

**City of New Castle Delaware
City Council Special Meeting
201 Delaware Street, New Castle
Monday, July 31, 2017
7:45 p.m.**

Roll call:

Councilperson Valarie W. Leary
Councilperson Michael J. Quaranta
Council President Linda Ratchford
Councilperson Michael M. Platt
Councilperson John A. Di Mondì

Also present:

William Barthel, City Administrator
Janet Carlin, City Treasurer
Daniel Losco, City Solicitor

Council President Linda Ratchford called the meeting into order at 8: 14 pm.

Council President Ratchford opened by reading the title of Ordinance 510, then opened to Council discussion.

Councilperson Quaranta asked Mr. Losco to explain the process behind the Ordinance. Mr. Losco outlined the process as a Planning Commission application, review by the Historic Area Commission if located in the Historic District and review by the Board of Adjustment. Mr. Losco went on to explain that the developer of the plot would need to develop a site plan implementing all conditions imposed, this plan is then passed back to the Planning Commission for review and if satisfactory only then would a construction permit be granted.

Council President Ratchford inquired if the process is similar to other approval processes to which Mr. Losco responded that not all approval processes require Planning Commission review. Council President Ratchford stated there had been a request for clarification on that matter and that she had discussed the matter with the city architect, who also felt that it is proper procedure for the Planning Commission to review first.

Councilperson Di Mondì stated he believes the Ordinance to be in conflict with the Comprehensive Plan which restricts building of parking lots in the historic and fringe areas, believing further legislation is needed before inclusion. Secondly, Councilperson Di Mondì stated his opposition to elected representatives not being given final approval, believing it disenfranchises both the Council and citizens and may lead to Council isolation from unpopular decisions. Thirdly, Councilperson Di Mondì stated that increased parking would only increase visitors to Battery Park, not local businesses and emphasised that the park belongs to the people of the city. Councilperson Di Mondì restated that responsibility should not rest in the hands of political appointees but the Council, requesting a motion to consider modification of the final approval process to include super-majority Council approval.

Council President Ratchford requested clarification on the matter from Mr. Losco, who stated that the Ordinance could be modified given a motion, a second, a vote and clarification of the language. Ms. Ratchford inquired as to the implications of the amendment, to which Mr.

Losco stated he was unsure if Councilperson Di Mondì wished to skip approval by the Board of Adjustment or simply include the four-to-one Council vote to confirm what is decided at Council level. Mr. Losco stated that currently there is no jurisdictional authority for Council to grant special exceptions while there is such authority for the Board of Adjustment and that Council is not normally involved in the administration of laws. Mr. Losco added that an amendment would be needed to Section 230-57, the jurisdiction of the Board of Adjustment to create jurisdiction in Council to confirm Board of Adjustment decisions or grant the Council authority to issue special exceptions.

Mr. Di Mondì requested a motion to consider replacing Board of Adjustment review with a Council for approval on parking lot locations and existence.

The **Motion** to consider replacing Board of Adjustment review with a Council was made by Councilperson Di Mondì and seconded by Councilperson Quaranta. The motion was not voted on by the City Council and it was discussed by Councilperson Quaranta.

Councilperson Quaranta stated that more parking enforcement was needed and that the police had higher priorities, adding that part-time parking enforcers should be taken on.

Councilperson Quaranta discussed free parking on paid lots for residents as was the case in Alexandria, Va. and the prospect of increasing tourism in the near future. Councilperson Quaranta stated he regrets the city did not have paid parking at the time of a spike in visitors due to virtual gaming and adding that the business across the street will at some point reopen and have need for parking. Councilperson Quaranta stated that increased parking will benefit residents and not only visitors to the city and that visitors to the city would be contributing financially to the city. Councilperson Quaranta expressed concern over the politicising of the approval process via a Council vote on developments.

Council President Ratchford stated that the Ordinance was only a tool to serve citizens and that passing the Ordinance may change nothing. Councilperson Ratchford raised the Comprehensive Plan indicating parking lot locations, a following study and Council finally approving five locations.

At this point, Councilperson Di Mondì interjected that another vote was needed to approve specific locations and that the original vote had only been to consider those locations. Ms. Ratchford recalled that the Planning Commission had recommended that city Council accept their recommendations and that the Council had voted to accept the recommendations of the Parking Sub-Committee.

Councilperson Di Mondì requested a vote, at which time Mr. Platt stated that he did not believe a super-majority was necessary. Mr. Losco stated he did not believe anything in the code required a super-majority and Mr. Barthel interjected that borrowing money does require one. Mr. Di Mondì inquired if requiring a super-majority was therefore possible, to which Mr. Losco responded that it was.

Councilperson Di Mondì stated that he was concerned with the possibility of a parking lot between Clark Street and the river in Dobbinsville due to the number of children living in the area. Ms. Ratchford responded that preliminary work had only been carried out regarding existing lots.

At this point, clarification of Councilperson Di Mond's motion was requested, Mr. Losco stated his understanding was that it was to skip the Board of Adjustment's involvement, replacing it with a Council supermajority vote, requiring 80% of votes to pass and that Council would be required to write a written decision. Mr. Losco added that any reference to the Board of Adjustment in the Ordinance would need to be replaced with a reference to the city Council vote and a new subsection would be needed stating that appeals would need to be filed within thirty days of the Council decision.

Mr. Losco highlighted specific changes needed in the language of the Ordinance, noting three references to the Board of Adjustment needing to be changed to refer to the Council and the super-majority and addition of "subparagraph i" to cover appeals to the Supreme Court.

Councilperson Di Mond stressed the need for accountability.

Councilperson Quaranta inquired of Mr. Losco whether the proposed changes to the Ordinance would cover areas outside of the Historical District, Mr Losco responded that skipping Historic Area Commission review would be the only difference in those cases and any amendments would still affect locations outside of the Historical District.

Councilperson Leary inquired with regard to the potential amendment where the line would be drawn between matters being the responsibility of the Board of Adjustment or the Council. Mr. Losco clarified that specifically only parking lots were covered but that it would open Councilpersons to potential lawsuits and the Council would need to run Public Hearings as the Board of Adjustment does. Mr. Losco concluded that making the amendment would be crossing a threshold.

At this point, a member of the public began voicing his displeasure at proceedings, causing disruption. Council President Ratchford called order and made clear the process of review, differentiating Ordinances from Resolutions and stating that there is no precedence for a super-majority being required. Council President Ratchford stated her confidence in the Planning Commission and the HAC.

Councilperson Di Mond raised issue with a development on West Street and the accountability of the Board of Adjustment.

Councilperson Leary requested clarification on whether the Ordinance was only covering sites laid out by the Comprehensive Plan or not. Mr. Losco responded that the plan put forward strong arguments for or against specific sites and that sites not in the plan would have a stronger argument to make but also that the plan itself could be amended.

Council President Ratchford stated that the last update to the Comprehensive Plan had been in 2009 and that - importantly - the next update would be completed by 2019.

Council President Ratchford raised a point regarding drainage, which Mr. Losco commented would be considered during design. Councilperson Di Mond raised drainage issues regarding filling-in of watershed, with Ms. Ratchford stating that this was off-topic.

Council President Ratchford then raised the issue of sizing of potential lots which she stated was under HAC preview, specifically streetscape.

Councilperson Platt inquired as to whether Councilpersons would be legally protected by the city in case of legal proceedings due to the proposed amendment, to which Mr. Losco confirmed that they would except in the case that they were acting wilfully in someone's interest, which is open to interpretation.

Council President Ratchford stated that the Board of Adjustment is akin to a court decision, with Mr. Losco agreeing.

Mr. Losco inquired as to whether everyone was clear on what Councilperson Di Mond's proposed amendment would entail, upon stating she was not, Council President Ratchford was handed Mr. Losco's annotated copy of the Ordinance.

Councilperson Leary requested clarification on content of the potential amendment, Mr. Losco restated the specifics.

Mr. Losco made a point of order that should the motion pass, the amended Ordinance would still need to be voted upon. Mr. Di Mond's requested further clarification, which Mr. Losco gave.

Council President Ratchford then called a vote on the amendment of Ordinance 510, with the motion failing one vote to four.

The **Motion** to amend Ordinance 510 by granting City Council, rather than the Board of Adjustment, the jurisdiction to grant special exceptions for parking lots in the HR zone, the HC zone and all residential zones; and to require an 80% super majority of Council to grant such special exceptions and Councilperson Quaranta seconded the motion.

The **Motion** failed (1 to 4), with the Council votes recorded as follows:

Councilperson Valarie Leary - No
Councilperson Michael J. Quaranta - No
Council President Linda Ratchford – No
Councilperson Michael M. Platt – No
Councilperson John A. Di Mond's – Yes

Council President Ratchford then called a vote on another amendment of Ordinance 510.

The **Motion** to amend Ordinance by Council President Ratchford then motioned to change the Ordinance under section 230-28.1 G "All special exception applications for parking lot usage shall require prior review and recommendations from the Planning Commission" to add "before being submitted to the Historic Area Commission or the Board of Adjustment." Mr. Quaranta seconded the motion and discussion was begun.

Councilperson Michael J. Quaranta discussed the **Motion**. Councilperson Quaranta requested clarification of the process, inquiring as to whether denial of the application at any stage except Planning Commission review would be the end of the process, Mr. Losco confirmed that it would. Councilperson Quaranta further inquired as to the sequence of the process and

Mr. Losco stated it would be up to the applicant as to whether they went to the Board of Adjustment or HAC after the Planning Commission but they would still require approval from both.

Councilperson Di Mondì questioned where in the process the approval powers lay to which Mr. Losco clarified that applicants get a recommendation from the Planning Commission, then onto either the HAC or the Board of Adjustment who may turn the application down. Council President Ratchford read a section of the Ordinance, highlighting that the Ordinance states that the application should be reviewed by the HAC before being handed on to the Board of Adjustment.

Councilperson Di Mondì questioned the nature of judgements in the process, to which Mr. Losco stated that the decisions by HAC and the Board of Adjustment are discretionary and their reasoning is a matter of public record required by case law. Councilperson Di Mondì stated that he was sceptical of the Board of Adjustment because of a previous case.

Council President Ratchford re-read the passage regarding the sequence of the process, checking the wording with Mr. Losco, who agreed it was fine. Ms. Ratchford then clarified the sequence, with Councilperson Quaranta noting that the Board of Adjustment could also add conditions to an application. Mr. Losco read section 230-57-B2 aloud.

Councilperson Di Mondì stated that public opinion was excluded from the process, to which Mr. Losco responded that the Board of Adjustment spends a lot of its time on public hearings. Council President Ratchford furthered that the Council was putting in place a process for hearing opinion on individual cases and added that it was an important part of the Mayor's role on the Board of Adjustment.

Council President Ratchford **Motioned** to modify Ordinance 510 to clarify that the Planning Commission is the first stop to send an application, which was seconded by Councilperson Quaranta.

Council President Ratchford called for a vote and the **Motion** was **passed unanimously**.

At this point, many members of the public loudly voiced their displeasure.

Council President Ratchford **Motioned** to have a vote on Ordinance 510 as amended and Councilperson Platt second the motion.

The **Motion** passed (4 to 1), with the Council votes recorded as follows:

Councilperson Valarie Leary - Yes
Councilperson Michael J. Quaranta - Yes
Council President Linda Ratchford – Yes
Councilperson Michael M. Platt – Yes
Councilperson John A. Di Mondì – No

Ms. Ratchford called for a motion to adjourn which was seconded. A vote was called [vote outcome inaudible] and the session was adjourned at 9:14 pm

Respectfully Submitted, Brian G. Whitaker

City Clerk of New Castle, Delaware