue which the Board will consider gathering more facts on in order to make a decision?

Mr. Harker said we are a judicial body sitting as a Board of Adjustment. We are not an investigative body and the courts have ruled that it is inappropriate for us to do so. The issue is to be presented by the applicants at the meeting scheduled for January 10, 2007. We will not look at email information sent directly to us because it is inappropriate. You can present your evidence and arguments at the public hearing. You are also permitted to speak against this project at the public hearing. We don't have jurisdiction to try violations in

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building codes or to determine what is a good or bad design. We have limited jurisdiction under our state law and zoning code so we will not be deciding a case on issues that are not specifically related to this parcel or what the effect of granting or denying a variance would be.

**Mr. Harker made a motion to adjourn the hearing.** The hearing was adjourned at 7:30 p.m.

Respectfully submitted,

Debbie Turner  
Stenographer