

A New Castle City Board of Adjustment Hearing took place on January 6, 2009 at 7 p.m. in the City of New Castle's Town Hall.

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

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

The Mayor read the Notice of Public Hearing that states, "An application has been filed by The Trustees of New Castle Common, P.O. Box 453, New Castle, DE 19720, for: a special exception under Section 230 19 B(3) of the Zoning Code to continue operation of the Goodwill Fire Company in its present location with the expansion requested in the variance being requested here; for a variance from the Zoning Code to allow the existing building to remain 8 feet from the rear property line instead of the required 25 feet; and to allow an addition to the building to be constructed 8 feet from the rear property line instead of the required 25 feet; and, if required, to consider this a request to allow an enlargement of a non-conforming structure, on property located at 401 South Street, New Castle, Delaware, known as tax parcel numbers 2101530093 and 2101530104.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Tuesday, January 6, 2009, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Street, New Castle, Delaware.

A notice of affidavit was advertised in the News Journal paper on 12/22/08. Mr. Jeff Bergstrom, City Inspector, confirmed that the property has been properly posted.

(Thomas L. Clayton (Goodwill Fire Co.) and Francis DeAscanis (Trustees) were duly sworn in by the Mayor.)

Mr. Andrew Taylor of Cooch and Taylor, representing the Goodwill Fire Co., requested Mr. Clayton present a summary of the project. A map and sketch showing the area where the variance is being requested were provided to the Board. Mr. Taylor informed that the variance request will be asking that the existing building be approved with the rear setback of 8 feet and the proposed addition also be permitted to be built along the same line of 8 feet setback. The exceptional practical difficulty is the size of the lot and a tree (40qtrunk) on a neighbor's property. The neighbor wishes to preserve the tree and our engineer redesigned the building back towards the rear of the property which appears on the sketch. The addition cannot go in the front of the building because of the emergency vehicle bays. All parties addressed questions presented by the Board using a larger version of the sketch. Mr. Bergstrom commented that the Historic Area Commission has approved the requested setbacks.

Two (2) of the neighbors are aware of the fire company's plans; however, concern was expressed that the posting appears on the front of the building rather than the rear and that no official contact by the fire company to the

neighbors has occurred. Having the neighbors consent to the plan is essential to the process. *(Discussion followed about a path forward.)*

It was agreed that a continuation is warranted to allow the fire company time to notify all of the neighbors. Full newspaper notification is not undertaken in a continuation. The continuation notice will be posted per routine practice. In the continuation the applicant would return to this body and submit under oath that all parties have been contacted and whether there are or are not objections.

Mr. Taylor requested a clarification for the record that the variance request is not from the 8 feet along Williams Street but the 12 feet that Mr. Bergstrom pointed out on the sketch.

Mr. Akin noted the property owners abutting the property (based on the plan submitted) in question are Elizabeth Cross, Frederick & Mary Gallagher, Jacquelin & Robert DiGallonardo, Thomas Reed & Emily Reed. Sharon & James Keller, Jago & Elizabeth Plant. Notification will be by certified letters and hand delivery.

(No one was present in opposition of the plan at this hearing.)

Mr. Athey made a motion to continue the hearing until Tuesday, 1/20/09, at 7 p.m. The motion was seconded and carried.

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

Exhibit:

#1 . Two-page sub-division plan

Respectfully submitted,

Debbie Turner
Stenographer

A New Castle City Board of Adjustment Continued Hearing took place on January 20, 2009 at 7 p.m. in the City of New Castle's Town Hall.

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

The hearing was reconvened at 7:05 p.m. on January 20, 2009.

The Mayor read the Notice of Public Hearing that states, "An application has been filed by The Trustees of New Castle Common, P.O. Box 453, New Castle, DE 19720, for: a special exception under Section 230 19 B(3) of the Zoning Code to continue operation of the Goodwill Fire Company in its present location with the expansion requested in the variance being requested here; for a variance from the Zoning Code to allow the existing building to remain 8 feet from the rear property line instead of the required 25 feet; and to allow an addition to the building to be constructed 8 feet from the rear property line instead of the required 25 feet; and, if required, to consider this a request to allow an enlargement of a non-conforming structure, on property located at 401 South Street, New Castle, Delaware, known as tax parcel numbers 2101530093 and 2101530104.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Tuesday, January 6, 2009, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Street, New Castle, Delaware.

(Raymond Krett, Jr. (Goodwill Fire Co.) and Fred and Tish Gallagher were duly sworn in by the Mayor.)

Mr. Andrew Taylor of Cooch and Taylor called on Raymond Krett, Chairman of the Board of Directors of the Goodwill Fire Co., to explain the need for the addition to the backside of the fire company and the alternatives they have explored. Mr. Taylor explained the practical difficulties and special exception. Under the City Code this is an approved use for a fire company which they feel is a governmental function under Section 230-19(b)(3). The area is zoned historic residential (HR).

Mr. Fred Gallagher lives immediately behind the fire company and has no issue with the variance but questioned the roof line. Is it going to be the same roof line? He is concerned with his view of the river being limited by a pitched roof. Mr. Krett responded that the proposed roof line is an ~~A~~ roof line consistent with the front of the building. This was done to allow for storage for records and because the basement will be damp and unsuitable for storage.

The Board reviewed the floor plan with Messrs. Taylor and Krett. *(Lengthy discussion and questioning followed about the plan.)*

Mr. Krett explained why they chose attic storage versus basement storage. The basement under the main entrance to the fire company has been resealed several times and they have installed a dehumidification system which is working right now and the cost of using the basement would be prohibitive. Mr. Gallagher

asked if they would be needing additional storage beyond the 2,009 square feet they will acquire with this addition. Mr. Krett said a consideration was they need to make space for their fire line officers and staff. Space on the first floor is needed for the administrative offices.

(No other public comments were offered.)

Special Exception

Mr. Athey asked the applicant what sort of operational hardship would be created if (in lieu of a pitched roof) they expanded the footprint to accommodate the area above the first floor and keep everything on a single floor. Mayor Klingmeyer asked Mr. Taylor if under the special exceptions if the Historic Area Commission (HAC) had granted approval. He informed that Mr. Bergstrom stated at our last meeting that they had approved the other setback lines, they determined the street setbacks and the only variance we needed a variance for was the 12 foot setback. *(There is no record of the HAC's approval with the application.)* HAC would also be involved with reviewing the application to comment on the architecture and bulk, Section 230-57(b)(1)(b). *(Lengthy discussion about HAC's role and the possible granting of approval conditional on HAC's input followed.)* The Mayor asked Mr. Akin if this Board could grant approval conditional on HAC making their recommendations. Mr. Akin believes that it can since this Board has met twice on this matter and it could approve the application based on receipt of approval or a set of minutes from HAC approving all aspects of the plan's subdivision then this Board's approval of setbacks would be legal. The applicant prefers this method as well.

The HR Zoning Section 230-19 (last paragraph) clearly spells out that a Historic Review Certificate is needed.

Mr. Akin identified the fire company as a private entity providing fire protection services fundamentally providing a government function that the government would need to provide if the fire company did not exist. The City's charter requires/permits the City to provide firefighting services and in this case a private entity provides this role/function. The existing structure is performing a government function of firefighting.

Mr. Akin made a motion that the applicant's request to be granted a special exception to continue to operate activities in an essentially government building under Section 230-19(b)(3) of the zoning code be approved. Mr. Athey seconded the motion. *(Discussion followed about HAC's authority to vote for/against a special exception because that issue is devoted only to the Board of Adjustment.)*

Board members provided their vote and supporting rationale.

Mr. Akin voted in favor of the motion citing Zoning Code Section 230-19(b)(3). The applicant in this instance has satisfied the requirements. It is an existing use, the conduct of fire suppression operations is a government function provided for in the City's charter, and the HAC does not need to weigh in on whether a special exception is required since that is an issue specifically assigned to the Board of Adjustment. There have now been two hearings on this application, the Board has heard testimony pro and con and this Board is permitted to grant special exceptions. The conditional approval should only be attached to whether or not the variances are going to be granted by the Board in this case.

Mr. Athey cited language in Section 230-19(c) in the last sentence states that a Historic Review Certificate shall be obtained. He is concerned whether special exceptions would be allowed.

Mayor Klingmeyer's understanding is that this is a conditional approval pending approval from the HAC.

Mr. Akin stated that we have an existing use that we cannot terminate by denying a special use permit. We are being asked by the applicant to take official action to approve what is already an existing use and he does not feel this Board can terminate. HAC must review this application pertaining to issues they have authority to review. The special use is not something that HAC needs to get involved in so he did not include HAC's recommendation as a condition of approving a special use in this case.

Mayor Klingmeyer added that he is concerned with acting on a special exception when the language states we are required to get a favorable recommendation from HAC. It is clear that the applicant must receive HAC's approval.

(Lengthy discussion followed concerning the language in the Code. Section 230-19(c) states that in all cases a Historic Review Certificate must be attained, but that design is to address new construction in the historic residential use rather than existing use. The Code needs to be amended and clarified.)

Mr. Akin made an amendment to his original motion regarding special exception. Mr. Akin made a second motion that with the Board's approval on special exception as already voted on unanimously by the Board shall be conditioned upon receiving a recommendation from the HAC and should the HAC choose not to comment on the eligibility of the applicant to conduct a use of special exception as a government building, then the Board's vote on the issue shall stand. Mr. Athey seconded the motion.

The Board approved the motion as amended based on their discussions. The motion as amended was approved by unanimous vote.

VariANCES

Mr. Akin supports the variances sought this evening contingent upon the favorable recommendation of the subdivision by the HAC. Under Section 230-57(c)(1)(a)(1) the Board has heard testimony concerning a large tree that the fire company is seeking to save and planned around the tree. Another special condition is the lot size and the current location of the building and its set back exception. Under 230-57(d)(2), structural alteration/enlargement of buildings which have been non-conforming use, a special exception has not been granted before tonight, technically this building has been a pre-existing, non-conforming use under zoning law. Under the latter section of the Code a number of factors are listed that must be considered by this Board to approve a structural alteration to an existing building. Under Section 230-57(c)(1)(a)(2) the fire company had a non-conforming setback situation and previously this Board has allowed enlargement of properties that did not further encroach in set back but are consistent with existing non-conforming set backs. Under (a)(3) he believes that market conditions of operating a growing fire suppression operation are not actions resulting from the fault of the applicant but rather the natural growth of the fire company. He also does not feel that such a request has been denied to other similarly situated structures in the same district. He added that under (d)(2) the Board is specifically permitted to consider the doctrine of natural expansion dealing with the public's welfare. He identified fire suppression operations as being consistent with protecting the public's welfare and safety. This is all conditional on a favorable opinion from HAC.

Mr. Akin made a motion that the set back variances requested in this application be granted for the reasons stated on the record and that the Board grant the variances but conditioned upon receipt of a favorable recommendation by the HAC of all issues pertaining to the proposed addition that are within their purview to address. Mr. Athey seconded the motion.

Mayor Klingmeyer asked for clarification about whether non-conforming uses as a special exception ceases to exist as a non-conforming use. Mr. Akin said that up until tonight's action technically the fire company has been a non-conforming use because apparently this Board has never granted a special exception. *(Additional discussion followed.)*

Mr. Athey voted in favor of the motion and did not add any more rationale.

Mayor Klingmeyer voted in favor agreeing with the City Solicitor's comments.

Mr. Akin is in support of the motion for the reasons stated.

The motion carried by unanimous vote.

Mr. Taylor asked for clarification of the process moving forward. If HAC gives a favorable opinion the report will be sent to the Board of Adjustment for the final report through the City Solicitor. Mr. Akin will contact the HAC and request minutes of any action taken on this matter.

The hearing was adjourned at 8:40 p.m.

Exhibits:

#2 . Notice materials for the first hearing

#3 -- Plan showing floor plan including proposed front elevation and left elevation

Respectfully submitted,

Debbie Turner
Stenographer