

HISTORIC AREA COMMISSION
New Castle Town Hall
2nd and Delaware Streets
July 13, 2011

Special HAC Meeting

Present: Sally Monigle, Chairperson
Doug Heckrotte
Dorsey Fiske
Bill Hentkowski
Tom McDowell

Also Present: City Solicitor Dan Losco
City Building Inspector Jeff Bergstrom

Ms. Monigle called the meeting to order at 5:05 p.m. Roll call followed.

OLD APPLICATION

R. Marini – 101 W. 3rd Street

To address and resolve a complaint concerning the height of the newly constructed building and, if appropriate, to consider and vote on the Issuance of Historic Certificate of Compliance.

Discussion: Concerns that HAC has expressed include the relocation of the second story dormer window to directly over the main entry door. That work has been done. Modifications to the third story dormer windows is complete. The change done to the basement windows has been approved.

Action: Ms. Fiske made a motion to accept the relocation of the second story window. Mr. Hentkowski seconded the motion.

Mr. Heckrotte suggested the work is not complete yet noting the mortar needs to be acid washed. Mr. Freebery acknowledged this and added shutters also need to be put up. Mr. Heckrotte considers the mortar cleaning to be part of the relocation work. Mr. Freebery assured him the cleaning will be done. Ms. Fiske amended her motion to add the text “provided the mortar is cleaned up.” Mr. Hentkowski seconded the amendment to the motion.

Disposition: The motion was approved by unanimous vote.

Dormer windows – Mr. Hentkowski asked if the side pieces are a “V” or just the saw cut. Mr. Freebery said because of the width they needed to have it milled to match the side. The piece had to be cut then have it routed and milled. The plywood sheathing area above will be painted. Cedar siding will be used to match the rear of the house.

Action: Mr. McDowell made a motion to accept the modifications on the dormer windows. Ms. Fiske seconded the motion.

Disposition: The motion was approved by unanimous vote.

Discussion turned to the height of the building.

Mr. McDowell asked Mr. Bayard Marin, attorney for Ms. Katherine Klyce, if Ms. Klyce has placed her home on the market for sale and intends to move out of New Castle. Mr. Marin acknowledged the house is for sale but does not know her intentions.

Mr. Marin addressed the Commission. He referenced an engineering report prepared by Mr. Jim Lober, P.E., of Apex Engineering, Inc. (*Copies of the report were distributed.*) In addition he referenced the 4/30/09 HAC meeting noting excerpts from the minutes (*distributed*). Over the course of several HAC meetings the original height submission for the structure was 35 ft. The height was cut down then submitted at 34 ft. 1 inch at the 4/30/09 HAC meeting. At that meeting Mr. Breck (architect) reported the building was reduced from 34 ft. 1 inch, to 33 ft. 7 in. in height. Mr. Breck also noted (p.27) in that meeting that the building height would be 33 ft. 7 in. which reduced the height from 35 ft. down 1 ft. 5 inches to 33 ft. 7 in. This body voted in September 2007 to turn down this application largely because of the size and height of the building. He said HAC changed course when the structure was reduced in size from 35 ft. to 33 ft. 7 in. and stepping down each part of the building 9 inches per Mr. Breck (p.27). The accepted measuring point was from the 17 ft. line (p.36).

Mr. Marin distributed copies of the Board of Adjustment hearing dated 4/30/09. At that meeting Mr. John Tracey (counsel for Ms. Marini) stated the size of the building was 34 ft. 1 in. at the highest point, 33 ft. 4 in. at the midpoint, and 32 ft. 7 in. at the end point. Mr. Breck stated three times during HAC meetings the height would be 33 ft. 7 in. Mr. Tracey said before the Board of Adjustment that the height was to be 33 ft. 7 in. When the building permit was applied for they submitted a height of 34 ft. 1 inch. Mr. Freebery said what was built was what HAC approved and what now exists.

Mr. McDowell asked Mr. (David) Bend what the height of the building was determined to be from the survey. Mr. Bend responded 34 ft, 4 inches. Mr. McDowell said the Code states they can go up to 35 ft., meaning the building complies with the Code of the City of New Castle.

Mr. Bend informed they are not questioning the building being in violation of the Code height. They are disputing the fact it is in violation of the height agreed to by HAC.

Ms. Marini asked Solicitor Losco if he had received a response to the height issue that Mr. Tracey submitted. Solicitor Losco confirmed he had received it and it was distributed to all HAC members prior to this meeting.

Mr. Bend noted Mr. Tracey's letter raises the same issue that Mr. McDowell noted and agrees that the building is in compliance with the Code that states it is within the 35 ft. height code required. This point is not being disputed. They do believe there was an additional restriction placed on that height based on the numerous deliberations and discussions with HAC.

Ms. Monigle said while numerous issues with the building have been addressed, the height is in compliance with the Code. Mr. Bend asked what the height requirement is and what standing the HAC approval has versus the building code. Mr. McDowell said the building code takes precedence. Mr. Bend then questioned why deliberations took place before HAC concerning height.

Solicitor Losco offered that HAC does have the authority and ability to set height limitations that is within code. He needs clarification on what HAC's decision was on 4/30/09 concerning the limitation being established. The minutes and motion are unclear to him. Once the height limitation is resolved it needs to be determined how the height was measured. The engineers present at this meeting disagree on how the building should be measured. HAC has the ability to confirm things as built, modify prior

decisions, correct things be repaired. He advised that HAC should hear arguments from both sides before making a decision.

Mr. Marin continued. He questioned the architect's statement to HAC that the height of the building is going to be 33 ft. 7 in. Their attorney (Mr. Tracey) appeared before the Board of Adjustment and testified to the height of the building when they had submitted an application for a building permit that was 34 ft. 1 in. He maintains the building was to be 34 ft. 7 in. at its highest point, as represented to HAC. This is what HAC voted on and what their attorney informed the Board of Adjustment. The building is too high. From every drawing from HAC 1 to HAC 7 or 8 it was measured from the 17 ft. line. Any questions regarding the correct measurements can be addressed by Mr. Lober.

Mr. Lober presented. He has a copy of his firm's survey and the Batta survey. The elevation of the roof per his survey is 51.32 ft. above sea level, a standard elevation. The same elevation as done by the Batta survey crew is 51.30. This is a difference of less than ½ inch; the surveys agree. The problem is Batta calculates the building height based on the international building code requirement that the City of New Castle applies. His firm calculated the height of the building in keeping with the way it was represented in the numerous HAC meetings. Elevations are the same. All deliberations before HAC meetings used an average grade around the house of 17 ft. The final conclusion of 33 ft. 7 in. was from elevation 17. They (Apex) calculated 34 ft. 4 in. from elevation 17.

Speaking to the height of the building, Mr. Heckrotte asked Messrs. Bend and Lober what the difference in height would be looking from Ms. Klyce's front porch to the roof top of the Marini house. What is the difference between 34 ft. 4 in. and 33 ft. 7 in. in terms of how high you would need to tilt your head. He does not see the difference as being significant. The change in angle is less than one degree according to Mr. Batta.

Ms. Fiske expressed concern with the authority of HAC and believes it should stick with what has been approved. Ms. Monigle does not see removing the house and starting over as a remedy. HAC has been dealing with construction issues with this building for over 13 years and if the number of inches has varied from meeting to meeting and are not significant and a building is now standing and ready for occupancy, she does not see removal of the building as a remedy.

Mr. Marin said that HAC had decided the building had been reduced in size enough that approval was granted for the historic area certificate. His feeling is an entire story should have been removed from the building. HAC decided that the reduction of 1 ft. 5 in. from 35 ft. was significant enough to grant the historic area certificate. He alleged they then built the building 9 in. too high in violation of what HAC approved. He believes consistency is needed.

Mr. Ramesh Batta, P.E. of Batta Associates, P.A. presented. He is registered as a professional engineer in the state of Delaware for over 30 years. His firm prepared the lines and grades and then staked the building. They were given the job of measuring the height of the building. They came to the City of New Castle to determine what is used to measure buildings. He described the process used to determine the height of the building based on the Code.

Mr. Heckrotte acknowledged what HAC approved for the construction drawings is not as obvious as it should be, but is not a big deal. HAC works to the peak of the roof.

Mr. Batta's job was to measure the building. The building is acceptable in the City Code. He informed that Mr. (Jeff) Bergstrom's office will require a final lines and grade plan in order to get a certificate of occupancy.

Mr. Marin reiterated the measurements considered from day one before HAC were always measured from the 17 ft. line. Had the drawings been submitted from day one in accordance with that measurement, then everyone would know where to start from. The correct measurement is what HAC has been considering based on the 17 ft. line.

Mr. Batta added the original lines and grade plan that was submitted was distributed to HAC members. From the peak of the roof it is 29 ft. .99 in. plus 5 ft. putting it slightly under 35 ft. It was measured from the 17 ft. line. At the time the 17 elevation was not respected. *(Further discussion about the measurements followed.)*

Ms. Fiske does not understand the reason for the measuring discrepancy. Mr. Lober explained the surveys were basically the same but his firm subtracted 17 from the elevation to determine the height of the building from 17 as was represented in the HAC meetings. Mr. Batta followed the Code definition which allows them to calculate the average height between the height of the roof and height of the eve then calculate the average grade around the perimeter of the building and compare the two elevations.

One calculation represents the Code while the other is based on the history of HAC 1 through 8. All of those HAC meetings used the 17 ft. line which is what should have been utilized during construction of the building, according to Mr. Marin.

Mr. Marin added HAC decided 1 ft. 5 in. was significant enough of a reduction that it reversed its decision made in September 2007.

Ms. Monigle asked Mr. Marin if he has any recommendations to remedy this dilemma. He responded they should find a way to reduce the height of the building to comply with the duly constituted board of this City decided the height of the building should be. He does not have any suggestions of how to do it, but if it is done wrong they have to find a way to do it right.

Ms. Monigle stated after all the years that HAC has been dealing with this issue there have been chances for things to get adjusted. There is a finished house that HAC has approved architecturally and personally she would accept the building as built. She acknowledged that HAC perhaps has made some human errors along the way but after the number of years HAC has been dealing with the matter we tried to reduce the mass of the building, not necessarily the height. The length of the building was addressed and some other things were done to reduce the mass. The lot is difficult and is on the highest point in New Castle (City). She believes that HAC has done the best it can. She acknowledged there are problems we will never be able to resolve and she does not believe HAC will require the owner to take down a portion of the building.

Action: A motion was made by Ms. Fiske to go into Executive Session to consult with the City Solicitor before voting.

Mr. Marin continued that violating what a commission has said to do requires some remedial action be taken. The whole purpose of HAC is to ensure that people in the historic district comply so that the district is preserved and people moving into the district understand there are certain things that must be done to preserve the historic standards so home values are maintained.

Mr. Heckrotte said HAC has on occasion set dictum on properties. Other things have happened and we have approached property owners to negotiate and change things after being built according to our rules. It is our right to accept the property as it stands and can also tell the applicant to tear the roof off. Mr. Marin disagreed.

Again Ms. Monigle did not question the dedication of the volunteers serving on the HAC. We recognize human errors can be made and they are just as guilty of participating in those as anyone else. She is looking to have a certificate of occupancy for this building in the near future.

Ms. Monigle asked for a second to Ms. Fiske's motion. Solicitor Losco advised HAC there are limited reasons for executive sessions, one of which is anticipation of litigation. There is a pending Board of Adjustment appeal and a lawsuit in Chancery Court. He asked Mr. Marin if it is his intention to appeal this decision if the building is approved as a building. Mr. Marin said he would need to speak to his client to discuss. The pending petition he filed to review the previous HAC decision (June) was filed because he had no assurance there would be any further hearing on this matter so he appealed to the Board of Adjustment within the 30 days to file an appeal since this body had not ruled. That pending petition may be moot in light of this hearing. He will discuss with his client whether they will take further action in court or consider an appeal of this decision.

There have been appeals and decisions related to this structure and Solicitor Losco said this body may call an executive session for purposes of potential litigation.

Action: Mr. Heckrotte seconded Ms. Fiske's motion to go into executive session. The motion was approved by unanimous vote. (Recessed for executive session at 6:05 p.m.)

The meeting was reconvened at 6:15 p.m. by Ms. Monigle.

Mr. Heckrotte stated this board has dealt with this property for a long time. We have fought the good fight and wrestled with the dimensions of the building (shortening, lengthening, raising, lowering). He noted this board has not been as clear as it needed to be on the height of the building and perhaps not as clear as needed from what elevation we are measuring. The elevation we always talked about was the grade line and currently there is no grade line on the property that anyone can measure to and there has been discussion the grade line would be 17 ft. We worked with their architect (Mr. Breck) many hours to reduce the height of the structure. In order to clear up what HAC's wish is with respect to the height of the building, we should amend our previous decision, whether it is 34 ft. 1 in, 33 ft. 7in., or the 34 ft. 4 in., which the building is purported to be.

Action: Mr. Heckrotte made a motion to amend the previous decision from whatever it was (previously approved height of building) to whatever it is today (current height of 34 ft. 4 in. above the 17 ft. elevation. Mr. McDowell seconded the motion.

Disposition: Roll call vote called.

Mr. Hentkowski – voted in favor because he does not believe it is worth the cost involved to lower the roof or remove a portion (9 in.) of the building. The cost involved wouldn't be worth the change of what the building looks like now versus what it would have looked like had it been 9 in. lower.

Mr. Heckrotte – voted in favor because wherever you stand the perceived difference in height is very small.

Ms. Monigle – voted in favor citing the same rationale as given by Mr. Heckrotte. The building as built is acceptable. She does not think HAC has any justification to pursue major renovation, major rebuilding of this building. It is totally acceptable, in her opinion, within the guidelines that we have for the Historic Area Commission.

Ms. Fiske – voted against the motion on the grounds of her concerns of the public's perception of HAC's authority and that it will serve to encourage people to ignore HAC's decisions and ask for forgiveness afterwards.

Mr. McDowell – voted in favor stating to require any reduction in the height of the building would be costly to the owner, the building complies with the New Castle (City) building code that states 35 ft. Therefore, 34 ft. 4 in. is acceptable.

The only other issue HAC was asked to deal with at this meeting is the certificate of occupancy (CO). Ms. Monigle recommended to allow the builder/owner to finish up the details (railing around front door, shutters, filling in the ground, etc.) and attempt to get this done by the monthly HAC meeting in July. It will be placed on the agenda for that meeting. Mr. Heckrotte said HAC would want to know the building was complete enough to receive a certificate of occupancy. The CO is given based on a complete project. (*Discussion.*)

Ms. Monigle noted community concern about the lack of the filler dirt from the standpoint of safety. Mr. Freebery informed this matter will be addressed next week.

Adjournment -- There being no further business to address, a motion to adjourn the meeting was made and seconded. The meeting was adjourned at 6:25 p.m.

Respectfully submitted,

Debbie Turner

Debbie Turner
Stenographer

(Minutes transcribed from recording; stenographer not present at meeting.)