

**A New Castle City Board of Adjustment Hearing took place on April 9, 2009 at 6:30 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 6:30 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 John Cochran, 807 Washington Street, New Castle, DE 19720 requesting a change in the non-conforming use of a building to allow operation of a barber shop at property located at 1111 Wilmington Road, New Castle, Delaware, known as tax parcel number 2100400023.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Thursday, April 9, 2009, at 6:30 p.m. in Old Town Hall, 2<sup>nd</sup> Floor, located at 2<sup>nd</sup> and Delaware Street, New Castle, Delaware.+

*(Mr. Cochran was sworn in by the Mayor.)*

An affidavit of publication in the News Journal was published on 3/25/09 and the filing fee has been received. Mr. Bergstrom confirmed that the property has been properly posted. He provided a brief description of the property; it is a non-conforming use that contained a dentist office until recently and the owner would like to use the property for a barbershop, another non-conforming use. It is the Board of Adjustment who determines if this non-conforming use is not a greater non-conformity than the previous one.

Mr. Cochran, 59 The Strand, owns property at 1111 Wilmington Road. He was approached by a variety of businesses interested in locating there. He owns property behind this building and also the property to the right side and the rear of the right side. It is in a community and faces New Castle Avenue. The dental staff was approximately 28 people. There were approximately 12 people there at any one time. The barber shop will generate 8-10 clients in addition to a staff of about 4-8 staff, thus reducing from 28 to 16 people on the premises.

The property is zoned residential R1. The applicant has spoken to the neighbor and she has no objections. A question arose about the use being abandoned for 12 consecutive months or 18 months in a three-year period then the use is in jeopardy. The dentist left the building in August 2008. Mr. Akin asked Mr. Bergstrom to clarify his comment about the new proposed non-conforming use; would it be more intensity of use? Mr. Bergstrom confirmed that is correct and that it is part of the Code. *(Brief review of the Code followed to ensure the correct standard is being applied in this case.)* The Mayor cited Section 230-10(C)-proper use is equally appropriate or more appropriate to the district than the existing non-conforming use. Mr. Akin confirmed this is the correct section. Conditions were then discussed.

Mayor Klingmeyer expressed concern over signage and its impact. Mr. Cochran said there is an existing sign from the dentist office and he has informed the barber that is the only sign to be used. Mr. Akin questioned the hours of operation for a barbershop. *(Additional discussion about signage took place.)* Mr. Bergstrom advised that Mr. Cochran would need to return to the Board of Adjustment to receive a permit to install any other signs. The R1 district does not permit signage. Signs inside the glass are not regulated (lighted sign that already exists).

Mr. Athey suggested attaching some conditions on approval such as being specific as to what services will be provided, the hours of operation, how long the sign is lit.

*(Discussion about hours and days of operation followed.)*

Mr. Paul Freebery was in the audience and commented that an occupied building is better than a vacant one. *(Mr. Freebery was not sworn in.)*

**Mr. Athey made a motion that the non-conforming use be granted for a barbershop on the property with operation limited to hair or nail care services, hours of operation are limited to 9 p.m. Monday through Saturday and 6 p.m. on Sunday. Mayor Klingmeyer questioned whether this would be an extension of a non-conformity. Mr. Athey amended his motion to include Monday to Saturday until 9 p.m. and closed on Sunday and to include that the dimensions and method of illumination of the existing exterior sign or its replacement remain the same.**

Mr. Akin noted that in a residential neighborhood allowing a non-conforming commercial operation to continue is in the discretion of this Board and allowing the business to extend to seven days a week would perhaps create a more burdensome operation to the surrounding neighborhoods. He is inclined not to permit Sunday operations since the previous business did not operate on Sunday. **Mr. Akin seconded the motion.**

A roll call vote was taken.

Mr. Akin . voted in favor of the motion citing the Non-Conforming Use, Section 230-6(A) of the Code states that it is the intent not to encourage the survival of non-conformities and to gradually eliminate them. However, there is a specific section that allows the Board to grant a non-conforming use to change to another use and the specific weighs more than the general statement. Mr. Cochran's sworn testimony reveals the proposed barber operation will have less impact on parking and pedestrian traffic based on the numbers he has provided to us. Under Section 230-10(C) we are charged with determining whether the proposed use is equally appropriate or more appropriate to the district than the existing

non-conforming use and he believes a barbershop is equally appropriate if not more appropriate given that a substantial dental office has been the use at this location previously.

Mayor Klingmeyer . voted against the motion because off-street parking was not addressed.

Mr. Athey . questioned Mr. Akin about what procedure is used in this situation without requiring the applicant from returning.

Mr. Akin said only one vote has been noted so far meaning a majority has not voted yet. The person making the motion can withdraw their motion and if the person making the second withdraws their second then there is no motion on the table and the parking issue can be addressed.

Mr. Athey withdrew his motion; Mr. Akin withdrew his second of that motion.

Mayor Klingmeyer asked Mr. Cochran what off-street parking is available at this location. There are two parking spaces in front of the second parcel and he has four parking spots behind the first parcel and can make room for more.

Mr. Akin questioned where the employees of the dental office (28+/-) parked. Mr. Cochran responded that they parked on Wilmington Road and both sides of an adjacent street.

*(Discussion followed.)*

**Mr. Athey made a motion that the non-conforming use continue but the use change to a barbershop subject to the following conditions: hours of operation be limited to 8 a.m. to 9 p.m. Monday through Saturday, closed on Sunday, the uses are limited to hair and/or nail care services specifically excluding tattoo parlors, the existing exterior signs (dimensions and illumination) remain the same as it is today with the change being the text on the sign, and the existing four parking spaces remain under the new use. Mr. Akin seconded the motion.**

Mr. Akin . voted for the motion citing the reasons stated earlier with the addition that he feels it is appropriate for someone who is proposing a continuing non-conforming use that may have occasional high walk-in traffic plus a significant workforce at least preserve the four parking spaces currently located behind the structure.

Mr. Athey . voted in favor of the motion citing Mr. Akin's reasoning.

Mayor Klingmeyer . voted in favor of the motion citing Mr. Akin's reasoning.

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The motion was approved by unanimous vote.

Respectfully submitted,

Debbie Turner  
Stenographer