

A New Castle City Board of Adjustment Hearing took place on September 4, 2007 at 7 p.m. in the City of New Castle's Town Hall.

Present: Mayor John F. Klingmeyer  
David Athey, City Engineer  
Roger Akin, City Solicitor

Mayor Klingmeyer called the meeting to order at 7 p.m.

The Mayor read the Notice of Public Hearing that states, "An application has been filed by R.M. Williams Co. for property located at 801 & 811 Gray Street, New Castle, Delaware, parcel numbers 2101400244 and 2101400243 seeking an area variance from the minimum lot area of 3,000 square feet for a one-family semi-detached dwelling to allow a lot area of 2,750 square feet for lots 1 and 6 and an area variance for lot 1 to allow a 7.5 front-yard setback along School Street. For the purpose of considering this application, the Board of Adjustment will hold a public hearing on Tuesday, September 4, 2007 at 7 p.m. in Old Town Hall, 2<sup>nd</sup> Floor, located at 201 Delaware Street, New Castle, Delaware."

An affidavit of publication from the New Castle Weekly was posted on August 22, 2007 and an affidavit from the News Journal was published on August 20, 2007.

City Building Inspector Mr. Bergstrom could not provide any additional background other than what has been provided by the applicant. He added that there is a request for a proposal to demolish the existing non-conforming structure at the corner of School and Ninth Street and replace with a series of townhouses for the configuration shown on the plan the applicant has provided.

*(All parties who testified this evening were sworn in.)*

Bill Ward of the law firm Ward and Taylor on behalf of R.M. Williams, Rob Williams, President of R.M. Williams and Jeff Williams (no relation), engineer with Kercher Engineering, Inc. are in attendance representing the applicant. Mr. Ward reviewed what is being proposed. R.M. Williams is proposing continuing the development that has occurred on Ninth Street and the town homes off Gray Street. He would like to remove an existing five-unit apartment building and build eight town homes. These town homes would be consistent with the neighborhood and be a positive addition. They would have a streetscape similar to what exists on Ninth Street and Gray Street. Mr. Jeff Williams provided a plot plan for the Board and described same. Six town homes would front on Ninth Street with two fronting on School Street. Because of the set up using the land as it is now configured, two variances will be required on each end for lot area. Instead of the necessary 3,000 there would be 2,750 square feet which is less than a 10% variance. We feel that the variance will not impact the community in a negative fashion. The interior units have the necessary lot areas so no variance is needed. The lot on School Street would be 7-1/2 feet from School Street which does provide a set back but because it is a street we need 20 feet from that street. There are three total variances being requested. The town homes will all be brick, three floors with four bedrooms.

Mr. Ward addressed questions from the Board. There is a strip of land that provides access to the two-car garages, trash and emergency vehicles that the applicant would consider granting an easement to allow access or dedicate to the City. They feel they meet the legal standpoints to obtain the variances.

Mr. Akin referred to the application making reference to a 2003 case which was before this Board. He asked if any of the variances being requested this evening touch on the matter before the Board in 2003. Mr. Ward responded that this proposal is completely different from the previous application.

Mr. Athey commented that he agrees this could be an improvement to the neighborhood. He asked if lot 8 is going to be deed restricted since it contains wetlands? Mr. Jeff Williams does not oppose a deed restriction. Mr. Athey asked what other options were pursued to avoid the applicant from coming before this Board. Mr. Jeff Williams informed that he and Rob Williams met with Jeff Bergstrom to discuss how it could be developed in the best interest of the City and provided information on how they decided upon eight units. They are proposing improvements to School Street in the area as well. *(Additional questions were fielded about the widening of School Street and the number of units being proposed.)* The Mayor was concerned with trash vehicles utilizing School Street and having enough room to access the rear of the units. Mr. Williams said they are proposing a 30-foot wide right-of-way or easement. Mr. Bergstrom confirmed there would be room for a trash vehicle. Mr. Athey noted for the record that dedication to the City would need to go through City Council and not this Board. If it were changed to an easement the City would not need to undertake any further action. Mr. Athey asked if an easement is involved would a homeowners' association assume maintenance? Mr. Williams said they would include in the declaration stating maintenance would be shared thereby making it a private alley. The agreement would have to include the open space as well.

The floor was open for comments.

Mr. Akin asked if the City received any correspondence or input from neighbors concerning this proposal. None has been received. *(Letter from Mr. Athey to Mr. Bergstrom dated in 2004 concerning the previous proposal was submitted for the record.)* In reviewing the letter Mr. Athey feels the letter does express concern about whether there was clear passage from School Street and that letter asked the applicant to demonstrate that School Street is a public street and that there is clear passage. Mr. Bergstrom believes deed records show the street to be a public street; a portion of the street between Ninth Street and the former railroad right-of-way is a bond bill street. The city has not given up rights to that street.

Mr. Akin suggested dealing with the variance requests one at a time. The Board was in agreement.

Mr. Akin started with the variance request for lot sizes for units one through six contiguous units fronting Ninth Street. The request is for a 250-square foot variance on each of those lot sizes which is a less than 10% of the required lot size in this zoning district (R3). We are constrained as the Board of Adjustment to follow the quick-check factors when addressing an area variance such as this one. This is in a residential zone and the character of the neighborhood contains a number of similar size town home units providing little to no setback from streets or side yards in their current locations. He feels this proposal would be consistent with the area where development is proposed. Lastly, there was no opposition registered with the city or at this meeting concerning this proposal; therefore, he does not feel the area variances being requested would have an adverse affect on neighboring properties. By not granting the variance request for lot sizes for the two end units the applicant may be victimized by the location and structures on the lot. He votes in favor of lot size variances for units one and six. *(Quick check factors and the city's requirements when considering variance requests were discussed.)* Under C(1)A(1) that special circumstances exist in that there has been a pre-existing lack of any setback and he feels there are no special conditions that requires the construction of six versus five units.

The Mayor is concerned with C(1)A(3), special conditions and circumstances do not result from actions of the applicant. The applicant decided to build six units rather than five. Five units would not require a variance. It is the applicant's choice to build six units thereby creating conditions resulting from the applicant. *(Discussion between the applicant's counsel, Mr. Bergstrom and the Board followed.)* Mr. Athey asked about C(1)A(4) which states that granting of the variance shall not convey on the applicant any special privilege that is denied by this chapter to other lands. In his opinion it would because every other land is required to abide by the setbacks. Following discussion Mr. Akin feels that the choice of six units versus five and the decision to place them on Ninth Street rather than School Street does appear to be a self-imposed dilemma by the developer in that it now requires lot size variances for units one and six in the current application.

Ms. Janet Koczak, 615 West 11<sup>th</sup> Street, supports the applicant's plans based on what she sees in the area. She doesn't feel the bulk of the units facing School Street is good because it wouldn't do anything for the look of the neighborhood and the project would be a nice look facing Ninth Street.

Mayor Klingmeyer agreed that facing Ninth Street is more desirable. He asked Mr. Akin if the concessions the applicant has suggested (granting an easement to allow access) could be mandated into the chapter now could we resolve tonight? Mr. Akin said those concessions would need to be made on the record in a binding form. *(Mr. Ward discussed concessions with Messrs. Williams.)*

Mr. Ward stated that given that now this would be a private easement we can extend the rear property lines so the lot area requests will not be necessary. The only request we would need is a side yard setback of 7-1/2 feet. The units will be sold in fee.

Mr. Akin asked if they are withdrawing the request for the lot area variances for one and six based on the concession made? Mr. Ward concurred.

Mr. Akin asked Mr. Ward to submit the redrawn plan to Mr. Bergstrom when prepared. He will submit the redrawn plan as well as deed restrictions.

Mr. Athey informed he cannot support the side yard setbacks for the same reasons as the lot size, citing C(1)A(1) and C(1)A(4). He is concerned with setting a precedent if we grant this variance.

Mayor Klingmeyer stated we are rigid in following the rules. He is troubled by the applicant's decision to propose six units rather than five.

Mr. Ward asked the Board to take into account that the parcel is being reconfigured for the benefit of the community and that every case should be on a case by case basis and does not feel special circumstances exist. He feels they do meet the requirements and are not setting a precedent.

Mr. Athey asked Mr. Jeff Williams to state for the record that they could get eight units along School Street legally with no variance. He agreed with the statement.

The Mayor asked the applicant if they would decrease the number of units from six to five. Mr. Ward responded putting in six units would be the best situation for the applicant. They feel they meet the code and did not entertain the Mayor's suggestion of decreasing the number of units to five.

Mr. Akin added that if a developer chooses to maximize value that is fine but in making that choice that one extra unit causes the developer to come before this Board to request a variance because he is voluntarily choosing to add one more unit, this does put the Board of Adjustment in a dilemma. He does not feel a special circumstance exists with the setback issue on the School Street side of building one. He is also concerned with setting a precedent. He feels the second variance, School Street variance, should not be granted under these circumstances.

**Based on the rationale stated during the second part of the hearing and the choice to place a sixth unit on the parcel is a condition caused by the applicant and because the applicant has not satisfied quick check factors or all of the terms of the zoning code (Section C(1)A(3) and (4), Mr. Akin moved the setback variance requested this setback variance be denied. Mr. Athey seconded the motion. Mayor Klingmeyer feels it is a violation of Section C(1)A(3) and concurs with Mr. Akin's position to deny the request. Mr. Athey cited C(1)A(3) and (4) and is also opposed to granting the request. The vote was unanimous to deny the request for setback variance.**

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The hearing was adjourned at 8:10 p.m.

Respectfully submitted,

Debbie Turner  
Stenographer