

A New Castle City Board of Adjustment Hearing took place on March 12, 2008 at 7 p.m. in the City of New Castle's Town Hall.

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

The meeting was called to order at 7:05 p.m. by Mayor Klingmeyer. Roll call was taken. Mayor Klingmeyer read the Notice of Public Hearing that states, "An application has been filed by 4048 Associates LLC, 4048 New Castle Avenue, New Castle, DE 19720 for a special exception to permit the operation of an additional high school building and athletic field for the Pencader Business and Finance Charter High School on property they own adjacent to 170 Lukens Drive in Riveredge Business Park, New Castle, Delaware.

Under the terms of the City of New Castle Zoning Code, a school is not permitted as a matter of right in an IOP zone. However, pursuant to Section 230-24B of the zoning code, a commercial use which is not otherwise permitted as a matter of right under the IOP zoning classification is permitted provided a special exception is granted by the City of New Castle Board of Adjustment.

For the purpose of considering this application, the Board of Adjustment will hold a public hearing on Wednesday, March 12, 2008, at 7 p.m. in Old Town Hall, 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Street, New Castle, Delaware."

The Mayor informed that affidavits of publication appeared in the NewsJournal on 2/26/08 and the New Castle Weekly dated 2/27/08. Building Inspector Jeff Bergstrom confirmed that the property had been properly posted.

(Mr. Donald Isken of Morris, Nichols, Arsht & Tunnell, representing 4048 Associates LLC, was sworn in by Mayor Klingmeyer.)

Mr. Isken provided the Board with a detailed description of the request for special exception. The property is zoned office/industrial park. The applicant intends to build a new two-story 46,000 square foot building to be connected to the existing two-story 46,000 square foot building located on an adjacent parcel that is also owned by 4048 Associates. Pencader Business and Finance Charter High School currently operates in the existing building (170 Lukens Drive). The new building will also be leased to Pencader Charter High School allowing it to expand to a senior class. Currently the school offers only ninth through eleventh grades. A public high school is not permitted as a matter of right in IOP zoning classification, but Section 230-24(b) of the New Castle zoning code does permit a commercial use which is not otherwise permitted as a matter of right under the IOP zoning classification providing that a special exception is granted by this Board. The school is permitted as a matter of right in a general commercial zoning district under the New Castle building code pursuant to Section 230-22.1.(a) 27. A public high school as a permissible commercial use will be permitted in an IOP zone provided this Board grants a special exception for this use. A special exception allows property to be used in a way that is consistent with the zoning ordinance although not necessarily allowed as a matter of right.

On December 6, 2005 this Board unanimously granted a special exception to allow Pencader Charter High School to begin operating. Since August 2006 the school has grown to its current population of 430 students. A total of 550 students is projected once expansion is completed. Enrollment will remain the same for the foreseeable future. There are no other plans for expansion. The school offers varsity sports such as soccer, lacrosse, football, volleyball, softball and swimming. The new building will house a multi-purpose room to be used as a cafeteria and performing arts facility, science labs and classrooms. No additional parking is planned. Only seniors will be permitted to drive to school. A multi-purpose athletic field is planned and is shown on the drawing presented to the Board. The use of the property as a school has not in any way interfered or presented conflict with neighboring properties. The location of the property is amply served by highways and streets that can easily accommodate the small increase in traffic that will be created. There is also ample water and sewer and utilities to accommodate the new school building. The City of New Castle receives property taxes and utility services, both of which will increase with the new building.

Mr. Akin questioned whether ample parking spaces will be available with seniors and additional staff driving. Mr. Isken said there are 189 parking spaces currently and is confident they have ample parking. Under code requirements we have enough parking for over 2,000 students (one parking space per 15 students). There are 26 faculty members at the present time. Projected growth will remain at 550 students for some time. The Mayor inquired about adequate parking for athletic events. David A. Jones, President of Pencader Charter High School, stated that they anticipate only attracting a crowd for football games that will be held on Saturdays. He could not provide an anticipated number of people needing parking for this event.

Mr. Akin referred to the Riveredge Park Declaration of Restrictions that was submitted with the application. Section 4.4.4 concerns no application for any permit or submission of any plan shall be made to the City unless those plans have been submitted and approved in writing by the Architectural Review Committee. Has that been done? Mr. Isken responded that the majority of the business park is owned by the applicant or affiliated companies with the applicant. The applicant technically controls the Architectural Review Committee and that process has been done.

Mr. Athey asked if the applicant has contacted any adjoining property owners to see if they are disturbed by children walking across the streets or if school buses are a problem. Mr. Jones stated that he has talked to adjacent businesses and is unaware of any complaints.

A motion was made by Mr. Akin that the special exception that is being sought be granted by this Board. Mr. Athey seconded the motion. Board members then provided their vote and rationale for same.

Mr. Akin stated that Mr. Isken has accurately represented on the record whether or not the Board grants the exception is governed by our zoning code, Section 230-24(b). Because a school is not industrial or residential it defaults to commercial use. It is noted that Section 230-24(a) of the zoning code supports permitted uses as a matter of right to include day care centers, pre-schools, kindergartens or day nursery schools. It appears when this section of the code was adopted certain types of schools were deemed to be proper uses as a matter of right. This Board in December 2005 did grant the applicant permission to construct the initial school building and he believes the second building and athletic fields is a logical extension for the school. An athletic field is a related use to public/private schools in Delaware. Based on this rationale and the fact that this Board is on record in December 2005 approving school use at this location, he is satisfied that the applicant has proved that a special exception is in order to expand the program to a second building and related athletic fields and is voting in favor of the application.

There was discussion at the earlier Board of Adjustment hearing of Planning Commission involvement. The school initially moved into an existing structure (December 2005) that went through the Planning Commission process. Mr. Akin asked if the applicant has approached the Planning Commission on this application. Mr. Isken said that the plan itself to develop the building will go through the normal plan approval review process, but not the special exception. Mr. Athey referred to the minutes from December 2005 where Mr. Kavanaugh (City Counsel) asked if a review of the application for special exception is required under the IOP and Mr. Bergstrom informed that this applicant does not need to go through the Planning Commission. Mr. Bergstrom confirmed this is correct. Mr. Akin asked if the reason this did not go before the Planning Commission in 2005 was because it was an existing structure and the only changes to the structure were going to be made to the interior which did not require Planning Commission approval. *(The Mayor is concerned with what section of the law that triggers the Planning Commission to act. Discussion followed.)* Mr. Bergstrom stated this is not a rezoning process nor is it a minor or major subdivision; it is merely an expansion of an existing use. Mr. Akin agreed and does not believe the Planning Commission would have any involvement in this application. Mr. Athey also believes this plan does not need to go before the Planning Commission. The Mayor was satisfied with this explanation.

Mr. Athey voted in favor. He believes this Board rendered its opinion in December 2005 and feels this application compliments the previous use. There have been no complaints from neighbors or adjoining businesses and supports the plan.

The Mayor voted in favor of the application based on the opinion of the City Solicitor.

City of New Castle Board of Adjustment Hearing—4048 Associates LLC
March 12, 2008
Page 4

The motion was approved by unanimous vote.

Adjournment

The meeting was adjourned at 7:40 p.m.

Respectfully submitted,

Debbie Turner
Stenographer

Applicant Exhibit 1 – Pencader Charter High School Admissions Document
Applicant Exhibit 2 – Mr. Isken’s Presentation
Applicant Exhibit 3 – Drawing of Proposed Facility
Applicant Exhibit 4 – Minutes of Related Proceeding in December 2005