

New Castle City Board of Adjustment Meeting Minutes
October 23, 2018 – 6:00 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 6:00 pm.

Mayor Gambacorta stated the Board would hear two related hearings: The first hearing is an appeal filed by Mr. John DiMondi concerning alleged irregularities surrounding Historic Area Commission decision of September 20th, of this year, approving the application of the Trustees of New Castle Common for a parking lot at 27 West 3rd Street, under §230-28.1 of the Zoning Code, or Ordinance #510. The second hearing is an application filed by the Trustees of the New Castle Common for a property located at 27 West 3rd Street, Tax Parcel No. 21-015.30-194 seeking a Special Exception for a proposed parking lot per §230-28.1 of the City Code.

Mayor Gambacorta explained the procedure to be followed for the appeals, and stated that Mr. DiMondi's argument would be heard first, noting that if Mr. DiMondi's appeal was successful and the Historic Area Commission decision is overturned, there will be no need for the scheduled second hearing; however, if Mr. DiMondi's appeal was unsuccessful and the Historic Area Commission decision stands, the second hearing would proceed with the Trustees application for a Special Exception.

Mayor Gambacorta proposed the following ground rules for the two hearings:

- First, all public comments should be brief (no more than 2-3 minutes) and to the point;
- Second, competitive comments should be avoided and once a point is made by one person there is no need for someone else to repeat the same point;
- Third, understanding that emotions have run high on this particular issue, all comments should be presented in a civil and respectful manner; and
- Fourth, as excessive crowd noise will impair the Board's ability to hear and understand the testimony and evidence being presented, no outburst or excessive talking from the audience will be permitted and the Board reserves the right to have anyone being overly disruptive removed from the room.

Mayor Gambacorta asked if the Board members agreed to the ground rules, and both Mr. Athey and Mr. Losco expressed their agreement.

Mayor Gambacorta invited Mr. DiMondi to come forward and read the application:

An application has been filed by John A. DiMondi, Box 72, New Castle, Delaware, who is the Applicant, regarding a property located at 27 West Third Street, New Castle, DE 19720 Tax Parcel No. 21-015.30-194, Trustees of the New Castle Common (Owners) appealing the September 20, 2018 decision of the Historic Area Commission approving the design and materials of the project.

Mr. Losco introduced John Tracey, Esquire, Special Counsel for the City of New Castle, and Mayor Gambacorta introduced the Board members.

Mr. DiMondi was sworn in by Mr. Losco. Mr. Losco then asked Mr. Bergstrom to confirm that the property had been properly posted and that the advertisement of both hearings being heard was posted and published in the newspaper in a timely fashion. Mr. Bergstrom stated they were.

Mr. Losco entered, as part of the public record, a photograph of the posting of the hearing and an affidavit of publication in both the News Journal and the New Castle Weekly of the notice of the hearing.

Mr. DiMondi questioned why both hearings were scheduled for the same night and Mr. Losco explained that the Code requires that an application be scheduled within 30 days of the date of the application, and since the Trustees application came in before his appeal both hearings needed to be scheduled at the same time in order to meet the Code requirements. Mr. DiMondi then questioned why the Trustees were present at his hearing and asked if they were getting a “third chance.” Mr. Tracey explained that any party who has a matter before the Board of Adjustment that has been challenged has the right to defend the decision. Mr. DiMondi noted that he thought HAC should be answering his questions.

Mr. DiMondi presented the Board members with a summary of seven challenges to the HAC decision that he would speak to individually.

Item 1: Ownership. Mr. DiMondi stated that the Trustees did not declare their ownership of the property at the time of their application to the Planning Commission. He added that according to the Parcel View, the owner was the City of New Castle. Mr. Athey asked if a HAC decision would stay with the property or the owner, and Mr. Tracey advised the decision would typically stay with the property. Mr. DiMondi noted that he was not disputing that the Trustees own the property, but rather that it was not stated in the original application, and that New Castle County was listed as the owner of the Tax Parcel and therefore, any interested party researching the parcel using the New Castle County Parcel Search would be unaware that the Trustees were the owner and that the Agenda is a violation of the Freedom of Information Act.

Item 2: Conflict of Interest. Mr. DiMondi’s second challenge is to why Ms. Norvell, despite repeated requests during the application process, refused to recuse herself from voting. In support of his challenge, Mr. DiMondi explained that Ms. Norvell’s daughter is the owner of Penn’s Place on Delaware Street, and that prior to her appointment to the Historic Area Commission Ms. Norvell appeared for her daughter several times before HAC and was actively involved with her daughter’s property on Delaware Street. He added that in 2016, prior to the Trustees application for the parking lot, a real estate advertisement was published for the sale of Penn’s Place listing a “50 car parking lot” as one of the perks for the sale; alluding that Ms. Norvell had knowledge of the proposed parking lot and used it to promote the sale of her daughter’s business. In summary, Mr. DiMondi stated that Ms. Norvell was actively involved in her daughter’s business and should have recused herself from voting on the application, but she did not.

Item 3: Tabling of the application: Mr. DiMondi’s third challenge stated that the application was tabled for reconsideration once to allow the applicant time to change some of their specifications and reapply back to HAC. He added that the meeting on challenge was convened after there was a “No” vote at the previous meeting. He contended that when the application came up for a vote, it was voted down, and according to the Minutes of the meeting, they tried to change the Minutes to reflect that it was tabled. Mr. DiMondi noted that during a City Council meeting, Councilman Quaranta asked Mr. Losco “What will stop this process?” and Mr. Losco said “A No vote.” Mr. DiMondi contended that there was a No vote at

the HAC meeting and the application should have gone back to the Planning Commission with a new proposal.

Mr. Athey asked for clarification of the chronology of events, that the application was tabled at some point then came up for a vote and the vote failed. Mr. DiMondi concurred that the vote failed at the second meeting. Mr. Athey then clarified that at a subsequent meeting the application got an affirmative vote, and Mr. DiMondi stated that was his argument: the application should not have gone to a third meeting at HAC. Mr. Athey asked if anything would stop an application from having a failed vote and coming back at the next meeting with changes, and Mr. DiMondi stated that according to the Ordinance, if an application received a No vote, the process had to start over again. Mr. Athey asked Mr. DiMondi to point out the in the Code the Ordinance supporting his challenge, and Mr. DiMondi replied it was the Ordinance; however he did not specify the exact Ordinance.

Mr. Athey asked Mr. Losco to confirm his statement to Mr. Quaranta, and although he was unable to recall his precise words, Mr. Losco said he assumed Mr. DiMondi recited them correctly; however he added that he never said someone could not resubmit an application as is done commonly at HAC. Mr. DiMondi then stated that the only reason HAC is supposed to reconsider an application is if there have been substantial changes to adhere to their recommendations. Mr. Athey asked if Mr. DiMondi was contending that the application submitted to HAC for reconsideration was not substantively different and Mr. DiMondi said it was basically the same plan with the exception of the use of concrete.

Item 4: Materials. Mr. DiMondi's fourth point stated the application was put on the agenda as "old business" by the chairperson on advice of Ms. Leila Hamroun. He added that the reasoning put forward was that concrete would be allowed because other structures and places in the Historic Area use concrete. Mr. Athey asked if there was anything in the Code that would prohibit the use of concrete, and Mr. DiMondi stated the Historic Guidelines prohibited it. Mr. Athey clarified that Mr. DiMondi's position is that the use of concrete is inconsistent with HAC Guidelines and Mr. DiMondi concurred. Mr. Losco asked Mr. DiMondi to point out the section of the Guidelines that prohibit concrete. Mr. DiMondi located the section in the Guidelines but did not identify a page or section number for the record. Mr. Athey asked if the Guidelines were codified and Mr. Losco advised the Guidelines are not in the Code and that they were approved by a Council Resolution for use by HAC in making decisions.

Mr. DiMondi then referenced the Minutes from the September 20, 2018, HAC meeting and paraphrased a section of the verbatim transcription: "The plan that we have presented or submitted for discussion tonight takes this center position previously shown as blacktop. It makes so that it is all concrete. It would thus reduce one type of material within the application." Mr. DiMondi contended that was proof that the application came back with basically the same materials proposed in the original application, with Ms. Hamroun's and Ms. Fontana's position that there is very little or no difference between the materials; thus compromising the HAC Guidelines.

Mr. Athey noted that it appeared Mr. DiMondi was not making the argument that concrete is inappropriate, but that he was making the argument that the plan did not change substantively and that HAC should not have reconsidered the application because there was not a substantive change to the plans. Mr. DiMondi stated that was one point, and added that a second point was the concrete, noting that at the previous meeting Ms. Hamroun stated concrete was not allowed for driveways or parking lots in the Historic Area. He added that was stated in the Guidelines but did not identify the page or section within the Guidelines for the Record. Mr. DiMondi also noted that at one meeting Ms. Fontana said concrete was not supposed to be used; however at the next meeting Ms. Hamroun noted concrete could be used

and that other areas in the Historic District use concrete, citing the wharf. Mr. DiMondi added that the use of concrete at the wharf did not mean concrete could be used in the parking lot.

Item 5: Fencing. Mr. DiMondi noted that the revised application removed fencing from the plan, however, the Historic Guidelines say any parking lot or drive has to be shielded by some sort of fencing. Mr. Losco stated that Ordinance 510, Section D, says “Visual screening in the form of walls, fencing and/or landscaping to reasonably shield said use from public rights-of-way and adjacent properties must be provided.”, and asked Mr. DiMondi if he was focused only on fencing or if he was saying there was no other landscaping, walls or other reasonable shield in the plan. Mr. DiMondi stated that fencing was reduced substantially and other landscaping was completely inadequate. Mr. DiMondi also stated that the parking lot is within feet of residents’ backyards and it should have fencing.

Item 6: Planning Commission review: Mr. DiMondi’s 6th point challenged procedure in that the applicant did not seek Planning Commission review or recommendations for the changes made in response to the HAC oversight objections and recommendations as required by Ordinance 510, §238-28-1; and any such new review would have to go on the agenda as new business but was listed as old business on the agenda of the September 20, 2018, HAC meeting. Mr. DiMondi contended the application should have gone back to the Planning Commission as New Business. Mr. Losco asked where in Ordinance 510 it stated that if HAC doesn’t approve an application the first time it has to go back to the Planning Commission. Mr. DiMondi stated that a plan approved by the Planning Commission has to be substantially intact for it to be passed by HAC. He also stated that the plan was substantially changed and it should have gone back to the Planning Commission as New Business. To clarify his position, Mr. DiMondi reiterated the chronology of the meetings: The application went to Planning Commission, then to HAC where it was tabled. It returned to HAC with substantial changes and received a No vote. It returned to HAC again with additional changes and received a Yes vote. However, after the plan with substantial changes received a No vote, it should have returned to the Planning Commission as New Business.

Item 7: Item was not tabled. Mr. DiMondi’s last challenge stated the applicant asked for a vote, the item was not tabled to address the concerns of certain commission members as had previously been done in the previous hearing. The vote was 3-2 to deny the application. Mr. DiMondi stated the application was tabled in the second HAC meeting to come back with recommended changes. The third time the application came before HAC, the application received a No vote. Mr. Athey noted that an applicant can return and asked if the change was substantive. Mr. DiMondi noted that if it was a substantial change that needed HAC approval, it should have first gone back to the Planning Commission.

Mr. DiMondi stated that HAC has an obligation to preserve the Historic Area, noting that even City Council has very little control over what HAC does in regard to the Historic Area. He further stated they did not allow the people being affected by the parking lot to comment on procedure or why it doesn’t belong in the proposed location. He added that HAC has a charge to listen to the people and what their concerns are, not to only focus on the materials of the proposed parking lot. He added there are better locations to put the parking lot. Mr. Losco clarified that Mr. DiMondi’s argument was that HAC didn’t consider procedural challenges, that therefore, they must be reversed in this case.

Mr. DiMondi restated that he had a problem with the fact that The Trustees owned the property for 50 year but only changed title the day before the HAC meeting.

Mr. DiMondi restated that Ms. Norvell should have recused herself and was challenged numerous times on the issue because she is actively involved in a property which lists the parking lot as a perk. Mr. Losco asked if Mr. DiMondi was stating Ms. Norvell and/or her daughter have any financial interest in the parking lot, and Mr. DiMondi clarified that they would benefit from the sale of a property adjoining the parking lot. Mr. Losco noted that using that logic, anyone who owns property near a site or is running a business near a site that is under consideration and is a member of HAC should recuse themselves in every instance. Mr. DiMondi clarified that he is specifically speaking of a member of HAC who is actively involved with the property, reiterating that Ms. Norvell went before HAC on behalf of her daughter's property. He stated that he had no knowledge of whether she has any financial interest in the property, but that the relationship between a mother and a daughter is close enough to where there is some effect on how someone might vote, and Ms. Norvell appeared in front of HAC two times to promote her daughter's business. Mr. Losco asked if Ms. Norvell was a member of HAC when she appeared on behalf of her daughter, and Mr. DiMondi noted that she appeared on behalf of her daughter prior to her appointment as a member of HAC. Mr. Losco asked about the timing of Ms. Norvell's appointment to HAC, and Mr. DiMondi stated it was 1-1/2 to 2 years ago. Mr. Athey then asked about the brochure Mr. DiMondi mentioned, and he advised it was made in 2016, which was probably before she was on HAC. Mr. DiMondi added that Ms. Norvell's involvement with her daughter's property follows her to HAC and she should have recused herself from any dealings with her daughter's business or properties. He added that Ms. Norvell's was the deciding vote to pass the application.

Mr. DiMondi restated that the application should have gone back to the Planning Commission after it received a No vote by HAC. He also questioned why Ms. Fontana changed her vote when the same items were on the table and nothing was changed substantially enough to send it back to the Planning Commission for review.

Mr. DiMondi thanked the Board.

Mayor Gambacorta invited Andrew Taylor, Esquire, and Andrew Hayes, representatives for the Trustees, to come forward.

Mr. Taylor and Mr. Hayes were sworn in by Mr. Losco.

Mr. Taylor addressed Mr. DiMondi's first point that the Trustees is not listed as the owner, and noted that Mr. DiMondi was referring to the Parcel View Records, which are for taxation purposes. He noted that the Trustees obtained the parcel in four different transactions that dated back to the 1960's, and that a Confirmatory Deed was filed to combine the four individual purchases. He submitted the Confirmatory Deed as Trustees Exhibit 1.

Mr. Taylor referred to the last page of the Confirmatory Deed showing an excerpt from the County Tax Parcel Map showing Parcel 194, and the Recital on the deed showing that the Trustees acquired the property in four separate deeds. Mr. Athey asked why there was a deed dated approximately one month ago, and Mr. Taylor advised that deed was filed to clean up the record and provide a legal description that gives the whole perimeter description. Mr. Taylor entered the first of the four deeds to the Trustees as Trustees Exhibit 2.

Mr. Taylor entered the second, third and fourth deeds of the four deeds as Trustees Exhibits 3, 4 and 5 respectively. Mr. Athey asked why there were four deeds and Mr. Taylor explained the four deeds were how the Trustees acquired the entire parcel. He added that having acquired the property in four separate

transactions before the Parcel View system was computerized was probably part of what contributed to the confusion. Mr. Athey inquired as to the Trustees rationale in consolidating, and Mr. Tracey explained that the argument is that the property was four parcels all next to each other that were owned by the same entity, but they were not combined into one deed for purposes of a unified legal description. Mr. Taylor added that the Confirmatory Deed gives the unified description of the parcel.

Mr. Taylor entered the Parcel View page as Trustees Exhibit 6 and noted that it shows the deed recorded as a Confirmatory Deed. He added that prior to the Confirmatory Deed being filed it erroneously showed the City of New Castle as the owner on Parcel View. After the Confirmatory Deed was filed it does not show any deed record number and shows “not available.”

Mr. Athey noted that one of Mr. DiMondi’s points was that the application did not show the Trustees having ownership, and Mr. Taylor advised that he believed the application itself did show the Trustees having ownership, but the agenda may not have done so.

Mr. Losco asked if Mr. Taylor could advise what Exhibit DiMondi 1 was, and he explained it was the meeting agenda from the Planning Commission showing the Bowling Alley parcel, giving the parcel number correctly, and the proposed parking lot site plan review and recommendations to the Board of Adjustment for Special Exception. Mr. Losco clarified that it was the agenda for the meeting and not the application itself. Mr. Losco asked Mr. Bergstrom if he could confirm when the FOIA notices went out for the Trustees application before HAC and whether it identified the Trustees as the applicant. Mr. Bergstrom did not have a clear recollection; however, he stated that he was of the impression at all times that the parcel was owned by the Trustees.

Mr. Taylor added that the deeds and either a title policy with that or an attorney’s opinion of title are an indication of ownership, and not the Parcel View tax parcel records. He added that the deeds clearly show the Trustees are the owner of the property.

With regard to Mr. DiMondi’s second item, whether Ms. Norvell should have recused herself from the application, Mr. Taylor explained that it was his opinion that that point should be examined under City Code §230-50.D, within the Historic Area Article of the City Code titled Conflicts of Interest and not some other State Code provisions mentioned in Mr. DiMondi’s appeal. As an aside, he noted that some guidance from the Board to HAC on this issue would be of benefit for this application and proceeding forward. He added that Ms. Norvell has a general business interest, as any other business owner along Delaware Street would have; not a special interest, a direct interest, or a direct financial interest in the parking lot. He also noted that if Ms. Norvell must recuse herself then any member of HAC who had a business in the area of an application being considered would have to recuse themselves as well. Mr. Losco asked if it would disqualify them if they had a home in the Historic Area, and Mr. Taylor stated that he did not believe so, nor was it the intent of §230-50 paragraph D.

Mr. Taylor entered Trustees Exhibit 7, a 2018 Business License Application of R. Martin Wright indicating him as the owner of Manor Antiques doing business at Second Act Antiques, a collective of antique dealers operating at 304-306 Delaware Avenue. He added that Mr. Wright is also a member of HAC and voted against the application. Mr. Taylor next entered a brochure for Second Act Antiques featuring Manor Antiques on the last page as Trustees Exhibit 8. Mr. Athey clarified that Mr. Taylor’s point was that Second Act Antiques is within a reasonable proximity to the coffee shop, and Mr. Taylor stated that was correct. Mr. Taylor then entered a photograph showing a general shot of the Manor Antiques display at Second Act Antiques featuring certain items with a card attached to them, and a

photograph of a close-up of the card showing a picture of Leslie Manor, and the initials RMW, which he said stood for R. Martin Wright, as Trustees Exhibits 9 and 10.

Mr. Losco asked if Mr. Wright voted at the HAC hearing, and Mr. Taylor advised that Mr. Wright voted against the Trustees' application. He stated that since he voted against the application and Ms. Norvell voted for the application, the votes would cancel each other out and the Motion would still pass. He added that the conflict of interest is that Ms. Norvell had a family interest with a business that would benefit from the parking lot; however Mr. Wright had a direct ownership in a business that could benefit from the parking lot. Mr. Taylor summarized by stating that the conflict of interest provision should be drawn narrowly and not broadly, and if narrowly drawn, it would not disqualify either Ms. Norvell or Mr. Wright from voting; however, if the Board interprets the conflict of interest provision to disqualify Ms. Norvell from voting, then that also disqualifies Mr. Wright from voting.

With regard to Mr. DiMondi's item #3, Mr. Taylor explained that they did proceed to HAC three times and submitted the Agenda for the February 8, 2018, Historic Area Commission meeting as Trustees Exhibit 11. He noted that as a result of the hearing, they received a letter dated February 28, 2018, from HAC, which was entered as Trustees Exhibit 12, and referenced the bottom paragraph of the first page:

The Commissioners used the Design Guidelines and Standards specific to Streetscape as the basis for the review of this application. After discussion ... based on the ... guidelines and standards, and lack of sufficient information provided for consideration, made a determination to disapprove the application.

Mr. Taylor stated that the application was not tabled. He noted that they disapproved the application, but then pursuant to 230.52.C of the Code,

...this statement..." meaning the letter of February 28, 2018, "contains the reasons for the disapproval and includes recommendations of changes that might make approval of an application possible, if approval is indeed possible. The applicant will need to come before the Commission if any changes are made based on the below recommendations.

Mr. Taylor noted the recommendations from the first HAC hearing: the use of Macadam or bituminous concrete blacktop is not appropriate; more information relating to the privacy fence; more information relating to the foot candles of the proposed lighting.

Mr. Taylor presented the Minutes of the Historic Area commission from the February 8, 2108 meeting as Trustees Exhibit 13. He drew the Board's attention to the last page and the actual Motion that was made.

Motion to disapprove the application as presented with a letter recommending use of non blacktop surface, look at the height of privacy fence and retaining wall, look at level of illumination of foot-candles and light intrusion and clarify the sidewalk will be ADA compliant. The Motion was seconded. The Motion to disapprove the application with conditions was approved by unanimous vote.

Mr. Taylor reiterated that the application was not tabled and that the application followed the procedure within the City Code that allows disapproval with recommendations to come back to HAC, which they did at the HAC Meeting of April 18, 2018. Mr. Taylor entered the Agenda of the April 18, 2018, HAC

meeting as Trustees Exhibit 14. He noted that Item 2 on the agenda, under Old Applications, is the consideration of the parking lot.

Mr. Taylor added that they subsequently received a letter of the results of that hearing and offered that letter as Trustees Exhibit 15. He drew the Board's attention to the bottom paragraph that again refers to Code §230.52.C of the City Code: "this statement" (*meaning this letter*) "contains the reasons for our disapproval and includes recommendations of changes that might make approval of an application possible, if approval is indeed possible." And then, to the next page that bulleted the items: reduce the amount of macadam and/or consider other appropriate materials; reduce the proposed mix surfaces; and incorporate the reinforced surface into the major design vs. the overflow. To go along with the letter, Mr. Taylor entered the Minutes of the April 18, 2018, HAC meeting as Trustees Exhibit 16.

Mr. Taylor then entered the Agenda from the HAC meeting on September 20, 2018, as Trustees Exhibit 17, and the letter dated September 26, 2018, with the results of that hearing as Trustees Exhibit 18. Mr. Taylor noted that at the September 20 meeting, upon review of the revised plan, a determination was made to approve the redesign with the concrete and the assurance that the proposed work would provide ADA compliant barrier-free access and meet all other City Building Code requirements. The Minutes of the September 20, 2018, meeting was offered as Trustees Exhibit 19.

Mr. Taylor stated that they were making the Special Exception Request under Code §230-28.1, noting that all Special Exception Applications for a parking lot shall require prior review and recommendations from the Planning Commission before being submitted to the HAC or the Board of Adjustment. Mr. Taylor added that the application had to be submitted to both the Planning Commission and the Board of Adjustment because it is located in the Historic District. He also noted that the application still needs to go back to the Planning Commission for final approval of the final plans. He submitted the letter from the result of the Planning Commission meeting held on January 22, 2018, as Trustees Exhibit 20.

Mr. Athey asked for clarification, noting that if Mr. DiMondi's appeal fails and if there is a subsequent meeting with affirmation from the Board that the application will go back to the Planning Commission, and Mr. Taylor stated that was correct.

Mr. Taylor then offered the Minutes of the January 22, 2018, Planning Commission meeting as Trustees Exhibit 21. He explained that detailed plans were submitted at the January 22, 2018, Planning Commission meeting, and approval and recommendations were sought for a parking lot in order to move the application forward to HAC and the Board of Adjustment. They also sought to have the plans reviewed and approved; however the Planning Commission denied doing that, and referenced on pages 12 and 13 of the Minutes: "Mr. Rogers informed they typically like seeing a site plan that has progressed further before recommending site plan approval with only a few technical comments to address." Over the top of the next page it indicates upon receipt of any comments from "the HAC and/or the Board of Adjustment" the application would have to go back to the Planning Commission for a final review, and "At that time it would be more of a technical by right site plan review." Mr. Athey made reference to the motion on page 14, "Mr. Justice made a motion to table site plan consideration until after Board of Adjustment approves ..." and Mr. Taylor referenced the Motion at the bottom of page 14 of the Minutes of the January 22, 2018: "motion to recommend to the Board of Adjustment that they approve the site use as proposed and that they consider movement of the driveway, addition of shrubbery, and provide security cameras." The motion was carried.

Mr. Taylor stated that, in his opinion, they have followed the proper procedure as laid out in the decision letters from the Planning Commission and the three letters from HAC, and have followed all the appropriate procedures of the City required by the Ordinances. He noted that there is no requirement to return to the Planning Commission until after consideration and approval by HAC, and then consideration by the Board of Adjustment; adding that a return to the Planning Commission would happen if the Board of Adjustment approves the Special Exception.

Mr. Losco asked Mr. Taylor if in the plan submitted to the Planning Commission they were proposing an asphalt parking lot, and Mr. Taylor advised it was a mix of asphalt and concrete. Mr. Hayes added that the plan presented to the Planning Commission was asphalt paving for the majority of the parking lot, and concrete paving for the ADA barrier-free parking spaces. Mr. Losco clarified that the majority of the parking lot was asphalt with a minority of concrete, and Mr. Hayes said that was correct. During a discussion of Mr. DiMondi's argument that the change from asphalt and concrete to all concrete was a substantive change that should have stopped the proceedings, Mr. Taylor stated that was not the procedure required by the Ordinances, adding that the application will have to return to Planning Commission for a final review of the site plan. He added that HAC and not the Planning Commission had the issue with the mix of material

During further discussion of whether the site plan review by the Planning Commission would include materials, it was noted that they must prove compliance with all Code provisions, but that materials are the purview of HAC. Mr. Losco asked if the change from a mixture of asphalt and concrete to all concrete was a substantial change, should the application have gone back to the Planning Commission and the process started over. Mr. Taylor stated that was not correct, and noted the Planning commission said they would not ordinarily have detailed plans until after the application went through HAC and the Board of Adjustment. He also noted that the Planning Commission considered the appropriateness of the use of the location of the parking lot to make their recommendation to proceed to the next step.

Mr. Losco brought up Mr. DiMondi's related argument that opponents to the parking lot were foreclosed from commenting on any kind of procedural issues and whether or not that is grounds for reversal at this level. Mr. Taylor responded that HAC followed their procedures, made their purview and the matters under consideration clear, and followed their Ordinances and Guidelines in consideration of the application. He added that a review of the Minutes of the HAC meetings would show that there was ample opportunity for public comment at all three meetings.

Mr. Losco asked what Mr. Taylor's position was on Mr. DiMondi's argument that renewed applications to HAC were presented as Old Business as opposed to New Business. Mr. Taylor stated his opinion that it was appropriate that the application was presented as old business because it was a continuing application, which is what the letters from HAC indicated, adding that the letters were an invitation to revise the plan and come back to HAC with revisions. He noted that as recommendations are made by HAC and the plan is revised, the list of objectionable items is narrowed because items are addressed and the plan is revised as the process proceeds, ending in a final hearing. He added that only issue at the final hearing with regard to materials was the mix of materials, which is why the plan changed to all concrete with brick for the parking spots and some reinforced turf.

Mr. Taylor proceeded to address Mr. DiMondi's fifth item, the fencing. He noted that the Code does not require there to be only fencing, and Code §230-28.1.B states: "visual screening in the form of walls, fencing, and/or landscaping to reasonably shield said use from public rights-of-way and adjacent properties must be provided." He noted that fencing is not an absolute requirement of the Code, and that

changes were made to the plan based on comments from HAC from the first hearing to the second hearing, including elimination of a retaining wall and a fence adjacent to it to allow room for a planting strip with evergreens as a visual screening.

Mr. Taylor addressed Mr. DiMondi's item 6, stating that the application will go back to the Planning Commission for a final review of the plans.

Mr. Losco asked if a negative recommendation had been received at the Planning Commission meeting would that have prevented the plan from going forward to HAC under the Ordinance, and Mr. Taylor stated that under §230-28-1.G "all special exception applications for parking lot usage shall require prior review and recommendations from the Planning Commission before being submitted to the Historic Area Commission or the Board of Adjustment." Mr. Losco noted that the requirement was "review and recommendation", and asked, theoretically, if the recommendation was negative, you could still proceed to HAC, and Mr. Taylor agreed that it could be read that way. Mr. Losco added that it doesn't say "positive recommendation" or "conditional recommendation", and when the Ordinance refers to HAC it requires "approval" and when it refers to the Board of Adjustment it requires "approval"; however, it doesn't say that about the Planning Commission. Mr. Taylor noted that it just says "recommendation" and Mr. Athey noted it could be interpreted openly.

Mr. Taylor noted that he felt he had addressed Mr. DiMondi's Item 7 previously in his review of various decisional letters from the Planning Commission and HAC and that the letters stated the application could come back with further refinements to the plan for consideration by HAC.

Mr. Taylor commented on Mr. DiMondi's summary point about HAC's Mission. He referred the Board to §230-49, Intent, that does say HAC may also consider "economic value to the public." Mr. Losco asked if Mr. Taylor were contending the parking lot does produce economic value, and Mr. Taylor stated that he did, adding that Mr. DiMondi also stated that in his testimony, in which he said the parking is a "big sales boost. No one is going to argue that." Mr. Losco noted that he thought Mr. DiMondi was referring to businesses, not necessarily the general public, and Mr. Taylor argued that the general public shops at the businesses, and therefore they also benefit from the parking lot. Mr. Taylor also noted that, as Mr. DiMondi indicated, the parking lot will be open 24 hours a day with lighting and security cameras, and residents may use the parking lot for their personal use as off-street parking, parking for family gatherings, or to park their cars to clear 3rd Street for snow-removal. Mr. Taylor presented an article that speaks to the benefit of off-street parking, and Mr. Tracey stated that would probably be more appropriate to present at the second hearing.

Mr. Taylor noted that Mr. Hayes could answer any questions the Board might have regarding materials and design of the parking lot, and Mr. Losco revisited Mr. DiMondi's argument about fencing, and asked for a description of any fencing in the plan. Mr. Hayes advised there is no fencing proposed along the side or the rear where only landscaping is being used; however there are brick piers with an iron fence between them at the front, reminiscent of the wharf area, that also has landscaping.

Mr. Taylor ended his testimony and thanked the Board for their time. There being no further questions from the Board, Mayor Gambacorta invited Mr. DiMondi to present a rebuttal. Before Mr. DiMondi started his rebuttal, Mr. Losco asked if he had any documents to be submitted into the Record.

Mr. DiMondi began his rebuttal with Mr. Taylor's assertion that Mr. Wright has a conflict of interest. A discussion of whether Mr. Wright's business location was any more or less significant than Ms. Norvell's

daughter's business was held in which Mr. DiMondi asserted Mr. Wright's position was not significant due to the fact that he was not trying to profit from having the parking lot near his business either before or during his vote on the parking lot. Mr. DiMondi added that the difference between Mr. Wright and Ms. Norvell is that he obviously does not care if there's a parking lot or not; however through her appearance before HAC on behalf of her daughter, Ms. Norvell has a direct involvement in the parking lot.

Mr. DiMondi submitted emails between himself and William Barthel, City Administrator, noting the City has no records of any taxes paid or billing notices sent to the Trustees for the subject property as DiMondi Exhibit 2. He stated that it is a property-owner's obligation to pay taxes, and if a bill is not received, the property-owner has an obligation to seek to pay the taxes due. During discussion, it was agreed that non-payment of taxes is an issue, but it is not relevant to the issue of ownership.

Mr. DiMondi's second rebuttal point was that the applicant made it impossible for the public to get information on them, and submitted a July 5, 2018, letter from Thomas Wilson, President of the Trustees of the New Castle Common, as DiMondi Exhibit 3. Mr. Wilson's letter was in response to Mr. DiMondi's request for public records, and states the Trustees of the New Castle Common is a private land management corporation and therefore is not subject to FOIA regulations. During discussion it was noted that the law would provide an opportunity to sue the Trustees for information. Mr. DiMondi stated that he was acting on behalf of the residents and noted there was an Attorney General's opinion that stated the Trustees of the New Castle Common are subject to FOIA.

Mr. DiMondi submitted a photograph of the homes across the street from the proposed parking lot site that have all been put up for sale as DiMondi Exhibit 4, and stated that the sale of the homes is a ramification of the parking lot.

In his summary, Mr. DiMondi stated that more consideration should be given to the residents who may be economically disadvantaged by the parking lot than visitors who want to visit Battery Park. He also stated that five locations were recommended in an AECOM Report and asserted that the Report stated the 3rd Street site was not recommended in the report.

There being no further questions from the Board, Mayor Gambacorta opened the meeting to public comment for anyone wishing to speak for or against Mr. DiMondi's appeal. Mr. Losco asked that all comments be confined to the subject of the appeal and the issues that have been raised on appeal, as that is what the Board is deciding on.

Jean Marie Camac – 23 West 3rd Street

Ms. Camac read an excerpt from the City Council Minutes for the Special Meeting of July 31, 2017:

Councilperson Michael J. Quaranta ... requested clarification of the process (*of 510*), inquiring as to whether denial of the application at any stage except the Planning Commission review would be the end of the process, Mr. Losco confirmed that it would.

Ms. Camac stated that City Council wrote the rules but no one is following the rules. She added that when asked, the City Council stated it was not up to them to decide HAC procedure; and when asked, HAC stated it was for City Council to decide. In summary, she stated that if you write the rules, you've got to follow the rules.

Roderick Gillespie – 24 West 4th Street

Mr. Gillespie stated that the scale of the project is huge and could conceivably hurt the Historic District. He added that because it is so out-of-scale, it could cause financial harm. He also noted that it is a very heavy-handed project that bisects the neighborhood, and that the narrowness of 3rd Street and Foundry make it hazardous for cars to navigate. To illustrate scale, he submitted a photograph of 3rd Street to depict how narrow it is (19' wide), and compared it to Delaware Street, which is 61' wide.

Mr. Tracey asked to interrupt Mr. Gillespie to note that the issues at the hearing are solely related to the issues brought up by Mr. DiMondi's appeal, which are mostly procedural and about material. He suggested that Mr. Gillespie's comments might be better suited for the next hearing. He explained that if Mr. DiMondi's appeal is sustained, there would be no second hearing, but if Mr. DiMondi's appeal is denied, the second hearing would deal with the Special Exception for the parking lot itself.

Mr. Losco noted that although he agreed with Mr. Tracey, he encouraged Mr. Gillespie to speak about any items with respect to the appellate issues that Mr. Taylor and Mr. DiMondi discussed, which are the issues being considered by the Board at the present hearing. He added if a second hearing is conducted, everything Mr. Gillespie presented would be very relevant.

Mr. Gillespie stated he would present his testimony at the next hearing.

Dorsey Fiske – 26 East 3rd Street

Ms. Fiske noted that, as a former member of both the Planning Commission and HAC, her understanding was that the Planning Commission "recommends", it does not "approve" or "disapprove." She asked if the Board of Adjustment approves this (*meaning Mr. DiMondi's appeal*), does it go back to the Planning Commission for recommendation and then back again to HAC? She added that according to Chapter 230-28.1 of the Code, it doesn't matter whether the Planning Commission recommends it or not because it will still go on to the Historic Area Commission for approval or disapproval. She added that it was her understanding that when the Historic Area Commission voted not to approve the plan on April 18, 2018, that it would go back to the Planning Commission with whatever changes they had, and asked for clarification.

Mr. Losco explained that if the Trustees receive their Special Exception, they must provide a fully-developed site plan that deals with all the nuances of the Building Code. He added that under Ordinance 510, a concept plan was presented to the Planning Commission for a recommendation. Before a Building Permit is obtained, it must be proven that the Code has been complied with. The second Planning Commission meeting would deal with the issue of whether all aspects of the Code have been complied with. Ms. Fiske clarified that at the second meeting the Planning Commission would approve rather than recommend, and Mr. Losco indicated that was correct, if the plan meets Code.

Bob Parker – 49 West 3rd Street

Mr. Parker noted that Mr. Taylor stated that the Historic Area Commission followed their Guidelines. He quoted from the City's web page "The function of the Historic Area Commission is to preserve the historic character of the area using the following guidelines.", and noted one of the guidelines is "New construction should be compatible with neighboring properties and with the New Castle Historic Area." Mr. Parker added that another guideline stated that "design materials used for new additions should be compatible with the architectural characteristics of existing structures and should be in harmony with neighboring properties and the New Castle area as a whole." Mr. Parker stated that the public should have been able to comment on those responsibilities of the Historic Area commission, but they were not.

Betsy McNamara – 22 West 3rd Street

Ms. McNamara stated that before they purchased her home on 3rd Street, on advice of their realtor, she and her husband looked carefully at the HAC Guidelines and regulations and the Comprehensive Plan, and thought the proposed parking lot property was part of the park. After they realized the property was owned by the Trustees, they thought the property could be sold and townhouses built; but they never thought there would be a parking lot in the Historic District. She stated the proposed parking lot was the deciding factor in putting their house up for sale; however, they have found that anyone who had any interest in the property has walked away when they were told about the parking lot. She noted that is an issue that could affect about a dozen immediate neighbors that are adjacent to the parking lot, and potentially the whole street.

Karen Whalen – 17 West 3rd Street

Ms. Whalen noted that it was her understanding that there are codes of conduct in the requirements of those holding public meetings as far as allowing public input as well as the ability of the public to research information in advance of public meetings. She stated that it appeared everything was done to limit the availability of information prior to public meetings in order to prevent public comment on the issues presented. She added that there she was astounded at the level of animosity directed at residents attempting to make comments, and the shutdown of comments. Ms. Whalen stated that she is adamant about being able to express her opinion according to her First Amendment Rights in public meetings, and noted that it is a passionate issue and many people were severely limited from expressing their opinions. She added that it is clear that the majority of opinion is against the parking lot. She also noted that it was her understanding the meetings are governed under State Law title 29, chapter 100, and asked if the meetings were conducted in accordance with the law.

Jane Wurtzel – 54 West 3rd Street

Ms. Wurtzel noted that Mr. Taylor presented testimony to show that the Trustees purchased four parcels of land in the 1960's that are now the subject parcel of land. She contended that the application was not for those four parcels, but was for Parcel 2101530194. She added that in order to buy or sell property a title search must be done to establish clear title. She asserted that the Trustees did not clearly have title to the parcel that was submitted for the parking lot and that the Trustees did not have the ability to file the application in the first place because they did not have clear title to the parcel.

Dawn Kackley – 65 West 4th Street

Ms. Kackley noted that Mr. Taylor mentioned that the HAC Guidelines are “guidelines”, and stated that she has neighbors who have been taken to court by the City for not observing HAC Guidelines. She added that they are very powerful guides and can be enforced to the detriment of residents, and that they should serve the residents as well.

Phil Gross – 301 Moore Avenue

Mr. Gross stated that he is not directly affected by the parking lot, but he related two occasions instances when he exited the M&T parking lot, and was almost hit. He stated the addition of a parking lot will increase traffic which will lead to more accidents. He also commented on Mr. Taylor's assertion that the residents can use the parking lot, noting that if the parking lot was such a boon they should be able to sell their houses; or shouldn't even have to sell them. He stated there is no need for the parking lot to be on 3rd Street and any of the other proposed locations for the lot do not have the issues that 3rd Street presents.

Mr. Losco reminded the audience to limit their comments to the appeal issues.

Benny Beale – 26 The Strand

Mr. Beale referenced Mr. DiMondi's comments relative to real estate values. He noted that 3rd and Foundry are the narrowest streets in the historic commercial area; that parked cars have had their mirrors sideswiped numerous times; and that both entrances of the proposed parking lot are immediately next to the entrance to the M&T Bank parking lot. He expressed his concern that visitors coming down 3rd Street may mistakenly enter the M&T parking lot, realize their mistake, exit, and make a u-turn in the middle of 3rd Street in a 9' car-way, in order to enter the proposed lot. Mr. Beale also expressed his concern regarding visibility for cars exiting the parking lot and noted that he recently witnessed a Trustee speeding down 3rd Street who went through the traffic stop sign at 3rd and Foundry without stopping. He added that the Code for the City of Newark, Delaware, states "it is desirable to position the entrances and exits to favor right hand turns onto and out of parking lots where possible.", and both the M&T Bank and the proposed parking lots, which are next to each other, will have left turning entrance and exit traffic.

Tom Tritelli – Bear, DE

Mr. Tritelli noted that he is not a New Castle resident grew up in New Castle and still owns property on 9th Street, and reiterated Ms. Wurtzel's comment that the Trustees did not own the property at the time of the application. He stated that because the applicant did not own the property at the time of the application, it should have been discarded at the Planning Commission level. He also stated that according to the Recorder of Deeds the last change to the parcel was 3:30 pm on the afternoon of the last HAC meeting, asserting that was enough evidence to bring into question the validity of the whole process.

Ken Oppenheimer – 36 East 5th Street

Mr. Oppenheimer noted some people had questioned the validity of HAC working with the parking lot, and noted that HAC worked with St. Peters Church and did a wonderful job of upgrading that parking lot. He urged approval of the parking lot, noting that it is something the City needs and that it will look good.

Anthony Collurafici – 18 East 5th Street

Mr. Collurafici stated that he lives next to a Trustees parking lot and it has been of great value to his family and the adjoining area. He noted that there is no place to park on Cherry Street, and therefore, those residents park in the parking lot on 5th Street. He added that he feels the parking lot has increased the value of his home because it offers additional parking for residents. He added that the parking lot can be used by residents for extra vehicles they own and family gatherings, and the parking lot by his house alleviates a lot of the stress on 5th Street.

Mr. Losco asked for order, and noted that he would ask that comments be focused on the procedural issues being considered by the Board.

Mr. Collurafici noted that he thinks the parking lot is beneficial, good for the town, and asked that the Board takes that into consideration.

Sandy Beale – 26 The Strand

Ms. Beale stated that for perhaps a decade, they have been the victims of the tools of deception and falsification used in the process of affecting the Bowling Alley site parking lot. She read a prepared statement:

Deflection. As a long-term 3rd Street resident recalled, for the better part of a decade an inquire regarding a rumor of the lot in the proposed site was kicked down the road. This tactic created discord between residents and the City government. It broke down the trust.

Deceit. The need for a lot, curiously at the 3rd Street location was based on two non-starter studies. A 2016 letter from City Council President to Mr. Henry Gambacorta, then President of the Trustees, misquoted the studies and urged the Trustees to build the lot next to M&T.

Ordinance 510. Council abused its own July 31, 2017, Ordinance by ignoring procedure and the process in the consideration of the parking lot.

Manipulate. Special Exception process violated the procedural intent of Ordinance 510.

Disingenuous. Council never canvassed, never canvassed the residents about the use of the Historic District land, and further, never responded to our disapproval expressed in many and varied ways and venues.

Masquerade. False rumors and messages about the intended use for this site as a lot never satisfied the residents, thereby, thwarting discussion. And the rumors just go on and on.

And I'm going to use the word that I don't like to use. Lies. An online commercial real estate posting to which we referred earlier about Penn's Place stated convenience of 50 parking spaces. Somehow the crystal ball works for some people.

In summation, Ms. Beale stated that all of these methods are dishonorable and infer nefarious intent, and she asked who is benefitting from the egregious plan.

Joanne Viola – 1 The Strand

Dr. Viola stated that she had forwarded the Board members an email detailing the events leading to the current meeting and asked if the Board wanted her to speak about the email at the meeting. Mr. Losco noted that her email was not submitted into evidence, and that she could provide any information pertinent to the appeal at this time.

Dr. Viola presented a history of the development process of the proposed parking lot.

In 2012 the Planning Commission created a Parking Committee in the context of the Transportation section of the 2009 Comprehensive Plan that included representation from the Planning Commission, the police, the Goodwill Fire Company, and volunteer citizens, with input from WILMAPCO and the City Planner. In order to have full disclosure, open meetings were held, Minutes were kept and progress reports were made to the Planning Commission, which included a Statement of Goals and Principles.

With help from WILMAPCO the Committee conducted a survey in 2012 to understand the parking situation as well as strategies for improvement from the citizens of New Castle that included residents, businesses, museums, churches and visitors. More than 300 responses were submitted, with the majority of responses indicating that aspects of parking were important and supported improvement of existing and the construction of new parking lots.

In 2015 an Inventory and Usage study was conducted, following some of the recommendations that the Parking Committee had made, which included parking residential permits for high volume public events. Parking counts on the surrounding streets showed overcapacity during summer peak times and on Thursdays and Saturdays when there were no special events being held.

In 2014 the Parking Committee presented five sites to the Planning Commission, and those sites were recommended to the City Council for prioritization and definition of scope and funding. The City Council adopted the Plan by Resolution. Of the five sites, the City chose the Bowling Alley property as the best option to meet the needs of downtown businesses, museums, residences and visitors.

Local residents are the primary users of the Cherry Street lot behind the Post Office, also known as the Ft. Casimir Lot, which is owned by the Trustees. Dr. Viola also noted that the tennis court location is not related to park use and has restricted hours, and the City decided not to pursue it.

In 2016, the Downtown Development District Plan highlighted the need for additional parking.

Dr. Viola stated that as early as 11:00 am on October 23, she saw there were only 3 available parking spots as she was coming from Ferry Cutoff down to the wharf. She expressed her opinion that the City has worked with the Trustees to define the scope of the initial project and that she feels it is important the Special Exception be approved.

Mr. Tracey noted that although he appreciated Ms. Viola's comments, they might be better incorporated into the next hearing, if there is a next hearing.

Dr. Viola stated that she wanted to make her comments part of the Record.

Mr. Tracey reminded the audience that the Board is considering issues specifically raised in Mr. DiMondi's appeal and that the actual Special Exception, which gets into more broader topics about the parking lot, will be considered if the Board rejects Mr. DiMondi's appeal.

Dr. Viola noted that one of the issues raised by Mr. DiMondi and others was that no public discourse was allowed. Mr. Tracey thanked Ms. Viola for her detailed history of the process.

Jim Workman – 21 West 3rd Street

Mr. Workman stated that public input was needed because there seemed to be no real consideration for people who live in the neighborhood.

Mr. Workman stated he was sked to speak about security in the area, noted that there are constantly police lights in the parking lot at night, and residents hear rumors about drug arrests going on at the parking lots, and asked why the town would want to move all that activity into a tight-knit residential neighborhood.

Mr. Workman then spoke about ADA compliance, noting that the parking lot will have ADA compliant sidewalks, but all the areas around the parking lot are non-ADA-compliant; that the sidewalks are all uneven brick and there's no ADA compliant egress from the parking lot to the businesses claiming a need for the parking lot.

With regard to the narrowness of the street, Mr. Workman noted that the mirror of every car he has owned has been knocked off, and that his vehicle was almost totaled when it was parked on the street.

Mr. Workman also spoke about the confusion of left-exiting vehicles from the Bank and the new parking lot, with cars crisscrossing, as well as cars going across to Foundry Alley, which will create even more safety and security hazards in the neighborhood.

Mr. Workman noted that the parking lot will have 36 spaces; however, during local events up to 100 cars can park on the lawn, He added that at the last event when people used the lawn for parking, everyone was respectful no one was hurt, and there was no damage to the grass.

Mr. Workman stated that a parking should be created elsewhere, and noted that neighbors moving were never given any idea that a parking lot would be built across the street from their houses. He also stated that the parking lot will cause safety issues with increased traffic on a narrow street; confusing left and right hand turns; noise; and anyone coming to the area with no clear, safe way to get to the downtown area.

With regard to procedural issues, Mr. Workman expressed his opinion that no one seems to want to follow the laws that were proposed to protect the citizens, and not to be used against them.

Mr. Workman stated that he wanted to point out these issues and remind the Board of what had been happening because some of the Board members might not have been present at other meetings held on the issue to hear how the public feels. He also stated his opinion that the parking lot should be built at some other location where it is safer and has better access.

Karen Whalen – 17 West 3rd Street

Ms. Whalen returned for further comments regarding procedure. She asked Mr. Athey if, as the City Engineer, it was his responsibility to ensure that any project follows good standards of engineering design and established and proper engineering. She also asked Mr. Athey to state his role in the procedure, noting that as an engineer she thought his vote would be predicated on whether he had determined it was good and sound engineering, and if he felt he could vote without seeing every aspect of the final design: traffic, drainage, flood plain management; and flooding impacts to the residents. Mr. Athey stated that was often his responsibility and that in some aspects he agreed with her comments; however, his main focus at the present hearing is the procedural aspects, not the actual design aspects, of the lot.

Ms. Whalen noted that the parking lot had been justified based on a study by AECOM, Mr. Athey's firm, that was purported to say parking was needed based on a traffic study. She contended that the conclusions of the study do not say that. She also contended that there was no determination in the study that parking was needed in the City, and that the study stated existing parking in the city is underutilized. She also stated that the study actually contradicts what is being presented as the reason for the lot. Ms. Whalen added that before Mr. Athey voted she thought he would want to be thoroughly versed in the applicable engineering principles. Mr. Athey noted that typically design details like that are not under consideration by the Board of Adjustment, according to its rules and regulations. He added it is very rare, and this might be the first time, that something that has a heavy civil design component has come before the Board. He also stated that he had no role in the preparation of the traffic study and that he did not necessarily see a connection with the AECOM study and his employment.

Mr. Losco noted that the issue before the Board was not Mr. Athey's employment with AECOM, and that the Board is only considering the items listed in Mr. DiMondi's appeal.

There being no further public comments, Mayor Gambacorta asked for a motion.

Mr. Losco made a **Motion that the Board adjourn the public hearing for the purpose of entering the business meeting to discuss and vote. The Motion was seconded by Mr. Athey. On vote, the Motion was approved unanimously.**

Mr. Losco invited the public to stay for the deliberations, and Mr. Tracey asked for quiet so the Board could discuss and vote on the matter.

After discussion, the Board Members agreed that despite the lateness of the hour, they would continue with deliberations and voting.

Mr. Tracey noted that Mr. DiMondi raised seven different points and asked if there was merit in discussing each point separately for ease of remembering thoughts and conveying decisions, and the Board agreed.

Item 1

Mr. Athey began a discussion of Item #1, whether the Trustees were listed as the owner on the application. He noted that it was brought up in public comment that there was a tax parcel inconsistency on the application, and stated his opinion that Mr. Taylor presented adequate information that the Trustees have owned the parcel for years, and regardless of whether it was recorded correctly in Parcel View or whether they paid taxes, ownership was clearly established.

Mr. Losco agreed with Mr. Athey's conclusion, and reviewed the timeline. He noted that the property was acquired in four separate transactions and when there are conglomerated parcels contiguous under common ownership, it is not uncommon for the County to assign a new single tax parcel to the conglomerated parcel. He added that what is conveying ownership in the deed is not the tax parcel, but is the legal description that describes by metes and bounds the four corners of the lot being transferred. He also stated that the Confirmatory Deed gave one metes and bounds description, and that had the effect of prompting the County to correct their tax website to show that the Trustees were the proper owner. He added that while it was odd the Confirmatory Deed was filed on the day of the hearing that did not change the fact that the Trustees owned the parcel before and they owned it after. He also stated that the Tax website Parcel View is run by the County's tax office and the Recorder of Deeds is a different branch. He gave his opinion that Item 1 was not a valid point.

Mayor Gambacorta called for a vote, and the Board discussed whether to vote on each item individually or as a package. On advice from Mr. Tracey, the Board agreed to vote on each Item individually.

Mr. Losco made a **Motion to reject the first point, which is that the Trustees were not listed as the owner of record at the time of application. So I would move to reject that single point of the appeal. The Motion was seconded by Mr. Athey. On vote, the Motion was approved unanimously.**

Item 5

Mr. Athey began the discussion of Item 5, the fencing on the project. Mr. Athey felt it was a subjective argument since the Code does not require a fence, and he did not want to challenge the HAC decision on a judgment call of whether or not a fence is adequate or the landscape plan is adequate.

Mr. Losco agreed, noting that the applicant did not present a picture that described more specifically why he thought fencing and/or landscaping were not adequate. He added that he felt this was more of a

substantive argument that could be raised at the next hearing; that he did not think it was grounds for an appeal, but that he did think it is a relevant question for debate at the next hearing.

Mr. Losco made a Motion that point number 5, that the fencing on the project that is by code a residential area and was noted in the Ordinance to shield is non-existent and if it does exist it's inadequate as stated in the AECOM report, be rejected. The Motion was seconded by Mr. Athey. On vote, the Motion was approved unanimously.

Item 3

Mr. Athey began the discussion of Item 3 that the application was tabled, then came back and was voted down 3-2. Mr. Athey noted that this item would probably segue into the 4th, 6th and 7th items of Mr. DiMondi's appeal. He further noted that despite the fact that it was discussed by HAC three times, and someone changed their vote the third time, people can change their vote. He added that it was very unfortunate if Councilman Quaranta made the statement that a No vote ended the process, and he felt it sounded like erroneous statements were made; but he stated that the fact that it was a No vote and then came back did not end the process.

Mr. Losco stated that he did not recall the specifics of his comment at the Council meeting; however he did not dispute that he may have answered as Mr. DiMondi averred. If he did not give a complete answer at the Council table, or if it is deemed misleading at this point, that was not his intention; and that didn't change the law or the procedures that HAC has always used. He added that there has always been the opportunity to resubmit an application to HAC, tweaking it to accommodate the HAC concerns. He also noted that nothing the Council did in Ordinance 510 changed the mechanisms HAC uses to consider and deal with applications. He added that in his experience, applications get rejected the first time, or as in this case multiple times, and when they get disapproved they are given recommendations as required by Code to fix things for reconsideration, if they choose to do so. He stated that based on the discussion and what he read in Mr. DiMondi's third point, he suggested a motion that the appeal be rejected as to the third point.

Mr. Athey asked if that was linking item 3 with item 7 as Mr. Tracey suggested, and stated that it was probably right to link them. He noted that during Mr. DiMondi's presentation, the issue of whether HAC limited public comment was made, and he asked Mr. Tracey what obligation an instrument of a government has as far as soliciting public comment.

Mr. Tracey noted that the Board was presented with three sets of transcripts from three public hearings considering the parking lot application, and at each hearing the public was given opportunity, and did, offer comments on a variety of matters. He noted his understanding was that HAC was not approving the actual permission to do the parking lot but was looking at how it was to be constructed and the items that fall within its purview. He stated that it appeared attempts were made to focus the discussions to specific points still at issue in front of HAC. He also noted that the Board has the right to control commentary, to move on to another part of the agenda or another item within the agenda, and there is no strict guideline on time limitations.

Mr. Losco added that in the HAC Minutes of September 20, 2018, Trustees Exhibit 19, the Bowling alley application started on page 2 and went to the bottom of page 4; and public comments continued from there for 11 pages until the top of page 16, adding that it appeared parties were given the opportunity to speak.

Mr. Athey recalled people stated that comments were limited just to materials; however he did not see much suppression of comments in the Minutes and that comments were made on varied topics besides materials. Mr. Losco stated that the Board of Adjustment exists as the appellate body for HAC and the system has worked in the sense that the applicant is being given an extended period of time to talk about the various issues he considers procedurally defective. Mr. Athey reiterated that he did not see a suppression of comments. Mr. Losco noted that there was already a motion on the floor to reject the appeal grounds stated in paragraph number 3 of Mr. DiMondi's submission. After discussion, it the Board agreed to vote on each item individually.

Mr. Losco restated the motion:

Motion to reject appellant ground number 3: "The application was tabled for reconsideration once, then it was voted on by the insistence of the applicant the second time and failed on a 2-3 no vote. Fontana chairperson in the negative."

Mr. Losco noted that he did not think it is not a ground for appeal, but more a comment and he did not see what the procedural challenge was in number 3. Mr. Athey agreed.

The Motion was seconded by Mr. Athey. On vote, the Motion was approved unanimously.

Item 2

Mr. Losco began the discussion of Item 2 dealing with a conflict of interest on the part of Chairperson Norvell. Mr. Losco noted that the issue appeared to be whether Ms. Norvell is so closely aligned to the parking lot application that she should have stepped aside, and commented that he did not see that. He noted that Ms. Norvell's daughter does not have an interest in the parking lot and there is no direct proof that the parking lot will enhance the value of the business, and it also didn't help her daughter sell the business

Mayor Gambacorta asked how Mr. Losco viewed the fact that there was an advertisement in the paper two years old that advertised there would be a parking lot, which enhanced the sale of the property by promising a parking lot. Mr. Losco stated he did not see how Ms. Norvell could control how a real estate agent promotes a property. He added that he did not see that Ms. Norvell needed to recuse herself because she did not have a direct association with the parking lot; her daughter owns a business, not the parking lot; and to Mr. Taylors point, another business owner one block over, Mr. Wright, was on the Commission and voted on the issue as well. He added that that if Ms. Norvell must recuse herself, Mr. Wright must recuse himself also, thereby cancelling out both their votes and leaving a 2-1 vote to approve.

Mr. Athey stated that he thought the problem was with the Code itself and that it is such a broad definition; noting that he didn't see how any member of HAC votes on any matter that isn't a conflict of interest. He added that he probably would have recused himself. However, but stated that he had to agree with Mr. Losco in that if Ms. Norvell had to recuse herself Mr. Wright had to recuse himself as well; they are both businesses and they are both in close proximity to the parking lot.

During discussion, a comment from the audience noted if both Ms. Norvell and Mr. Wright recused themselves there wouldn't be a quorum. Mr. Athey stated the Board should not debate with the audience, but acknowledged the comment.

Mr. Losco made a **Motion to reject appellate ground number 2 relating to the claim that Ms. Norvell had a conflict of interest and should have recused herself from the proceedings. The Motion was seconded by Mr. Athey. On vote, the Motion was approved unanimously.**

Item 4

Mr. Losco began the discussion on Item 4 the argument that, is it old business or is it new business and noted the argument also concerns concrete and Ms. Hamroun's comments. Mr. Losco stated that Mr. DiMondi's issue is: was, procedurally, a mistake made by listing the second and third HAC applications as "old business." Mr. Losco stated that he felt it would be confusing to list it as "new business", thereby creating more gossip. He questioned whether it mattered if the application was listed as "old" rather than "new" business, observing that the matter was publicly noticed; the public came out; and the public had an opportunity to, and did, speak. He expressed his opinion that it is not legitimate grounds for appeal.

Mr. Athey referenced Ms. Fiske's comment of whether the Planning Commission would even consider the plan again since they don't actually vote up or down, and an earlier discussion that materials is the purview of HAC. He stated that procedurally, it was right.

Mayor Gambacorta stated that he didn't think there should have been a compromise in favor of the concrete.

Mr. Losco stated that materials is HAC's purview, and asked if that was a procedural issue noting that whether they should use concrete or not may be a relevant issue to decide at the next hearing. As to it being a procedural defect in the way HAC handled things, he stated that whether or not one liked the idea of concrete, it didn't mean it was procedurally defective. Mr. Losco added that he asked Mr. DiMondi twice to point out in the Guidelines where concrete was forbidden, and he didn't do it. Mr. Losco also asked Mr. DiMondi if he had any documents he wanted to enter into the Record to make certain the Board had all of the relevant information.

Mayor Gambacorta stated he would be in favor of accepting the DiMondi appeal as it relates to number 4. Mr. Losco seconded the Motion to put it to a vote. Mr. Tracey called for a vote.

Mayor Gambacorta – Yes

Dan Losco – Nay

David Athey – No

Mr. Tracey stated that the Motion did not carry.

Mr. Tracey then stated that the Motion to approve number 4 failed and another Motion was needed to reject number 4.

Mr. Losco made a **Motion to reject appellate issue number 4, that the application was put on the agenda as old business by the chairperson upon advice of the architect (*Mr. Losco ceased reading the entire Item as it is already a part of the Record*). The Motion was seconded by Mr. Athey. Mr. Tracey called for a vote on the Motion to reject point number 4.**

Dan Losco – Aye

David Athey – Aye

Mayor Gambacorta – Nay

Mr. Tracey noted the Motion to reject item 4 was approved with a 2-1 vote.

Item 6

Mr. Losco began the discussion of Item 5, that the applicant did not seek Planning Commission review or recommendations for the change made in response to the HAC oversight objections and recommendations as required by Ordinance 510. Mr. Losco stated that Ordinance 510 requires a recommendation from Planning, yea or nay; it doesn't matter. Once Planning gives a recommendation, the matter moves to HAC for approval. He added that there is nothing in the Ordinance 510 that requires an application to go back to Planning to start over again if HAC does not approve it. He added that nothing in the Ordinance changes HAC's procedures and they routinely reconsider applications that were rejected once. He gave his opinion that item 6 is not a valid objection to the procedure.

Mr. Athey agreed.

Mr. Losco made a Motion to reject item 6 on the grounds for appeal that the applicant did not seek Planning Commission review or recommendations for the changes made in response to the HAC oversight objections and recommendations. The Motion was seconded by Mr. Athey. Mr. Tracey called for a vote:

Dan Losco – Aye

David Athey – Aye

Mayor Gambacorta – Aye

The Motion to reject item 6 was approved unanimously.

Item 7

Mr. Losco began the of Item 7, that the applicant asked for a vote, the item was not tabled to address the concerns of certain commission members as it had previously been done in the previous meeting. The vote was 3-2 to deny the application. Mr. Losco stated his opinion that the Board had discussed this and that there was nothing in the Code, nothing in 510, and nothing in the HAC Ordinance that says an applicant can't come back and revisit an application. Mr. Athey added that there was nothing to prevent someone from changing their vote, and Mr. Losco added that there has been a vote change for anybody who has been to HAC, been rejected and resubmitted and gotten approval.

Mr. Losco made a Motion to reject item 7, The applicant asked for a vote, the item was not tabled to address the concerns of certain commission members, as had previously been done in the previous meeting. The Motion was seconded by Mr. Athey. Mr. Tracey called for a vote and the Motion to reject Item 7.

Dan Losco – Aye

David Athey – Aye

Mayor Gambacorta – Aye

The Motion to reject item 7 was approved unanimously.

Mr. Tracey stated that all seven of the items on Mr. DiMondi's appeal were discussed. Items 1, 2, 3, 5, 6, and 7 were rejected by a 3-0 vote, and Item 4 was rejected by a 2-1 vote. Mr. Tracey stated that concluded the hearing on the appeal.

After discussion, the Board agreed that since all seven items on Mr. DiMondi's appeal were voted on individually, it would be redundant to have an overall Motion to reject the appeal.

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

Mayor Gambacorta adjourned the meeting.

During discussion of whether to proceed with the second hearing, Mr. Losco noted that in order to continue the hearing first the hearing needed to be convened to make a legitimate Motion, and the Board would need the applicant's permission to extend the 30-day deadline. A five minute break was declared prior to convening the second hearing.

Mayor Gambacorta gaveled to reconvene the meeting.

Mr. Losco announced the Board of Adjustment for the second public meeting was reconvened, and read the application.

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 §230-28.1 of the City Code.

Mr. Losco asked Mr. Bergstrom to confirm that the property was properly noticed and that newspaper publication was properly submitted, and Mr. Bergstrom do so confirm.

Mr. Athey made a Motion, to continue the meeting to the next earliest date it can be reschedule, due to the lateness of the hour and personal obligations on behalf of the Mayor. Mr. Losco seconded the Motion. Mr. Tracey called for a vote on the Motion to continue the hearing to the soonest possible new hearing date.

**Mayor Gambacorta – Aye
David Athey – Aye
Dan Losco – Nay**

Mr. Taylor stated the Motion to continue the hearing was passed 2-1.

Mr. Athey called for a Motion to adjourn.

Mr. Losco made a Motion to adjourn the meeting. Mr. Athey seconded the Motion. Mr. Tracey called for a vote on the Motion to adjourn. On vote, the Motion was approved unanimously.

The meeting adjourned at 9:43 pm.

Kathy Weirich
Stenographer