

**New Castle City Board of Adjustment Meeting Minutes**  
**November 12 2018 – 6:30 p.m.**  
**City of New Castle Town Hall**

**Members Present:**     **Jimmy Gambacorta – Mayor**  
                                  **Daniel Losco, Esq., City Solicitor**  
                                  **David J. Athey, City Engineer**

**Also Present:**         **John Tracey, Esquire, Special Counsel for the City**

Mayor Gambacorta opened the meeting of the City of New Castle Board of Adjustment public hearing at 6:30 pm.

An application has been filed by the Trustees of the New Castle Common, 201 Delaware Street, New Castle, DE 19720 (Owners and Applicants) for a property located at 27 West Third Street, New Castle, De 19720, Tax Parcel No. 21-015.30-194 seeking a Special Exception for a proposed parking lot per Section 230-28.1 of the City Code.

For the purpose of considering this application the Board will meet November 12, 2018, starting at 6:30 pm at Town Hall.

Mayor Gambacorta introduced Dan Losco, City Attorney, and David Athey, City Engineer, and advised that at the end of the meeting the Board would vote. He stated the ground rules for the meeting: Public Comment should be limited to 3 minutes; Public Comments should not be repetitive; and public commentary should be conducted in a civil manner. The Mayor also explained the format of the meeting.

A privilege of question pursuant to parliamentary procedure was presented from the floor asking why Mr. Losco, being City Solicitor and an author of Ordinance of 510, had not recused himself. John Tracey, Esquire, counsel for the Board of Adjustment, stated that Mr. Losco could respond if he wished. Mr. Losco stated that he did assist in drafting the Ordinance. City Council modified certain aspects of the Ordinance and ultimately passed the Ordinance. He added that being a scrivener did not require him to recuse himself. Mr. Losco was asked if he received compensation as City Solicitor, and he responded that he did. He added that Mr. Athey and Mayor Gambacorta also receive compensation from the City and stated that did not disqualify any of them from serving on the Board of Adjustment.

Another member of the audience asked Mr. Losco why he had to recuse himself from the March 5, 2018, Board of Adjustment meeting since he assisted the Building Official in the research and development of the Opinion appealed at that meeting but not at the present meeting. Mr. Losco stated that the two situations were very different. He explained that Mr. Bergstrom sought his legal counsel and he assisted him with advice and the drafting of Mr. Bergstrom's answer, which created a much more direct relationship to the issue at hand. Mr. Losco added that he was not involved in the process of passing Ordinance 510.

Andrew Taylor, Esquire, and Mr. Andrew Hayes, representatives for the Trustees of the New Castle Common were sworn in by Mr. Losco.

Mr. Taylor stated the Trustees had applied under Section 230-28.1 for a Special Exception to install a parking lot between 3<sup>rd</sup> Street and Battery Park, with prior recommendation from the Planning Commission and review by the Historic Area Commission for materials used. Mr. Taylor presented chronology of the process:

- January 22, 2018 – Planning Commission reviewed and issued their recommendation.
- February 8, 2018, April 18, 2018 and September 20, 2018 – Historic Area Commission considered the parking lot at three meetings. The September 20, 2018, meeting resulted in approval of the parking lot by the Historic Area Commission.
- November 12, 2018 – Pursuant to Code Section 230-28.1H, the applicant is seeking a Special Exception from the Board of Adjustment.

Mr. Taylor added that if the Special Exception is granted, there will still be a final technical review and approval of the plan by the City Code Official, City Engineer and the Planning Commission.

Mr. Taylor provided background of the issue at hand:

In 2016, at the request of the City the Trust approved funding as part of its annual grant process to provide the cost of the engineering and installation of a municipal public parking lot on the Bowling Alley parcel, which was the result of more than 40 years of study. The parking lot will be open to the public; however the Trust is the legal owner of the parcel and this is a private property matter.

The plan was engineered by ForeSite Associates and is in compliance with all City Codes and Regulations and of the New Castle Conservation District.

In the early 1960's the Trustees purchased four parcels of land between 3<sup>rd</sup> Street and Battery Park. The two main parcels had a Bowling Alley building on it. In 1974 a plan was done for a parking lot on the site with 73 parking spaces. In 2009 the City Comprehensive Plan was updated and approved by City Council that included areas noted for potential parking lots, including the Bowling Alley parcel. The parcel is currently zoned HR, Historic Residential; but it was the site of a large bowling alley building, it is contiguous to the M&T parking lot, and across the street from the David Finney parking lot, where both residents and visitors park.

There are at least five other blacktop parking lots in the downtown area where parking improvements have replaced buildings, and there are six other blacktop parking lots existing in the HR zoning area. The list of parking lots was entered as Applicant 1.

In May 2014, Council adopted Resolution 2014-28, which partially acknowledged a significant need for additional parking in the downtown area and accepting the Parking Committee recommendation of certain parcels for the installation of parking lots, including the Bowling Alley parcel on West 3<sup>rd</sup> Street.

In October 2015, AECOM, the City Planner, published a parking subcommittee update for the Planning Commission.

In March 2016, the Board of Trustees of the New Castle Common approved a Grant Funding Request from the City government for the engineering by ForeSite Associates and installation of a lot on the Trust owned Bowling Alley parcel.

Mr. Taylor advised that the stated background information had been previously presented to the Planning Commission.

Mr. Taylor added that the proposed parking lot will be available for visitors and residents. Mr. Losco asked if there was a fee associated with use of the lot, and Mr. Taylor advised that would be up to the operator of the lot. Mr. Losco asked if Mr. Taylor would commit that the Trustees themselves would not charge any fees for the parking lot, and Mr. Taylor stated that the Trustees would not, but his understanding is that the parking lot will be operated by the City.

Mr. Athey asked for clarification of the March 2016 Grant Funding Request approval, and Mr. Taylor noted that the City had requested the Trustees provide funding for the engineering and installation of the parking lot and the Trustees approved the request as part of their Capital Budget. Mr. Athey asked for further clarification that the Trustees hired the engineer and funded the project and that the City did not request funds for the project, and Mr. Taylor stated that was correct.

Mr. Losco asked if Mr. Taylor knew when the bowling alley building was taken down, and Mr. Taylor advised that he did not have that data.

Mr. Taylor reiterated that the parking lot would be available for a wide variety of individuals including residents and non-residents.

Mr. Taylor noted that in the Whereas clauses of Ordinance 510, the City made certain acknowledgements, including:

- There is a shortage of public parking spaces in many portions of the City of New Castle;
- Adequate parking in the City is essential to provide adequate resident parking employee parking, support local businesses and provide visitor access to the historic structures, parks and other amenities in the City;
- Council has determined to address the parking shortage in a controlled manner by permitting parking lots on a limited basis in residentially zoned districts, the Historic ... District ... by means of a special exception granted by the Board of Adjustment.

The following documentation was submitted into the Record by Mr. Taylor to demonstrate that the proper steps were followed:

Applicant 2 – a letter dated November 29, 2016 from Linda Ratchford, City Council President, to the Trustees in response to a request for clarification of Resolution 2014-28 which dealt with approval of potential sites for parking as Applicant 2. He added that the letter gave information on various reports and surveys conducted; the “recommendation to build the parking lot that is already proposed behind the M&T Bank near Battery park as soon as possible to serve businesses along Delaware Street as well as Battery Park;” and the Downtown Survey of May 2016 that identified the parking shortage and “recommended consideration of a parking structure in a strategic Downtown location.”

Applicant 3 - Resolution No. 2014-28, with special reference to the resolution that “the City Council adopts the recommendations of the Parking Committee as set forth above and authorizes the City Administrator, City consultants and Planning Committee Chair to proceed accordingly.” Five locations were recommended, including the Bowling Alley parcel identified as 1C.

Applicant 3 – pages from the 2009 Comprehensive Plan. Mr. Taylor referenced a map of the City that highlights the Bowling Alley parcel as a potential site for a parking lot.

Applicant 5 – a letter dated February 12, 2018, from the Planning Commission Chair to the Board of Adjustment and a letter of February 7, 2018, from the Planning Commission to the Historic Area Commission, reporting on its review of the Plan.

Applicant 6 – Minutes from the Planning Commission meeting of January 22, 2018.

Applicant 7 – Agenda from the Planning Commission meeting of January 22, 2018.

Applicant 8 – Agenda from the Historic Area Commission meeting of February 8, 2018.

Applicant 9 – a letter dated February 28, 2018, from the Historic Area Commission to the Trustees of the New Castle Common reporting on its review of the Trustees' application.

Applicant 10 – Minutes from the Historic Area Commission meeting of February 8, 2018.

Applicant 11 – Agenda from the Historic Area Commission meeting of April 18, 2018.

Applicant 12 – a letter dated June 19, 2018, from the Historic Area Commission to the Trustees of the New Castle Common reporting on its reconsideration of the Trustees' application for Plan review.

Applicant 13 – Minutes from the Historic Area Commission meeting of April 18, 2018.

Applicant 14 – Agenda from the Historic Area Commission meeting of September 20, 2018.

Applicant 15 – a letter from the Historic Area Commission to the Trustees of the New Castle Common reporting on its consideration of the Trustees' application for plan review and approval, which states its approval of the redesigned conceptual design with concrete.

Applicant 16 – Minutes from the Historic Area Commission meeting of September 20, 2018.

Applicant 17 – Parking Committee Report dated April 27, 2015. Mr. Taylor referenced visitor data from 2014 (17,077 visitors) and a projection of the NPS estimate for the First State National Historic Park (40,000 visitors).

Mr. Hayes presented some of the technical aspects of the parking lot for the Board, and noted that if the project moves forward it will go back to the City for a complete technical review for grading, Code compliance, drainage, and ADA compliance; it will go back to the Conservation District for an additional review; and no construction would occur until all agencies, including the City, approve the design and construction documents. Mr. Losco noted that he understood the Planning Commission would conduct a review for Code compliance, and asked for additional clarification of who else would independently review the project if it moves forward. Mr. Hayes responded the City Code Official, the City Engineer, the City Planner, and the Conservation District (the delegated agency to ensure compliance with sediment and storm water management) would all review the Plan. Mr. Taylor referenced Mr. Rogers' comments on pages 12-13 of the Minutes of the Planning Commission January 22, 2018, meeting (Applicant 6), noting Mr. Rogers explained the Commission did not want to give final approval since changes would be made, and recommended that "if a special exception is approved by the Board of Adjustment that the applicant resubmits a site plan to the Planning Commission and AECOM for review in consideration of

our comments and any comments from the HAC and/or the Board of Adjustment. At that time it would be more of a technical 'by right' site plan review."

Mr. Losco asked what standard the Conservation District is applying, and Mr. Hayes noted they are looking for compliance with the State sediment and storm water regulations. He added the regulations require that storm water be treated for pollutants; that it meet a particular pollutant removal rate; and that certain standards in terms of the materials that are used within the facility (grading, the way in which it drains, adequate drainage time, etc.) are met. Mr. Losco asked if the Conservation District would ensure that the existing drainage issues would not be exacerbated. Mr. Hayes stated it was a combination of the City and the Conservation District that reviews those aspects and noted that his presentation would address that issue.

Mr. Hayes presented an aerial view of the city showing the location of the proposed parking lot, and referenced Ordinance 510 where "the Council further acknowledges that adequate parking in the City is essential to provide adequate resident parking, employee parking, support local businesses and provide visitor access to the historic structures, parks and other amenities in the City." He noted the proposed location is centrally located to address each of those issues. He also noted the Ordinance states "Council has determined to address the parking shortage in a controlled manner by permitting parking lots on a limited basis in residentially zoned districts, the Historic Residence District or the Historic Commercial District by means of a special exception granted by the Board of Adjustment."

Mr. Hayes noted parking lots adjacent to the proposed site include the Battery Park parking lot, the M&T Bank parking lot, and a privately owned lot that serves the David Finney Inn. Mr. Hayes presented several photos of the site and the surrounding area, including the site being used for parking during events and by residents for parking.

Mr. Hayes explained the drainage for the area, noting that the area that drains to the river, before the improvements, is approximately 28.5 acres. He explained in detail the original pipe drainage system, improvements that have been made to the system, and proposed improvements to the system. He noted that the completed improvements removed a pipe going from West 3<sup>rd</sup> Street to the system by the tennis courts, and installed a new, larger pipe drain system that provides a new outfall for 12.7 acres to the river. Mr. Hayes also explained the improvements will include new catch basins and pipes. He presented photos of ponding in the 3<sup>rd</sup> Street area and stated when all improvements are complete, the new catch basins will have large openings in the curb that will allow for greater capacity, and will allow debris to slide off thereby keeping the area clear. He added that previously water from the 12.7 acres in the city would rush down toward the tennis courts, impacting a pipe already full of water causing bubbling out of the catch basin resulting in flooding. Mr. Hayes explained that pipe capacity is measured in feet, noting that before improvements, the pressure would push water up 20' into the air; after improvements, the pressure is one foot below the surface so the catch basins have adequate capacity for storm water. He added that the modeling is based on DelDot Storm Drain Standards for the design of storm drain systems.

Mr. Hayes explained that based on recommendations from the Historic Area Commission, their work with the HAC architect, Ms. Hamrout, and Mr. Bergstrom, revisions were made to the plan that resulted in the elimination of the retaining wall and fence, and a change in materials from blacktop to brick and concrete. He also explained the landscaping changes on the boundaries and within the parking lot and the reinforced turf overflow parking area. Mr. Losco asked why the entire parking lot was not designed using reinforced turf, and Mr. Hayes explained that reinforced turf products are excellent for infrequent, seasonal-type uses; however with daily use, heavy vehicles and frequent turnings the turf product can fail

in a number of ways: the material can rut, it can shift, and it can't handle the frequency of the loading. He added that the turf product does not have a high survival rate when vehicles are parked in the same spot for prolonged periods of time; and this was a concern because the parking lot would be available for long-term resident parking. Mr. Hayes noted that several manufacturers recommended a gravel based product, however, gravel is not permitted in the Historic Area. Mr. Athey asked about users parking in the overflow area before all spaces have been filled, and Mr. Hayes explained there is a 2" curb around the overflow parking area that acts as a visual 'cue' so users gravitate to an open blacktop space first, and also acts as a guide so the turf area is not affected when the lot is plowed for snow removal.

Mr. Hayes presented the final plan submitted to the Historic Area Commission after materials discussion at the September 20, 2018, HAC meeting proposing an infield of reinforced concrete with brick in the parking spaces. It uses flush granite at the entrance point which also acts as a visual 'cue' as the entrance to the parking lot. The plan proposes 39 standard spaces, 3 overflow spaces, the elimination of the retaining wall and fence, and landscape buffering between the residential properties and the M&T parking lot. Mr. Hayes noted that as a result of discussions in the Planning Commission meeting, it was agreed that 4' high semi-evergreen landscaping along the M&T boundary was appropriate to provide some visual buffering but would not obstruct the view of vehicles on either side of it. He pointed out where light standards would be located, the ADA compliant parking spaces, a reinforced turf area for access to the maintenance building, and a sidewalk leading to the park. He noted that the Trustees have a master plan that proposes a walkway that comes through the park and follows the approximate route of the Frenchtown railroad, and when those improvements occur the small sidewalk would connect to that walkway. He also pointed out an area of reinforced turf for use by maintenance vehicles.

Mr. Athey asked for clarification of the landscape screening on the NE side and along 3<sup>rd</sup> Street. Mr. Hayes presented a rendering of the parking lot from 3<sup>rd</sup> Street showing a brick sidewalk, and brick columns with an iron fence along the front of the parking lot with evergreen screening in the corner by the M&T parking lot. Mr. Athey clarified that the evergreen screening that is higher than 4' is only in the front corner of the boundary along the M&T parking lot. Mr. Hayes also noted that the screening along 3<sup>rd</sup> Street was a combination of delineating the parking lot as a separate space from 3<sup>rd</sup> Street; maintaining the materials of 3<sup>rd</sup> Street; and keeping a clear line of sight so vehicles can see pedestrians and vice-versa, and that traffic on the street can clearly see cars in the lot and exiting the lot. He explained the screening along the front is small ornamental trees and an iron fence that can be seen through. Mr. Athey further clarified that the final rendition was made after discussion with HAC and the Planning Commission, and Mr. Hayes stated that was so.

Mr. Athey asked why the ADA parking was not closer to 3<sup>rd</sup> Street in order to be more accessible to Delaware Street, and that it appears the location makes access to the park more accessible. Mr. Hayes explained that the ADA accessible parking spaces are located to provide proximity to the playground and the future walkway; and that the parking lot was not designed to provide remote accessible parking to Delaware Street since there is existing accessible parking on Delaware Street. He added that when the final engineering and plans are done, ADA compliance would be part of the review process with the City.

Mr. Losco asked if any street spaces would be lost by the creation of the parking lot, and Mr. Hayes noted that one single parking space will be discussed with the City; and he identified the areas where parking is not permitted. He further noted that a fire hydrant would be relocated to the front of the parking lot. Mr. Hayes also explained that the exiting lane of the parking lot aligns with Foundry Street.

Mr. Losco asked how much distance was between the M&T parking lot entrance and the entrance to the proposed parking lot, and Mr. Hayes stated it was approximately 25-30'. He added that there was discussion at the Planning Commission meeting as to whether the entrance location should be moved further west, and after discussing that issue with the the City Code Official, it was determined that the current location was the best place for the entrance and exit lanes.

Mr. Hayes explained there was two-lane traffic circulation within the parking lot around the overflow parking area, and that vehicles could exit left down 3<sup>rd</sup> Street or straight across to Foundry. He added that at the corner of Delaware and West 3<sup>rd</sup> Street there is a sign directing to parking down 3<sup>rd</sup> Street. Mr. Hayes also presented a rendering of the overflow parking area.

Mr. Hayes identified the species and foliage features of the recommended landscaping: small flowering ornamental trees, Shad Bush, Redbud, River Birch, a species of Sweet Gum, St. John's Wort, Bayberry, semi-evergreens and evergreens. Mr. Losco clarified that the semi-evergreen species would provide screening year-round, and Mr. Hayes explained the chosen species does not stay 100% green during the coldest months but it will provide adequate screening. He added that it is good for songbirds and is a coastal species that is very salt tolerant. Mr. Hayes added that landscaping recommended for the bio-retention area includes milkweed, ornamental grass, low mounding grass, and iris.

Mr. Losco asked who would maintain the landscaping, and Mr. Hayes advised that the Trustees would maintain the landscaping and it would not be an expense to the City.

Mr. Hayes described the fencing and piers across the front of the parking lot and presented an example of the reinforced turf area, as well as photos of other locations where the reinforced turf has been used. Mr. Hayes noted that they are using the same designer and light fixtures used by Municipal Services, and the light standards are identical to those used on Delaware Street. He added that there will be shielding on the lights to direct the light into the parking lot. The Historic Area Commission reviewed and approved the lighting design, fixtures and illumination.

Mr. Hayes presented photos of examples of the brickwork and concrete that is being proposed for the parking lot.

Mr. Hayes noted that the storm water facility is located between the parking lot and the park area, and explained that it receives runoff from the parking area into a level spreader that flows into a bio-retention area that looks like a mulched planting bed during the winter and will have various flowering species planted. The system uses an engineered soil profile that encourages a biota within the soil that breaks down pollutants and consumes them. Mr. Losco asked if that would be a ponding area during rain events. Mr. Hayes stated that drainage improvements proposed as part of the application include a new catch basin to drain an area that has chronic ponding issues. He explained that the modeling has approximately 1.7 acres that will drain to the proposed facility, and the facility slopes from north to south with a curve line that captures offsite runoff coming across the parking lot and directs it into the storm water management facility. Mr. Hayes also noted that the Conservation District reviewed the storm water engineering report and design and had a few minor notes they wanted changed, but had no comments on the design that would impact the technical configuration of the facility. The design provides 200% of the required water quality treatment to filter for pollutants, and addresses upstream areas that currently do not have treatment. Mr. Hayes explained that it uses a plant-based living treatment system, which is recommended from an ecological standpoint because it provides landscaping and any problems with the facility are visibly evident in the form of standing water. He noted that the facility has a treatment

volume capacity of approximately 36,000 gallons, and added that a 100 year storm event would drain through the facility in 12 hours or less and a 2" rainfall event would drain in less than 10 hours.

Mayor Gambacorta asked what the total cost of the project is, and Mr. Hayes stated that a construction cost had not yet been applied to the project and added that he did not know if the Trustees had sought construction estimates. Mr. Taylor added that construction drawings will be done after all comments are assimilated into the plan and an estimate would be sought at that time.

Mr. Losco asked Mr. Hayes to explain where the lighting standards will be in the parking lot, and Mr. Hayes explained there would be two small lights on either side of the entrance on top of the concrete posts, and a series of six upright light standards throughout the lot. He noted that the Trustees are open to discussions with M&T Bank if they would like to replace their lights or have the lights bordering the M&T parking lot light that lot as well.

Mayor Gambacorta asked for clarification of the entrance width, and Mr. Hayes stated that the entrance would have two lanes accommodating one lane for entering vehicles and one lane for exiting vehicles at the same time.

Mr. Taylor presented additional exhibits:

Applicant 18 – a write-up from Dr. Joanne Viola discussing the background of parking lot reports, and added that Dr. Viola's Exhibit 5 notes the need for increased parking capacity in the downtown area based on the Downtown Survey results.

Applicant 19 – an internet article from homeguildes.sfgate.com on the effect of parking lots on home values.

Applicant 20 – an internet article from homes.com on driveway vs street parking.

Applicant 21 – a portion of New Castle County Tax Parcel Map 21-015.30 showing the four homes across from the parking lot were constructed in 2002, 2003 and 2004.

Applicant 22 – Mr. Andrew Hayes PowerPoint presentation.

Mr. Taylor asked Mr. Bergstrom to report on the posting of the property and Mr. Bergstrom stated that the property is posted and published in the newspapers. Mr. Taylor advised that there will initially be two security cameras in the parking lot, one in the front facing into the parking lot and one on a building in the park facing into the parking lot; and wiring for two additional security cameras if they are necessary. Mr. Athey asked if the cameras would be continually monitored, and Mr. Taylor advised the Trustees would coordinate monitoring with the police department. Mr. Bergstrom noted that the park has cameras that are monitored by a private security firm under contract to the City. Mr. Athey noted that it would seem reasonable that the parking lot cameras would be added to that system. Mr. Hayes added that conduit infrastructure is put in place with the initial lighting to expand the system; and if the City adopts a kiosk or pay structure for the parking lot in the future there is infrastructure in place that would enable correlation to the rest of the City program. Mr. Taylor clarified that the parking lot would be open 24/7.



Mr. Athey asked for clarification of the chronology of the process, referencing the January 22, 2018 Planning Commission meeting Minutes stating “in March 2016 the TNCC (Trustees of the New Castle County) approved the City’s grant funding request for engineering and installation of the lot on the Bowling Alley parcel,” and Mr. Taylor stated that was within the Trustee’s approval process for various capital projects at their March 1, 2016, meeting. Mr. Athey then referenced Ms. Ratchford’s letter of November 29, 2016 (Applicant 2) in which she states “this letter is in response to questions in your November 21, 2016 letter ...” and asked if Mr. Taylor had any documentation indicating what the Trustee’s letter was requesting 7-8 months after the grant had been approved. Mr. Taylor responded that the President of the Trustees had requested further background information, that he thought was about which parking lots were approved.

Mr. Athey referenced Ms. Ratchford’s letter of November 29, 2016, that stated “Their (*meaning the University of Delaware students*) recommendation was to build the parking lot that is already proposed behind the M&T Bank near Battery Park as soon as possible ...” and asked if that was what the study said. Mr. Hayes stated the study did say that and that the issue had been discussed during the January 22, 2018, Planning Commission meeting. He added that the professor clarified that it was a student project. Mr. Taylor noted that there was some question about the study, that the study had not been submitted as an exhibit and they were not relying on the study.

Mayor Gambacorta called for a five minute recess at 7:56 pm.

Mayor Gambacorta gaveled the meeting to order at 8:06 pm and opened the floor to public comments.

Ken Oppenheimer – 36 East 5<sup>th</sup> Street

Mr. Oppenheimer had two points: First, there is precedence for the size, scope and scale of the proposed parking lot in the St. Peters parking lot. He added that he saw economic benefit to the St. Peter’s parking lot and thought it beautified that section of town. Second, he had not seen any analysis presented to demonstrate the economic loss that the parking is purported to bring. He added that he felt 3<sup>rd</sup> Street is not the only narrow street in town and that when Rt. 9 is backed up, traffic comes down 5<sup>th</sup> Street. Mr. Oppenheimer stated that he felt the project is needed and asked for the Board’s approval.

Dawn Kackley – 65 West 4<sup>th</sup> Street

Ms. Kackley noted that Mr. Taylor pointed out that there are six areas of blacktop in the Historic Area and stated that she felt that is a very good reason not to add another blacktop area. She also referenced the Downtown Survey had a response of only 300 people, or 10% of the population, and added that she believed less than 1 in 2 respondents indicated there was a parking issue in town. She also noted that the survey did not suggest a parking lot on West 3<sup>rd</sup> Street and it could not be an adequate basis for the site as a solution to any potential parking. She further noted that a map referenced by Mr. Taylor as part of the Comprehensive Plan was actually part of the appendix and not the main body of the Comprehensive Plan and she felt it was oddly counter to the other suggestions in the Plan itself, referencing the 4<sup>th</sup> Goal on page 38 of the Plan is to “formalize and optimize the existing parking supply” and it suggests strategies to do that; none of which is to create a new parking lot. She added that the top three strategies are:

1. Pave, stripe, and sign the gravel parking lots at the southern terminus of 3rd Street and the foot of Chestnut Street. Consider permeable paving for new parking facilities to limit increases in impermeable surface coverage.
2. Encourage businesses and churches in the downtown to share parking.

3. Create new visitor and/or employee parking areas on the fringes of the Historic District.

She stated that these strategies are in the current Comprehensive Plan, but they have been ignored. She added that it makes more sense to work with existing resources instead of paving greenspace in the town. She also noted that there has been debate about what is the Historic District and referenced the National Register of Historic Places Inventory Nomination Form, which clearly outlines the Historic District. Ms. Kackley submitted Table 18 from page 36 of the 2009 Comprehensive Plan as Opposition 1.

Suzanne Souder – 60 West 4<sup>th</sup> Street  
Ms. Souder read a prepared statement:

Some believe that construction of this lot would help the businesses on Delaware Street attract customers. Many residents do not believe that there is sufficient evidence that businesses would benefit as they hope. They seem to be operating on the premise “if we build it, they will come.”

The Board should weight speculation about the potential benefit of this parking lot against the certain negative effects it would have on the appearance of our Historic District. If it doesn't have the desired result, residents of the surrounding homes will still have to look at an empty parking lot instead of a grassy field. We would have an eyesore in the midst of our Historic District which could actually discourage visitors.

Others maintain that residents want this lot as they and their guests could use it rather than struggling to find parking on the street. However, in the past Residents' Downtown Survey fewer than half of the 300 respondents cited a lack of downtown parking as a problem in New Castle.

A University of Delaware class project claimed that this parking lot was needed. However, Dr. Justice, the professor overseeing this project, states that the report was not conducted in such a way as to make it a valid basis for decision making.

The majority of residents in the immediate area of the proposed parking lot are opposed to its construction. Over 40 have signed the petition I am presenting to the Board tonight. I hope you will give considerable weight to their opinion since they are the people who will be most affected by the construction of this parking lot. Thank you for your consideration.

Ms. Souder submitted a Petition to the New Castle Board of Adjustment as Opposition 2.

John DiMondi – 301 West 7<sup>th</sup> Street

Mr. DiMondi stated the applicant's presentation included exhibits that was not subject to any discovery and was hidden by an objection to FOIA.

Mr. DiMondi noted that private parking lots can limit, select, monitor and enforce whoever parks in their parking lots. The applicant wants a public parking lot with no closures at night, no shielding, 2' trees, and doesn't meet the HAC requirements of shielding from residential properties. He noted that the AECOM report stated the Bowling Alley parcel was not recommended, but that it did recommend the existing lot at the end of 3<sup>rd</sup> Street. He stated that the parking lot should be built someplace else.

Mr. DiMondi noted that the Board of Adjustment is charged with hardship, and none of the presentations for the last year have mentioned hardship. He also noted that previous testimony stated the parking lot was intended for access to the park and not intended to help the businesses on Delaware Street. He also noted that three more houses have been put up for sale on 3<sup>rd</sup> Street.

Mr. DiMondi read a prepared statement:

This motion is brought to you the BOA out of an Ordinance from City Council after going through the Planning Commission and HAC.

To bring their votes in perspective we go back to the discussion on the procedures whereas the City Attorney Mr. Losco was asked by Councilman Quaranta what would stop this proposed parking lot from proceeding. Mr. Losco replied “a NO vote during the procedure.” The Ordinance passed. Was it a central point in the acceptance of the Ordinance? As a member of that City Council, I can only say, “Who knows.” I know it passed. And this coming from the City Solicitor responsible for writing and engineering the Ordinance. This declaration of NO was not said by a non legal authority.

His comeback when confronted by it was it was common for HAC to rehear petitions. The petitions he was generally speaking of were not specific legal ordinances with specific legal conditions. These were general conditions, not an ordinance with conditions they had to adhere to. If Mr. Losco has his way, the petitioner would have and did have, unlimited shots at passage utilizing as in this case, political and monetary connections to achieve final acceptance.

Mr. DiMondi departed from his prepared statement and commented that the application was returned to HAC several times and noted that the Chairman of HAC changed her vote from one meeting to another, and inferred that she was swayed in her vote because she is the President of the New Castle Alliance which receives funding from the Trustees.

We had a vote, we had a NO Mr. Quaranta and the rest of Council believed ended this!

Besides that, should this parking lot be built here? Mr. Athey’s company who performed a parking study for the city thinks not! And gave an inference that it should be on the end of 3<sup>rd</sup> Street where the other parking lot is.

The current Comprehensive Plan dissuades putting a parking lot in the Historic District.

The neighbors affected by putting the parking lot adjacent to their homes for the vast majority part, don’t want it. The consequences to their homes values and quality of life issue alone should negate its building. More homes have been put up for sale since our last meeting.

The petitioners haven’t exactly been good stewards of the parking lot privilege they already own. Their current parking lot at the foot of 3<sup>rd</sup> Street was overbuilt past the permit limitations. I believe and more obvious is the lack of shielding from the public and residences next to it as required by existing code.

There are no hardships that have ever been stated in their petitions. The reasons for their desire to burden this neighborhood in fact been buried in their refusal to be transparent in their dealings

and plans through rejecting the State of Delaware Attorney Generals order and opinion to abide by FOIA besides the IRS agencies mandate for nonprofits to be transparent in all financial dealing as a condition of being privileged not to have to pay their fair share of their tax obligations. To retain trust that in fact the condition of their Trust “for the benefit of the citizens of New Castle” be upheld!

Mr. DiMondi stated the Board could not let the Trustees’ privilege, money and influence rule the town and they should take into consideration the people living in the town and deny their request.

Joanne Viola – 1 The Strand

Dr. Viola noted that she appreciates the concerns raised, but she feels there are many people who participated in the processes and development of the parking lot and the process set out by the City has been followed and the requirements fulfilled. She stated that many people in the town participated in the decision, and many things have changed in terms of visitors to the town since the 2012 Downtown Survey. She also noted the Pokemon epidemic, the tall ships at the waterfront, and the bicycle path to Wilmington as being an enticement for visitors to come to New Castle, and in speaking with many of them, she has learned that many of them were unaware of what New Castle has to offer and they want to return. She stated that she believes the extra parking lot is needed; that the site location is logical; and that the other locations recommended are more remote. She added that community parking lots are valuable to the residents because many private lots are unavailable during events in the City. Dr. Viola stated that the Board should support the application.

Dorsey Fiske – 26 East 3<sup>rd</sup> Street

Ms. Fiske noted that there is always room on East 3<sup>rd</sup> Street to park. She stated that as a Trustee she was surprised to learn that the City was going to manage the parking lot and that the Board of the Trustees has never been informed of that fact. She also noted that the Trustees will soon have the Minutes of their meetings posted on the City website. She confirmed that a vote on the Bowling Alley parking lot was held and that the cost was going to be \$175,000. She also noted that it was presented along with six other capital projects and not at a separate Capital Meeting, and added that some of the Trustees did not have much opportunity to hear about the project and the reason for choosing the Bowling Alley parcel for the parking lot.

Jeanne-Marie Camac – 23 West 3<sup>rd</sup> Street

Ms. Camac submitted a packet of documents as Opposition 3.

Ms. Camac noted that the City of New Castle Parking Usage Inventory from the AECOM report states that average usage levels are low or optimal. She also noted that in the Minutes of the Planning Commission meeting of January 22, 2018, it was noted that Dr. Justice stated the New Castle Counting Parking Project by the University of Delaware undergraduate students was a student project with the purpose of gaining experience working with a client. The students were not studying traffic engineering or planning, and “at the client’s request inserted the throwaway comment about a need for more parking, but that was not based on any analysis of the report.”

Ms. Camac did her own count on Delaware Street from 6<sup>th</sup> up to and including the Wharf Circle; on 5<sup>th</sup> Street west to the Library entrance and east to Cherry street; on 4<sup>th</sup> Street west to just beyond the Bridgewater Jewelers driveway and east to #10; on 3<sup>rd</sup> Street west to Foundry and east to the antique light post near the fire hydrant; on Market Street to the Armory; on 2<sup>nd</sup> Street to the far end of the Presbyterian church property wall; on The Strand to Alexander Alley; and the Post Office parking lot. She did the

count on October 26, October 28, October 29, October 31, November 2, and November 3. She noted there are a maximum of 111 available parking spaces, and calculated that on average, there were 53.7 available parking spaces on Delaware Street and 42.8 available parking spaces on the side streets, for a total daily average of 96.5 vacant parking spaces. She added her observation of a number of visitors to the town with whom she spoke about parking issues, and none of them indicated they had trouble parking. Other visitors indicated they found parking on 2<sup>nd</sup> Street, East 3<sup>rd</sup> and Market Street, and the parking lot at the Wharf was noted as “where the action is.”

She stated that the new lot is being touted as a way to attract new businesses; but she noted that there are no empty shops on Delaware Street and most businesses in New Castle are not the type that attracts large numbers of visitors.

She also noted that one question on the Planning Commission survey asked “are you in favor of a permanent entertainment venue?” and asked what the Trustees and the City are planning on doing in Battery Park and why is this parking lot so very necessary.

Ms. Camac noted that her home is next to the driveway of M&T Bank parking lot, but the lot itself is well hidden from 3<sup>rd</sup> Street. She also noted that vehicles drive through the park to the maintenance building every day and wondered how well the reinforced turf area will stand to up that constant traffic. She expressed her hope that the Board rejects the applicant’s request for a special exception.

Roderick Gillespie – 24 West 4<sup>th</sup> Street

Mr. Gillespie submitted the AECOM Parking Sub-Committee Update of October 26, 2015, as Opposition 4.

Mr. Gillespie introduced himself and stated that he is a registered architect in the State of Delaware. He stated his primary objection to the parking lot is the huge size and scale in an Historical Residential neighborhood. In support of his objection, he presented an aerial view of New Castle showing both Delaware Street and the proposed parking lot site. He noted that Delaware Street is a very large boulevard, 61’ from curb to curb. In comparison, he noted that the proposed parking lot site is approximately 70’ at the narrowest section, and approximately 98’ at the widest section and the length is 240’. He discussed this with HAC at two meetings, however, they refused to discuss scale and the architect would only discuss materials. He referenced City Code 230-52A, Historic Area Commission Guidelines, which state that they are to address things such as require “that all construction be of a scale in keeping with the surrounding neighborhood and buildings” and noted that had been ignored at the last two HAC meetings.

Mr. Gillespie expressed his opinion that the parking lot will hurt the neighborhood. He recommended that the parking lot be built at a different site, or improve existing parking on the fringes of the Historic Area as recommended in the AECOM study.

Mr. Losco asked Mr. Gillespie his opinion of the best use of the property if he were the property owner and Mr. Gillespie noted it is currently a 95’ wide gateway to the park and that if he were the owner he would not develop it but would leave it as green space. He added that visitors to the park will have to walk through the parking lot and down a slope, and referenced a study done by the University of Albany that stated 22% of pedestrian/automobile type accidents occur in parking lots.

Binney Beale – 26 The Strand

Mr. Beale spoke of potential traffic and safety issues of the proposed parking lot. He noted that 3<sup>rd</sup> and Foundry Streets are two of the narrowest streets in the Historic Residential area, and 3<sup>rd</sup> Street has a usable car-way of 9-10'. He added that many residents have had their cars sideswiped. He also noted the location of the proposed entrance to the new parking lot will cause confusion since it is adjacent to the M&T parking lot entrance and will potentially cause confusion and traffic problems. He stated that the 15 mph speed limit and stop sign at 3<sup>rd</sup> and Foundry Streets are often ignored and spoke about potential sight-distance problems. Mr. Beale referenced the Code that states "it is desirable to position the entrances and exits to favor right-hand turns into and out of parking lots wherever possible," and Section 230.2.1 defines restrictions for the downtown gateway district under special exception and states that the Planning Commission in its presentation to the Board of Adjustment shall "determine the proposal will not substantially injure or detract from the use of neighboring property or from the character of the neighborhood and that the use of the adjacent property is adequately safeguarded." He stated further that the section refers to considering both traffic and pedestrian needs to avoid congestion and confusion.

Mr. Beale asked the Board to consider public safety in their consideration of the application.

Karen Whalen – 17 West 3<sup>rd</sup> Street

Ms. Whalen submitted a number of documents for the Record:

Opposition 5 – a letter from Christopher Rogers, Principle Planner, AECOM, to William Barthel, City Administrator, dated January 19, 2018. Ms. Whalen referenced page 5 of the letter where Mr. Rogers states "Can the applicant provide data that additional parking is needed?" and stated that his question was never answered.

Opposition 6 – two packets of data, one in favor and one opposed to the parking lot.

Opposition 7 – Stormwater Management Design Report prepared by ForeSite Associates dated January 2018.

Ms. Whalen presented a flood plain map showing the 100 year flood plain boundary that indicates 60-65% of the proposed parking lot project falls into the 100 year flood plain area. She stated the project has two major technical pitfalls: the drainage and the flood plain. She noted that the City is required to properly manage the flood plain as it pertains to improvements and construction within it and added that the National Flood Insurance Program calls for this criteria to be followed very closely. Ms. Whalen referenced the Sections of Chapters 130 and 230 of the City Code. She stated that the project is being proposed in a flood plain that requires more stringent managing to determine if it should be sited in a flood plain and she noted that it had been pointed out that Delaware should be very cautious of constructing in flood plains. She added that the City has adopted the FEMA regulations which state if you have a project where the elevation of the flood plain may be elevated more than one foot you should reconsider the project. She also noted that the homes downhill from the proposed parking lot could receive higher flood elevations based on the topography of the site. She stated that the purpose of the flood plain regulations is to "promote the public health, safety and general welfare" and asked that the Board ensure they do not make a decision that would endanger the health, safety and welfare of the residents of 3<sup>rd</sup> Street.

Ms. Whalen stated that if there is a significant storm, the storm water basin is in the middle of the 100 year flood plain. Mr. Losco asked if those zones would be inundated with water in a significant storm

even if the parking lot was not there, and Ms. Whalen admitted that was true, but added that the parking lot would increase the amount of water flowing down from the paved surface.

She added that Battery Park has numerous drainage issues and it appears that portions of the Battery Park drainage program that are completed and are not working. She added that some residents have witnessed water bubbling back into the park. Several photographs of drainage issues were displayed.

Ms. Whalen noted several inconsistencies in the AECOM Stormwater Management report.

- The introduction of the report states “the unimproved residential lots to the southwest” but that does not state there are four residences down from the parking lot site.
- It mentions how the stormwater retention pond will be tied into the existing storm drain system within Battery Park, and she stated it doesn’t work.
- She said that it incorrectly states part of the hardscape is in the Zone X and part of the project is in the 100 year flood plain, and she noted a very small part is in the Zone X 500 year flood plain area.

Ms. Whalen noted that the project was submitted to the Conservation District in January 2018, but it is still morphing; and she suggested that the Board not approve anything without reviewing the technical viability and what the project is going to consist of.

Glenn Rill – 60 West 4<sup>th</sup> Street

Mr. Rill submitted photographs of the site showing slope as Opposition 8.

Mr. Rill expressed his concern over the grade of the proposed site, referencing photos he presented to the Board depicting a 3% cross slope of the site and an illustration of the proposed parking lot. He noted that users of the lot will have to walk approximately 60 yards on a cross slope of 3% or more to reach West 3<sup>rd</sup> Street. The ADA specification for sidewalks states that the cross slopes may not exceed 2%; and the proposed lot would be in violation of the ADA standard. He added that after exiting the lot onto West 3<sup>rd</sup> Street, it is 100 yards up 3<sup>rd</sup> Street to Delaware Street on a grade of approximately 4.5%, which is just under the 5% maximum for ADA. He noted that it appears the City is encouraging parking on West 3<sup>rd</sup> Street and walking to Delaware Street, and during slippery or wet conditions the risk for slips or falls could be significant. Mr. Rill referenced a local personal injury law firm’s website that listed parking lots and sidewalks as frequent sites for litigation due to slips and falls; and he suggested the proposed parking lot increases the liability risk to the Trustees and the City.

Mr. Rill noted that the entrance has purposely been aligned to Foundry Street, which increases the risk for accidents and suggested it would establish confidence in the project if a traffic study were done or input from a State traffic engineer obtained. Mr. Rill also suggested that the true effect on property values could be ascertained if the Trustees hired an independent professional property assessor to determine the effect of the parking lot on the surrounding homes; further suggesting that if property values are negatively impacted, the Board should require the Trustees to compensate the property owners for their loss.

Anthony Collurafici – 5<sup>th</sup> & Cherry Street

Mr. Collurafici noted that after listening to the applicants’ presentation, it appeared the drainage portion of the parking lot is going to be better. He added that the Board will not please everyone, and therefore, they need to determine what will benefit the City as a whole and not only the residents of 3<sup>rd</sup> Street. He noted that neither the tennis court nor the basketball court is “historic”; however they are in the Historic

District because it benefits the whole City. He recommended that the Board vote in favor of the applicant.

Lois Barth – 110 West 3<sup>rd</sup> Street

Ms. Barth advised that with the exception of mowing the grass, she is the volunteer gardener at the Old Library Museum and has been for several years because no one was taking care of the Museum garden. She stated that when she heard the Trustees will be responsible for maintaining the landscaping at the parking lot, she wanted to recommend that many volunteers be found for that work since there is no manpower available for the job.

Jim Workman – 21 West 3<sup>rd</sup> Street

Mr. Workman spoke about the value of the homes on West 3<sup>rd</sup> Street because of the parking lot. He stated that he has been against the parking lot since the beginning. He noted that during Hurricane Sandy West 3<sup>rd</sup> Street was flooded and asked what will happen when the next Sandy hits. He stated his opinion that by putting the parking lot on West 3<sup>rd</sup> Street, the flooding will be worse. He expressed his opinion that it was irresponsible to build in a flood plain, to have ingress and egress on a narrow street, and to have a facility that is non-ADA-compliant. He spoke of rumors that a permanent facility may be built in the park and referenced maps that were distributed by the Trustees a few years ago showing various roads through the park. He questioned why there was a need for the parking lot on 3<sup>rd</sup> Street and what the plans for Battery Park were. He also noted how useful the green space is as parking for large events in the City. Mr. Workman referenced *Kelo vs New London* and Supreme Court Justice Sandra Day O'Connor's dissent. Mr. Workman stated his opposition to the parking lot and that individual rights should be protected.

Kathy Dunn – 6 The Strand

Ms. Dunn presented a Comparison of Residential Parking Code Legislation: St Paul, MN vs New Castle, DE as Opposition 9. She noted the difference in the quality of life considerations St. Paul, Minnesota gave its residents vs the considerations New Castle is giving its residents.

St. Paul, Minnesota

- Safety of the residents
- To protect real and personal property from damage by reducing hazardous traffic conditions resulting from the heavy usage of these residential streets by nonresidents or transients
- To protect those residential areas from polluted air, excessive noise, trash and refuse
- To promote efficiency in the maintenance of the streets
- To preserve the character and integrity of those areas as residential districts
- To preserve the general health, safety and welfare of those residential areas

The New Castle City Code:

- Visual screening using walls, fences
- Brick or stone construction
- Vegetation/evergreen
- Visual access to enhance safety

Ms. Dunn stated that no accommodation is made for quality of life issues that will affect the residents of 3<sup>rd</sup> Street.



Marianne Caven – 49 West 3<sup>rd</sup> Street

Ms. Caven stated she has taken counts of parking spaces over a number of years and noted there were 150-250+ open spaces in an area smaller than the Historic District. She also noted that the University of Delaware students did not count available parking spaces in their study. She added that parking spaces are more plentiful than ever before. She stated that she has questioned visitors about their parking experience, and they enjoy parking on the street. She noted that extended parking lots on the park, especially in a residential area, in close proximity to an existing parking lot on West 3<sup>rd</sup> Street is not beneficial to anyone, including businesses. She added that a camera and light have recently been added to the parking lot on West 3<sup>rd</sup> Street because of increased crime, and there is already a plan for security measures in the new parking lot. She also noted that people are very content to park in the ample, free parking available on the streets, and New Castle is a safe town to walk in.

Ms. Caven expressed her opinion that the open space should be maintained, or if it is developed, the development should be for another purpose that allows for continued pedestrian access to the park. She added that she also has safety concerns about putting a parking lot so close to the children's' playground, especially with no security beyond cameras.

Ms. Caven referenced a number of professional and government studies have been made and noted that all of them suggest much more care has to be given to the planning of a parking lot where vehicles and pedestrians use the same functioning space, and she felt the present plan has that. She also questioned the size of the lanes in the lot; and expressed concern that the exit lane must be crossed over to enter the parking lot; and the proximity of the entrance to an intersection.

Ms. Caven noted that Dr. Justice did not vote in favor of the parking lot, and added that a Professor of Urban Planning at UCLA says with regard to parking lots and the planning of them, "being roughly in the right is better than being precisely in the wrong."

Janet Wurtzel – 54 West 3<sup>rd</sup> Street

Ms. Wurtzel asked Mr. Athey if, in his professional opinion, a traffic study should be done for a parking lot of this size. She also expressed concern for the traffic flow in and out of the parking lot and that the entrance is lined up with Foundry Street. Mr. Athey deferred to Mr. Bergstrom, but added that to the best of his knowledge he has never seen a traffic study for a parking lot and was unsure if data even existed for a municipal parking lot study. Mr. Bergstrom added that he has never heard of a traffic study for a parking lot either.

Ms. Wurtzel noted that Mr. Losco asked what the best and highest use of the property is and what would it be developed for, and she noted that in Wilmington and Philadelphia and other municipal areas in the country, when buildings are no longer in use and are taken down, the property is dedicated to green space and the site in New Castle should not be developed in any way.

Roger Clark – West 4<sup>th</sup> Street

Mr. Clark submitted a parking study as Opposition 10.

Mr. Clark stated that for half the year, there is no problem parking on 3<sup>rd</sup> Street, particularly on inclement or hot, humid days. He estimated that Battery Park and West 3<sup>rd</sup> Street parking issues are less than 20% of a full year, which is not much usage for the effort being spent on the proposed parking lot. Mr. Clark expressed his hope that the Board would deny the application.

Mayor Gambacorta closed Public Comment, noting the Board has heard many interesting points from those for the parking lot and those opposed and asked if the applicant had a rebuttal.

Mr. Taylor noted that the property is zoned HR, not OS&R, and the Trustees were responding to various parking studies and Ordinances that showed a need, referencing Applicant 17, the Parking Committee Report, that talked about the Survey indicating the areas of greatest concern for parking are at the access points to Battery Park and on Delaware Street from the Wharf to 3<sup>rd</sup> Street; and the parking lot addresses that concern. He added that the Report also includes proposed parking expansion recommendations based on anticipated increase in visitors to New Castle. Mr. Taylor stated that the Trustees are responding to the need for increased parking.

Mr. Taylor referenced Resolution 2014-28, Applicant 3, and the City Council approving the Planning Commission Parking Committee report that identified five lots, including the Bowling Alley parcel, and Ordinance 510, stating the opening clauses of the Ordinance clearly indicate the need for parking in this area. Mr. Taylor referenced Section 230-57, Powers and Duties of the Board of Adjustment, paragraph E, that mentions a point of granting the special exception and not adversely affect the public interest, and noted one of the speakers (*Anthony Collurafici – 5<sup>th</sup> & Cherry Street*) astutely pointed out that it is not just the interests of the immediate neighbors, it is the interest of the entire City and community that should be considered. Mr. Taylor referenced *Fisher vs Pilcher* for a New Castle County special exception mentions when referring to neighborhood it contemplates a community at large, not just the immediate neighborhood. Mr. Taylor stated he felt the applicant has shown this addresses a need for the greater community of the entire City and people who will use the parking lot. He also referenced the September 20, 2018, HAC Minutes that indicates with the design the applicant has met all of the HAC Guidelines.

Mr. Losco stated that Mr. Taylor made a compelling presentation; however, he felt the opponents raised some compelling issues about flooding and scale. Mr. Hayes noted that with respect to the flooding, when the project goes through the technical review with the City it will have to comply with all the provisions of the 100 year flood plain ordinance restrictions with structures within the flood plain; and part of that review is working with the City Code Official and the City Engineer to establish no adverse impact. Mr. Losco asked who would judge adverse impact, and Mr. Hayes advised it would be the City. He added that the Conservation District would review the computations in terms of runoff, but the City administers and reviews applications within the flood plain. Mr. Taylor added that the storm water management area is handling the flow from a much greater area than the parking lot itself. Mr. Losco noted that a picture of flooding on 3<sup>rd</sup> Street dated November 6, 2018, is after some drainage is in, and Mr. Hayes noted the portion of drainage on West 3<sup>rd</sup> Street that is incomplete is the inlets and grates that allow the water to get into the system. He added that leaves clog the top of grate, and the new grates have a large opening in the back and a much greater capacity to allow the water to get into the pipes.

Mr. Losco asked about scale, and Mr. Hayes noted that in discussions with the Trustees the application design was to have adequate circulation within the parking lot, which typically sets the number of spaces, and through the process with HAC, approximately 1,100 square feet was removed from the lot. Mr. Losco clarified that the lot will consist of 42 parking spaces including the overflow turf area. Mr. Athey asked if the design charge was to have a certain number of spaces or maximize the area, and Mr. Hayes stated that the Trustees were responding to a parking demand they felt was established up to 50 spaces. During discussions ForeSite advised that to provide adequate buffering and stormwater management 50 spaces was too many, and it was agreed to reduce the number of spaces to 43 and the final number of spaces was reduced to 42 after compliance with HAC recommendations.

Mr. Athey asked Mr. Taylor if there was discussion or encouragement to approach M&T in order to combine the two lots to eliminate the need for another entrance. Mr. Taylor submitted a letter from Mr. McDine, Branch Manager of M&T Bank to Mr. Taylor as Applicant 23, and advised that the Trustees did approach M&T Bank regarding an accommodation between the parking lots and the Bank responded that due to liability insurance concerns, they would be unable to provide their parking lot for private usage during or even after M&T business hours and they asked their parking lot not be used for any immediate or future studies. Mr. Athey noted that the letter only stated “we are unable to provide the parking lot for private usage during or even after M&T business hours” and references a conversation with Roger Clark; Mr. Athey said it appeared the request was “can we use your lot”, not “can we come up with a plan for a joint entrance”. He added that liability insurance was a factor, but asked if accommodations could have been made, and Mr. Taylor stated that their understanding was that M&T would not allow a combined entrance.

Mr. Hayes noted there was a discussion of slopes that were greater than 3% on the parking lot, and stated that the slope range within the parking lot is typical and that slopes were measured on Delaware Street. He presented a slide indicating that the brick walk in front of the Courthouse has a cross slope of almost 4% to over 5%; parking spaces on Delaware Street of 4% and over 4%; on the opposite side of Delaware Street over 4%; in front of the Bank almost 5%; and in front of the Town Hall of 2.9%. He added that those measurements were taken within the first half of the parking space coming from the curb, and noted that these are frequent, commonly encountered cross-slopes that pedestrians walk on.

Mr. Hayes noted that in terms of the comments on the Report, he reiterated that the flood plain is administered through the City, and in terms of the drainage, he referred to a previous photograph close to the river, and explained that when a new inlet was put in the old pipe was plugged. The old pipe was so corroded that the water came up into the park. He added that the Trustees have engaged a contractor who will fix that problem. In terms of West 3<sup>rd</sup> Street, he noted that the project is not yet complete and still needs grates; in terms of ponding, Mr. Hayes referenced a photo showing ponding at the bottom of the Bowling Alley parcel up to the neighbor’s stockade fence, and stated that the project includes planned grading and drainage improvements that address the flooding that would improve it.

Mr. Hayes addressed comments about the Stormwater Management Report concerning adjacencies, and noted it is common to talk about uses directly adjacent to it, and advised it is a general introduction to the project, and not part of the technical computations.

**Mr. Athey made a Motion to move into the Business Meeting. Mr. Losco seconded the Motion. On vote, the Motion was approved unanimously.**

Mr. Losco stated there was a very difficult and challenging decision to make. He noted that historically, the property had been commercially developed and it did not destroy the city when it was there. He added that with a special exception single family homes, libraries, clubs, government buildings, museums and corner stores could be built on the site. When a private party owns property, and the Trustees are a private party, they have the right to develop it in accordance with the law. He added that the application was for a special exception, which meant they did not have the absolute right and they do have to prove there will not be a significant adverse effect on the public; however it is not just the parties on 3<sup>rd</sup> Street, those immediately impacted, but the betterment of the whole.

There was much discussion about whether there is a real need for additional parking or not, but Mr. Losco noted he wasn't sure that was particularly relevant; however, and a private property owner is permitted to make an application to improve their land in accordance with the law.

Mr. Athey stated a major challenge the Board has is that the Code provides very little guidance on what criteria to use to approve a special exception. He noted that it was pointed out that more-or-less the only criterion is "in harmony with the public interest;" however, the question is how broad an area you look to determine the public interest. He noted there was clearly a great deal of discussion about need and an argument can be made either way, and evidence was presented for both sides of the issue.

Mr. Athey asked for Mr. Tracey's counsel where a particular improvement is proposed to a privately owned parcel as to whether it is within the purview of the Board to determine the market need of the proposed use. Mr. Tracey responded that under the Statute, the answer is no. He added that the applicant has come before the Board with a request grounded in a Code Section that specifically allows for this use with certain standards having been met. He stated that one of the standards is not whether or not there is a need, and that is not something the Board should evaluate in its consideration of the application. Mr. Tracey further stated that in the standards in 230-28.1 there is no requirement that there be a study of whether there is a need for parking; nor is there a provision in the section governing special exceptions in the Code that states you must look at the need for the particular use. He added that in certain codes in certain jurisdictions there may be a requirement for a particular use to demonstrate a need; but the way this Ordinance was drafted, he saw no particular requirement one way or the other to demonstrate need.

Mr. Athey noted that the Board does not have final plans for the application and the Notice does not state specifics such as the number of spaces or a certain amount of landscaping, and asked if the Board should have assurances that everything either has been, or will be done through a subsequent process. Mr. Tracey advised that the way the process is designed, the applicant does not have to come before the Board with final engineered plans, however, there are specific standards in 230-28.1 subsection B that requires as part of the application visual screening in the form of walls, fencing or landscaping to reasonably shield the use from public rights of way and adjacent properties; walls, if there are any, shall be constructed of brick or stone; planted vegetation shall consist predominantly of evergreen vegetation; and in subsection F, gaps may be permitted in visual screen to permit access. He noted those are the specific items the Ordinance speaks to; everything from a final construction standpoint would be the requirement to go through the appropriate state agencies, receive the appropriate state or local approvals and/or letters of no objection that would be required. He stated the Board is looking at the use, with particular elements called out by the Statute.

Mr. Athey noted that some of the documentation presented to the Board seemed lacking in effort; particularly in regard to discussions with M&T Bank to share the parking lot entrance. He further noted that the Board is allowed to put conditions on a plan, and although those conditions cannot be conditioned on M&T being cooperative, he did feel that some conditions could be imposed, including scale, screening and pulling the lot further back from 3<sup>rd</sup> Street to provide additional screening at the entrance.

Mr. Athey suggested he would be in favor of a motion to approve the application with heavy conditions, including the lot will not exceed 30 spaces, additional significant landscaping along 3<sup>rd</sup> Street, and shielding along resident property lines.

Mr. Losco stated that assuming the application is approved, one of the conditions the Board needs to discuss is putting a time deadline on the commencement of construction, if such a Motion is made, he wants to ensure the deadline starts at the time a final, un-appealable decision of the Board is made.

Mr. Losco noted that historically the property had been commercially in the past, and it could be developed for a number of purposes in the future. He added that a property owner has the right to seek to develop their property in a manner consistent with the law. He also noted that a major consideration is whether or not the public as a whole is adversely affected by the parking lot. He expressed his opinion that he did not think it is adversely affected, and added that he felt in time residents on 3<sup>rd</sup> Street will see the parking lot as a benefit and they, their families, and their guests will be the predominant users of it. He added that the parking lot has been engineered to a degree he has not seen before to make it presentable. The scale argument is compelling and expressed his agreement with Mr. Athey's suggestion that the size be reduced.

Mr. Athey suggested a condition that the lot have no more than xx number of spaces, or revert to the proposed 42 spaces if a common entrance with M&T could be negotiated. He noted that one resident who lives across the street from the M&T parking lot (*Jean Marie Camac – 23 West 3<sup>rd</sup> Street*) indicated she could see the driveway, but not the lot itself. Mr. Losco stated that Mr. Athey's recommendation would fundamentally change the nature of the proposed parking lot. He felt the application as presented, not with a combined entrance, has been reviewed and approved by the Planning Commission; approved by HAC; that prior and present Councils adopted Ordinance 510 to facilitate this type of application and therefore it is the policy of the City to encourage this type of development; it was the policy of the City when the 2009 Comprehensive Plan was adopted to encourage this type of development; it has been stated by prior Councils in 2014 when they endorsed the site in a Resolution; the elected representatives of the town in prior Councils going back to 2009 have endorsed the idea of a parking lot; and the need for additional parking to support the residents and the business community. He added that on the other side, change is always very difficult to accept, but change is the one thing that cannot be avoided.

Mayor Gambacorta asked Mr. Tracey if the Board was leaning toward not being able to vote, and Mr. Tracey stated that was not his decision. Mr. Athey stated that he is inclined to vote in favor of the applicant with certain conditions; and added that to Mr. Losco's point there was a very clear progression and process going back to the 2014 Resolution where the Council overrode the Planning Commission on the number of locations to be looked at and made the request to the Trust for this specific location, and the application has gone through a rigorous public process. He added that the lack of documentation is troubling; but FOIA is not under the purview of the Board.

Mr. Athey reiterated his opinion that the project could be vastly improved by co-using the M&T entrance, but understood that was probably not an option. Mr. Tracey noted his opinion that using the M&T entrance was problematic for two reasons: first, that condition would tie an approval to the concurrence of a party not before the Board and the owner of a different property; and second, the designs before the Board have been vetted and approved by the Planning Commission and HAC and involving reconfigured entrances and the different materials on the M&T lot, under the Ordinance the application would have to be re-approved by the Planning Commission and HAC.

Mr. Athey asked what latitude the Planning Commission and HAC have on their approval, and Mr. Tracey thought they were both recommending parties, but HAC has a particular bent toward materials. Mr. Losco stated that per the Ordinance, the Planning Commission recommends pro or con and HAC has

to approve. Mr. Athey noted that HAC can assign conditions, and Mr. Losco stated that HAC did assign conditions.

**Mr. Athey made a Motion for approval of the special exception with the condition of the number of spaces not to exceed 32.**

Mr. Losco asked if he was willing to add the time limit of one year from a final, non-appealable Board of Adjustment decision. Mr. Athey asked for clarification and Mr. Tracey noted that if the decision is approved, and an appeal was made, the appeal would be prosecuted through the court system and eventually a conclusion would be reached. The time limit would start once that process is concluded. After discussion it was agreed that a reasonable time limit would be two years from a final, non-appealable Board of Adjustment decision.

Mr. Losco asked if Mr. Athey would also entertain an amendment requiring security cameras, permanent maintenance responsibilities for the water retention area and landscaping, and if parking spaces are reduced would he require the non-spaces be focused on the 3<sup>rd</sup> Street side to provide more of a buffer. Mr. Athey noted that he intended to require that the space occupied by the 10 eliminated parking spaces be generously landscaped as shielding; however he did not want to over-dictate requirements. Mr. Athey stated that if the Motion was to reduce the number of parking spaces to 32, he would suggest four spaces, two on either side, be on the 3<sup>rd</sup> Street side to provide additional landscaping along 3<sup>rd</sup> Street to greatly minimize the visual impact. Mr. Tracey suggested that if the Motion proceeds to a vote there should be some discussion from the Board as to why it believes reducing the parking from 42 to 32 spaces is appropriate; otherwise it could be considered arbitrary and capricious.

There was discussion as to whether the Trustees or the City would be responsible for maintenance of the parking lot, since although the Trustees are the property owners Mr. Taylor stated in earlier testimony that the City would operate the parking lot, and Mr. Losco was adamant that the landscaping, water retention area, and security be properly maintained and stated any Motion should include those assurances. Mr. Athey asked if written documentation would be necessary, and Mr. Tracey noted that making the Trustees responsible for maintenance would not preclude them from contracting with a third party to do the work.

After discussion, Mr. Losco recapped that the suggested motion was to approve, limit the number of spaces to 32 with an emphasis on moving at least four spaces off the 3<sup>rd</sup> Street side, with a deadline to commence construction within two years of a final, non-appealable decision by the Board of Adjustment, with the Trustees being perpetually responsible for at least two security cameras, maintenance of the water retention area, and all landscaping on the site.

**Mr. Athey made a Motion that the special exception be granted conditioned on the total number of spaces being no greater than 32, with at least four, two on either side of the entrance road in, being eliminated adjacent to 3<sup>rd</sup> Street with landscaping placed instead, and that the Trustees have perpetual responsibility for at least two security cameras, maintenance of the plantings in and around the storm water management area, and all landscaping on the site, and construction will commence within two years of a final and non-appealable Decision. Mr. Losco seconded the Motion.**

Mayor Gambacorta asked for clarification of the terms of the Motion and stated that he is very much opposed to taking such a large section of green space to install a parking lot. The Mayor stated that he

wanted to give consideration to the residents of 3<sup>rd</sup> Street who have a legitimate objection to the construction of the parking lot.

After discussion, Mr. Athey withdrew his Motion for the purpose of considering Mayor Gambacorta's Motion.

**Mayor Gambacorta made a Motion to deny the application for a special exception. Mr. Losco seconded the Motion. A vote was called:**

**Mr. Athey – No**

**Mr. Losco – No**

**Mayor Gambacorta – Yes**

**The Motion failed.**

**Mr. Athey restated his Motion that the Board approve the special exception with conditions being that the parking lot have no more than 32 spaces; that at least four of the spaces be eliminated along 3<sup>rd</sup> Street such that additional landscaping can be placed; that the Trust will be perpetually responsible for the maintenance of at least two security cameras, the maintenance of the landscaping in and around the storm water management area and the landscaping on the balance of the property; with construction to begin no later than two years after the date of final, unappealable Decision. Mr. Losco seconded the Motion.**

**Mayor Gambacorta stated there was a Motion on the floor that had been seconded and called for a vote.**

**Mr. Athey – Yes**

**Dan Losco – Yes**

**Mayor Gambacorta – No**

**The Motion passed.**

**Mr. Athey made a Motion to adjourn the meeting. Mr. Losco seconded the Motion. On vote, the Motion was approved unanimously.**

The meeting adjourned at 10:33 pm.

Kathy Weirich  
Stenographer