

A New Castle City Board of Adjustment Hearing took place on November 3, 2008 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 hearing to order at 7 p.m.

The Mayor read the Notice of Public Hearing that states, "An application has been filed by Richard Keller/Buck-Kennett III LLC, P.O. Box 4095, Greenville, DE 19807 for a variance from the Zoning Code to permit the size of parking spaces to be reduced from the required 180 square feet to: 162 square feet for 138 regular parking spaces; 160 square feet for 8 parallel parking spaces; and 144 square feet for 6 handicapped parking spaces, on property located at 0 West Ninth Street, New Castle, Delaware, known as Deemer's Landing II, tax parcel number 2101400500.

For the purpose of considering this application, the Board of Adjustment will hold a public hearing on Monday, November 3, 2008, at 7 p.m. in Old Town Hall, 2<sup>nd</sup> Floor, located at Second and Delaware Street, New Castle, Delaware."

An affidavit of publication from the News Journal was published on October 17, 2008 and the New Castle Weekly on October 22, 2008. Payment for the application has been received.

City Building Inspector Mr. Bergstrom confirmed that the property has been properly posted. He informed that the applicant is seeking relief from the requirement that parking spaces in this district of the City be 180 square feet. This application would bring parking spaces into conformance with actual parking spaces delineated across the street and with parking spaces in our general commercial district.

*(All parties providing testimony this evening were sworn in.)*

Mr. Robert Beste, counsel for the applicant presented to the Board. He introduced Mr. Richard Keller and Meredith Keller, his daughter. Mr. Beste called upon Mr. Parley Hess, project engineer from McBride and Ziegler, to provide an overview of the application.

The applicant is requesting variances to install standard parking spaces that are 9' by 18' in dimension, parallel spaces of 8' by 20' in dimension, and handicapped parking spaces of 8' by 18' in dimension. The handicapped parking spaces would be consistent with Americans with Disabilities Act (ADA) requirements with aisles of 5' to 8' in width. Using a diagram (Exhibit 2) Mr. Hess illustrated to the Board the location of the various spaces.

Mr. Hess presented four (4) photos (Exhibit 3) to the Board showing examples of the different parking spaces in the City. He provided a detailed explanation of each photo.

Mr. Hess stated that the site is bisected by a drainage ditch. The building and parking is located on the western side. There is no portion of the property to the east currently being built on, but could be developed in the future. That area is on top of a landfill and would require it be raised.

Mr. Athey inquired about traffic flow near the parallel parking spaces. Mr. Hess used the photos to show traffic flow and said that appropriate signage and painting on the pavement will be installed. Mr. Athey questioned the calculations used to determine the area of the spaces since they are on a curve. Mr. Hess responded that the shorter, inner radius was used to determine the size of the space.

Mr. Athey referred to the New Castle County Unified Development Code that states that parallel parking spaces should be 8' by 21' rather than 8' by 20'. Mayor Klingmeyer questioned egress at the site. Mr. Hess confirmed that it is two-way.

Mr. Akin asked if the user population anticipated for Deemer's Landing II is similar to the user population characteristics at Deemer's Landing I. Mr. Hess confirmed they will be similar. Mr. Keller informed there will be elevators in the new structure, which will attract an older population.

Discussion about ADA handicapped parking requirements followed.

Mayor Klingmeyer questioned the absence of a "no left turn" sign from Ninth Street. Mr. Hess confirmed that it does not appear on the drawing, but markings will be painted on the pavement.

No one appeared in opposition of the application.

Mr. Hess summarized using the detailed parking study that was prepared for Deemer's Landing I. The density of two spaces per unit is not being used at this location. It is standard to attempt to reduce the number of parking spaces rather than reducing the size of those spaces.

Mr. Keller added that there are currently 1.8 spaces per unit at Deemer's Landing I. The parking study was based on 2 spaces per unit and extra spaces were still available.

Mayor Klingmeyer asked if there would be signage at Deemer's Landing II that additional parking is available at Deemer's Landing I. It was confirmed that there will be none. The Mayor then expressed concern about double parking and creating a safety issue. Mr. Hess responded that there would be no signage because these are separate projects. He added that there is overflow parking (about 35-40 parallel spaces) on Ninth Street that can be used.

Mr. Hess confirmed Mr. Akin's statement that the development is all on the west side of the drainage ditch and the applicant did not want to inconvenience tenants by having them walk across the drainage ditch to parking spaces to the east side of that ditch. Additional spaces could be constructed on the east side.

Mayor Klingmeyer expressed concern with this Board granting variances when the Zoning Code establishes the parking space size. Mr. Akin confirmed that this is a dimensional variance application that is handled by this Board.

The applicant feels that they meet all of the criteria in 230-57 of the Zoning Code. The Mayor disagreed stating that the size of the building created problems. Mr. Hess added they have demonstrated that they can provide additional parking on the property or off the property to meet the requirements of the size of the lot. The uniqueness of the property provides that it makes more sense for tenants to have parking located on the building side of the drainage ditch or offsite parking areas which do not require them to walk a big distance. Mr. Hess continued that they feel that the size of the parking variance is not unreasonable and that they meet the requirements of the Zoning Code for a dimensional variance.

Mr. Keller stated that at the last meeting one of the variances was the setbacks from the street and the railroad property in the rear. A main reason is that the units will be a little more upscale and the units need to be a certain size. We were going for parking at that time, but it wasn't advertised so nothing could be done. We are here tonight to approach going with parking spaces that are normal in most places as opposed to asking for a variance in the required number of spaces.

Mayor Klingmeyer said that the Board is bound by current laws and he would have trouble approving this variance because the developer has chosen to build the larger structure rather than build in accordance with the land. Mr. Beste feels his applicant is experiencing a hardship. The Mayor does not see any hardship in this case.

Mr. Athey stated that this is similar to the Riverbend project that sought to change one of the setback lines to apply to all of the lots in the subdivision. The code is what it is and this Board was not the proper venue in that matter. If the City's code is antiquated, it is not up to this Board to determine that.

Mr. Bergstrom noted that the City has permitted large commercial development with 160 square foot parking spaces. The Planning Commission is close to asking the City to change parking space dimensions in the Zoning Code. Mayor Klingmeyer reiterated that this Board does not have the power to change the law; there is a procedure for that. Mr. Hess is of the opinion that this Board does have the power to approve dimensional variances.

Mr. Athey said there is no peculiarity in the size of the property; it is what it is. Mr. Hess responded that the Planning Commission suggested that we seek a

dimensional variance for the parking space size. Their planner also indicated that they did not have an issue with the size, but they were not in a position to make that decision.

Mr. Athey asked Mr. Akin how long it would take City Council to revise the parking space requirements section of the Zoning Code. After brief discussion it was estimated that it would likely be later in the summer of 2009 before the Zoning Code is changed. Mr. Bergstrom responded that he feels that the Planning Commission would recommend that Council reduce parking space sizes to be consistent with surrounding jurisdictions.

Mr. Beste argued that special conditions and circumstances do not result from actions by his client. Mayor Klingmeyer disagreed stating that the applicant can build a smaller building and comply.

Mr. Athey asked Mr. Akin if this Board can ask the developer to pledge that if parking became too tight at Deemer's Landing II, they would then agree to build another parking lot. The Mayor feels we would be exceeding our authority. Mr. Akin does not support Mr. Athey's suggestion and recommends against it.

Mr. Keller said that if his application is denied this evening, he would have to add parking spaces in order to comply. In response to Mr. Athey, Mr. Keller confirmed that he contributed to the widening of Ninth Street. Mr. Athey added that there is parking space not being utilized on Ninth Street and questioned paving more spaces, although not disagreeing with the Mayor. (*A brief recess was called.*) He asked if it is possible for tenants to use the Ninth Street parking spaces. Mr. Akin noted that these parking requirements are for off-street parking to support this complex and the Code doesn't address on-street parking to satisfy off-street parking requirements. The Ninth Street widening is a dedicated public right-of-way. If Mr. Keller wishes to pursue a proposal to use those parking spaces based on his contribution to the street widening, it is not a matter that this Board can address.

Mr. Keller commented that he is trying to improve the City of New Castle and feels that what he is proposing will be wonderful and will be a positive for the community and the area. Mr. Athey asked what Mr. Keller's timeline is for completing the project. Mr. Keller estimated 9-12 months from the beginning of the project. Construction will move quicker than Deemer's Landing I. Mr. Athey offered that if Council changes the parking space size that shouldn't be a problem. He suggested that Mr. Keller show parking spaces on the east side of the drainage ditch, and then change the plan later.

Mr. Hess stated that the applicant is seeking minimal variances to allow us to develop the site in a reasonable manner. The site is unique in its size. Other properties are not impacted and no unsafe conditions are present. It does not vary with other

sections of the City Code and does not provide them with unique conditions that cannot also be granted to others in the district. No one has expressed any negative concerns with this project. They believe it is a reasonable variance.

Mr. Beste noted that they believe the applicant has addressed all four sections under Section 230.57 and that they are acceptable and asked the Board for its approval of the dimensional variance.

Mayor Klingmeyer again stated that he feels the conditions are the result of the developer. The Board is required to follow procedure. The Board has been consistent in the past in similar cases. The law pertaining to parking space size is clear. The Board does not have the power to override the law.

Mr. Akin agreed with the Mayor. There are arguments on both sides of the issue. The existence of the drainage ditch area represents a special condition/circumstance that would not have been created by the applicant. When Mr. Keller elected to build a larger structure, he knew or should have known the parking space requirements. It is significant to note that Mr. Hess stated that it would not be difficult or impossible to create an additional 15 parking spaces thereby causing all the spaces on the west side of the drainage ditch to be Code-compliant. The developer testified, and Mr. Bergstrom supported, that there have been parking spaces installed in the City that have been permitted to be installed that are smaller than required by Code. Mr. Akin is unaware of those cases which would have occurred prior to his being a member of this Board. Mr. Keller has made an aggressive development proposal that the City has accepted and testimony from tenants of Deemer's Landing I is very supportive of this project. However, the size of the building was chosen by the developer who must then meet all the Code requirements. He is not in favor of granting the variance.

Mayor Klingmeyer clarified the statement concerning smaller parking spaces in another area of the City. The area concerns City-annexed property near the Farmer's Market. When the City annexed the area of the Farmer's Market and the adjoining commercial properties that had been developed under the New Castle County Code, the City accepted the County's parking space sizes for that area only.

Mr. Athey also agreed with the Mayor. The issue is with the Code. He does not feel that the drainage ditch created a peculiar situation. He is optimistic that the parking space size requirements in the Zoning Code can be changed prior to finalizing the lot. He does not support the variance.

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**Mr. Athey made a motion to deny the application for a variance to the size of the parking spaces. Mr. Akin seconded the motion.**

**The motion was approved by unanimous vote.**

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

Respectfully submitted,

Debbie Turner  
Stenographer

Applicant Exhibits:

- #1 – Application for dimensional variance
- #2 – Diagram of project showing locations of various parking spaces
- #3 – Four (4) color photographs of project