

New Castle City Board of Adjustment Meeting Minutes
July 15, 2020 – 6:30 p.m.
City of New Castle Town Hall

Members Present: **Mayor Michael J. Quaranta**
 Daniel R. Losco, Esq., City Solicitor
 David J. Athey, City Engineer

Also Present: **Jeff Bergstrom, City Building Official**

Mayor Quaranta convened the meeting at 6:35 pm. Roll call followed and a quorum to conduct business was declared.

Brandywine Valley SPCA

An application has been filed by 508 South Street LLC, 104 Bentley Lane, Greenville, DE 19807 (Owner) and Brandywine Valley SPCA, 600 South Street, New Castle, Delaware (Applicant), for a special exception under Zoning Code Section §230-21.1 (E) (1) permitting construction of a 6 foot fence on property located in the Downtown Gateway District known as 580 South Street, New Castle, Delaware, Tax Parcel No. 21-014.00-409.

Messrs. Walter Fenstermacher, Director of Programs for the Brandywine Valley SPCA, and Mark Ziegler of McBride & Ziegler, were sworn in by Mr. Losco.

Shawn P. Tucker, Esquire, counsel for the Applicant, made a presentation in support of the Application. Mr. Tucker began with the applicable legal standards and how the Applicant meets those standards. Mr. Tucker read subsections (a), (b), (c), (d) and (e) from §230-21.1(E)(1) of the Code. He explained the current configuration of the property where dogs are walked and stated that the Application proposes constructing a 6' high white vinyl fence that will tie into existing chain-link fencing to create an enclosed area to be used as a play yard where a number of dogs can run free for a specified period of time under direct supervision.

Mr. Tucker offered the following in support of the Application and compliance with the Code §230-21.1(E)(1) and stated that the SPCA is willing to make these acts and conditions should the Board approve the Application:

- The enclosed area complies with the Code;
- As a charitable organization the Applicant faces special circumstances which cannot be practically addressed; namely it shelters many dogs, each of which needs exercise and outdoor time;
- The Applicant does not have enough volunteers to ensure each dog is exercised multiple times each day;
- Providing an off-leash, safe environment will ensure the dogs receive the supervised exercise and socialization needed to stay healthy;
- The proposed fenced-in area will be reasonable in size to allow for a safe area for dogs to exercise without potential hazards of walking the dogs in the public right-of-way;
- The proposed fenced-in area will not cause harm to adjacent properties or the neighborhood;
- The dogs will be supervised at all times during outdoor exercise;

- Dogs not suited for outdoor play will be identified and removed from the play yard; and
- All refuse will be promptly disposed of by the supervising attendant.

Mr. Tucker further stated that the fenced-in area is a minimal alteration to the property that makes reasonable use of otherwise vacant property and will reduce foot traffic on nearby pedestrian walkways. The SPCA has been walking dogs in the proposed fenced-in area without objection, and the only difference would be the addition of a fence and the unleashed dogs.

Mr. Tucker also stated that the Application complies with the provisions pertaining to special exceptions in Code § 230-21.1(C)(2), and read subsections (a), (b), (c), (d), (e), (f), and (g).

Mr. Tucker addressed a series of questions to Mr. Ziegler in support of the Application regarding preparation of the Site Plan. Mr. Ziegler testified that he prepared a Site Plan for the Applicant and gave the Board an overview of the subject property including existing chain-link fencing and the proposed 167 linear feet of new fence to create the 15,049 square foot area for the proposed play yard.

Mayor Quaranta clarified on the site map where the proposed play yard would be located, and Mr. Athey clarified that the enclosed area is to the south of the proposed new fence. Mr. Losco clarified that the proposed enclosed area is all grass and that the Applicant proposes to connect the new vinyl fence to the existing chain-link non-conforming fence. Mr. Tucker explained that because the SPCA is a non-profit organization cost is a factor.

Through questioning by Mr. Tucker, Mr. Ziegler continued to explain the site plan and stated that:

- the existing fence is chain-link;
- the proposed new fence will be vinyl;
- the fence will not extend into the front yard beyond the face of the building;
- 167 linear feet of new fence will be required to enclose the area of 15,049 square feet;
- the new fence will be 6' tall, will be visible to adjacent properties, and the finished side will face the residential properties;
- the fence will not distract from the use of, or harm adjacent properties;
- the site is suitable for construction of the proposed fence;
- the fence is consistent with the City Zoning Code;
- the fence will have no adverse impact on public services and/or facilities nor will it have any impact on highway or pedestrian traffic in the area; and
- the fence will not adversely affect the public.

Mayor Quaranta clarified there are 942 linear feet of non-conforming chain-link fence on the property and 342 linear feet of which will be part of the enclosed play area.

Through questioning by Mr. Tucker, Mr. Walter Fenstermacher, Director of Programs, testified that:

- the SPCA houses approximately 70-80 dogs;
- the goal is to walk on-leash every dog once a day, and they strive to walk each dog three times each day;
- it takes approximately 15 staff/volunteers to walk the dogs each time;
- each dog is walked 10-15 minutes per walk;
- the dogs are walked in the proposed play yard area and down at the beach;
- the same process has been used since December 2015;
- it is proposed to have play groups of 10-15 dogs each;
- each play group of 10-15 dogs would exercise in the play area for 20-30 minutes;
- each play group would be supervised by 9 staff/volunteers;
- dog waste will be removed after each play group; and
- play groups would rotate throughout the course of the day.

Mr. Fenstermacher explained that it is mentally and physically beneficial for dogs to interact with each other, and the outdoor play area will allow the dogs to burn off more energy than an on-leash walk. The SPCA reached out to Dogs Playing For Life (DPFL), a nationally renowned group focused on enrichment and behavior of animals in shelters. DPFL spent 21 days at the SPCA to help the SPCA improve enrichment and exercise for the dogs. The DPFL introduced the SPCA to the theory and benefits of play groups and helped the SPCA staff master running play groups. Play groups allow dogs to burn off excess energy and be less over-reactive in their kennels; which allows them to present better in their kennels and be viewed as more adoptable, which can shorten their stay in the shelter. DPFL is an animal welfare group endorsed by the Humane Society, PetSafe, Best Friends, Shelter Me, and the International Association of Canine Professionals. Mr. Fenstermacher stated that the play area is consistent with recommendations from the DPFL.

The play area would be used during regular business hours of the SPCA: 8 am – 7 pm Monday through Friday and 7 am – 5 pm Saturday and Sunday. In response to a question from Mayor Quaranta, Mr. Fenstermacher explained that all dogs would have two 10-15 minute on-leash walks and one play group time per day. The Mayor noted that based on 80 dogs in groups of 10, there would be 8 play groups of 20-30 minutes each per day.

Mr. Losco clarified that groups of 10-15 dogs would be in the play yard on a revolving basis seven days a week between the hours of 8 am – 7 pm Monday-Friday and 7 am – 5 pm Saturday and Sunday. Mr. Losco noted that the intervals between walks and play groups would be very brief which does not give neighbors much relief from barking dogs. Mr. Fenstermacher explained that dogs in play groups are busy playing with each other and are less likely to vocalize; and the play yard would not be in continuous use from open to close. It was clarified that the SPCA took up residence at the current site in December 2015.

In response to a question from Mr. Athey, Mr. Fenstermacher explained why dogs do not vocalize much in groups. Mr. Athey asked about the complaint history and Mr. Fenstermacher stated that there had been a number of complaints of odor coming from the shelter; however,

there have been no recent complaints for odor or noise. He added that play group exercise causes the dogs to be quieter in their kennels. Mr. Athey asked how the SPCA would handle complaints if the Application is approved, and Mr. Fenstermacher indicated the SPCA would respond to complaints quickly. It was clarified that dogs not suitable for group play would be removed from the group. Mr. Tucker added that noise complaints were generally for dogs in their kennels and not outside.

Mr. Losco posed the question of how the City would enforce any violation by subsequent management of any conditions that might be placed on an approval of the Application. Mr. Fenstermacher stated that the SPCA has multiple layers of senior leadership and it is policy to be a good neighbor. He added that the SPCA would be amenable to any recommendations or conditions (adjustment of hours, etc.) the Board might place on an Approval. Mr. Fenstermacher agreed with Mr. Losco that if there is no standing statute for policing such conditions, the City would be unable to enforce any conditions imposed by the Board of Adjustment if the SPCA is not voluntarily compliant. Mr. Tucker suggested that the Applicant would be agreeable to a condition placed on an Approval whereas if there are multiple violations by the SPCA the Applicant would be brought back before the Board of Adjustment to answer for any complaints reported by the Code Enforcement Officer.

Mr. Ziegler clarified that there are 942 linear feet of existing chain-link fence, of which 342 linear feet will be tied into the 167 linear feet of new fence to create an enclosure. In response to a question from Mayor Quaranta regarding the use of the area adjacent to the SPCA's main building as an alternate site for a play area enclosure, Mr. Fenstermacher noted that space is used as an access road to a diesel garage adjacent to the SPCA building.

Mr. Ziegler pointed out the residential areas near to the SPCA property on the site map.

Mr. Tucker concluded his presentation and respectfully submitted that the Applicant has met the spirit and intent of the Code for a special exception and that the Applicant is acting in good faith for the benefit of the community and the dogs in their care. He reiterated that the client is a non-profit who consulted with an organization with expertise in dog behavior to help promote the mental and physical health of the dogs, which will help to encourage adoptability. He also noted that the SPCA has endeavored to be a good neighbor and has responded to complaints of noise and odor.

Public Comment

Mr. John DiMondi submitted a letter to the Board of Adjustment in opposition of the Application. Mr. Losco summarized Mr. DiMondi's letter.

Mr. DiMondi believes that a kennel use at the site is not permitted pursuant to the Savings Clause in §230-21.1E that says (paraphrasing) 'existing buildings that were zoned either SC or Industrial at the time of the rezoning to DG could continue to be used for those purposes for a 10 year period'. Mr. Losco noted that Mr. DiMondi's assertion is that the property was formerly

zoned SC which does not permit a kennel use; however, Mr. DiMondi does not address whether or not the Applicant has vested rights or equitable estoppel arguments.

Mr. DiMondi cited case law saying that a governmental Certificate of Occupancy was issued for this particular use and if it was done by mistake it does not give any rights to the Applicant despite the expenditure of resources to improve the property.

Mr. DiMondi argued that if it is an illegal kennel use then the Applicant should not have the opportunity to seek this special exception.

Mr. DiMondi raised general complaints about the site smells, the number of dogs, and the noise created by the dogs.

Mr. DiMondi cited a comment made by Mr. Losco at an SPCA Application meeting in 2017 when he raised the same issue of whether or not the use was permitted. At the time, Mr. Losco believed the property to be formerly zoned as Industrial, not SC, but neither Industrial nor SC permits kennel use. That Application was approved despite Mr. DiMondi's argument.

Mr. Losco stated the Applicant and Counsel should have the opportunity to review Mr. DiMondi's letter. In order to provide time for the Applicant and Counsel to review the letter Mayor Quaranta recommended that a temporary recess of the Application be called and the Board move to the second Application on the Agenda. The Board will then return to the subject Application for rebuttal from Counsel to be presented. Mr. Losco concurred that Mr. Tucker should be granted an opportunity to review and respond.

The Mayor moved to Item #2 on the Agenda.

New Castle Sailing Club

An application has been filed by New Castle Sailing Club, Inc., P.O. Box 46, New Castle, DE 19720 (Owner & Applicant), for a special exception under Zoning Code Section §230-21.1 (E) (1) and a variance per City of New Castle Code §230.57 (C) as regards the size of a yard (§230-1) and other related sections of the Code related to front yards and setbacks to permit construction of a 6 foot fence on property located in the Downtown Gateway District known as 614 South Street, New Castle, Delaware, Tax Parcel No. 21-014.00-392.

Mr. Steve Constable, Commodore of the New Castle Sailing Club (NCSC), was sworn in by Mr. Losco.

Pamela J. Scott, Esquire, counsel for the Applicant, stated that the subject property was formerly zoned Service/Commercial and is now zoned Downtown Gateway. The property is a corner property bounded by South Street and West 7th Street and is used as the Headquarters of the New Castle Sailing Club (NCSC). As a corner property, the lot has two front yards as defined by the New Castle Zoning Code. Ms. Scott described the property in further detail.

Mr. Losco asked for clarification of the exact relief the Applicant is seeking. Ms. Scott explained the variance being requested is to be able to provide fencing in the front yard that will extend beyond the building face.

Mr. Constable presented background on the Sailing Club, which is a non-profit organization that has been sailing out of New Castle since 1952. The property is owned by the Club and the Club is an active participant in the community.

Ms. Scott explained that the Applicant wishes to remove the existing hedgerow and a 16' section of stockade fence and replace it with a 6' high white vinyl fence to improve the safety and security of the property, and to improve the aesthetic appearance and pedestrian access of the neighborhood. The Application seeks a special exception under §230-21.1 (E) and a variance under §230-1.

Mr. Constable described the property and the fencing/hedgerow and the purpose of the existing buildings. The front yard along 7th Street is used to store boats during the off-season from late fall to early spring. He further described the fencing/hedgerow along 7th Street (73' in length) and adjacent to a gate giving access to the rear door of the main building in detail and explained the rationale for removing the hedgerow/fencing and replacing it with a fence. The hedgerow is difficult to maintain, intrudes on pedestrian access along 7th Street; and does not provide sufficient security for the boats and equipment that are stored that area. The proposed fence will match the existing vinyl fence.

The Application was presented to the Planning Commission and the recommendation was made to move the Application to the Board of Adjustment.

Ms. Scott cited §230.21.1A and read subsections (1), (2), (3), (4), (5), (6), (7), and (8) of the Code to demonstrate how the proposed fence is consistent with the uses intended for the Downtown Gateway District.

With regard to the special exception, Ms. Scott cited §230.21.1E(1) and read subsections (a), (b), (c), and (d) to demonstrate how the Applicant meets the criteria for granting a special exception. The variance is being requested to meet the requirements of subsection (d).

Through questioning by Ms. Scott Mr. Constable stated that:

- the property is suitable for the uses of the NCSC;
- the fence will not substantially injure or detract from the use of neighboring property or the character of the neighborhood;
- by providing the fence the use of adjacent property will be adequately safeguarded;
- the proposal of the fence serves the best interests of the City, the convenience of the community, and benefits the public welfare;
- there will be no adverse impact on public services and facilities;
- there will be no impact to traffic and will improve pedestrian movement along 7th Street; and

- the proposed fence is consistent with sound standards of subdivision and land development.

Mr. Constable stated that the NCSC does not have an alternative site to store boats in the off-season other than what is considered the front yard of the property and space in the garage is already being utilized for the storage of boats.

In response to a question from Mayor Quaranta regarding impact to traffic, Mr. Constable indicated that with the removal of the hedgerow, there will be more room for pedestrian movement along 7th Street. He added that DelDOT has been consulted and they had no objection to the proposed fence. The NCSC is not changing any use of the property that will result in increased traffic. The NCSC does not own any other property in the area, but does lease the Sail House.

With respect to the requested variance for the portion of the fence that would extend into the front yard beyond the face of the building, Ms. Scott cited §230-57C(1)(a), noting that an unnecessary hardship is created in terms of meeting the requirements of the Code because the front yard is the only area available for the storage and security of boats.

Mr. Constable stated that the Property Director of the NCSC spoke to the next-door neighbor and she had no objection to the proposed fence.

Ms. Scott concluded her presentation.

In response to a question from Mr. Losco regarding security of the site, Mr. Constable stated the Club has not had any theft; however because foot traffic has increased due to the new bus stop at the intersection of South Street and 7th Street, they are concerned about pedestrian safety. Mr. Losco asked why the request is to install a fence instead of replace the hedge, and Mr. Constable explained that Club members do not want to constantly trim the hedges, and the goal is to increase security and provide a more attractive visual break along 7th Street.

Mr. Clay Greer, NCSC Safety and Instruction Director requested permission to speak, and he was sworn in by Mr. Losco. Mr. Greer stated that the Club is concerned for security and safety noting that if curiosity snoopers climb into boats stored on trailers in the yard there is the potential of significant damage being done to the boats, or harm to themselves which could potentially cause liability to the Club.

Mr. Athey asked if the Club had considered any landscaping in addition to the fencing to soften the look of the fence. Mr. Constable indicated they Club was not considering any landscaping in order to provide adequate pedestrian access along 7th Street on a “sidewalk” and suggested that the Club could paint a mural on the fence. Mr. Athey stated for the Record that there is no concrete sidewalk in that area and Mr. Constable clarified it is a sidewalk-like grassy area.

Ms. Scott respectfully submitted that the Applicant has shown that the provisions of the Code have been met with respect to the Special Exception and Variance they are seeking to provide safety and security to the fenced area to the property; the fencing is an upgrade to the property; and additional pedestrian access to the area is being provided. In conclusion, Ms. Scott respectfully requested the Board approve the Application.

Public Comment

Mr. John DiMondi submitted a letter to the Board of Adjustment in opposition of the Application. Mr. Losco summarized Mr. DiMondi's letter.

Mr. Losco noted that Mr. DiMondi offered a brief history of the property, stating the Club has over 50 members, many of which live out-of-state; the Code requires 8 to 10 parking spaces per square footage of the property and there is no on-site parking; and other private social clubs have off-street parking.

Mr. DiMondi referenced the agreement reached between the Club and the City to use a parking lot owned by Brosius and Eliason, and asserted that the Club has not abided by that agreement.

Mr. DiMondi asserted that a solid vinyl fence is not as aesthetically pleasing as a hedgerow, and opined that by cutting back the hedgerow the NCSC compromised the security of the site.

In order to provide time for the Applicant and Counsel to review the letter Mayor Quaranta called a temporary recess of the Application and the Board moved back to the first Application on the Agenda. The Board will then return to the subject Application for Counsel to present a rebuttal.

Brandywine Valley SPCA

Mr. Tucker first addressed a number of items in Mr. DiMondi's June 29, 2020, letter to the Board of Adjustment in which Mr. DiMondi states "also at the meeting ... no outside animal activity was allowed." Mr. Tucker stated that restriction is not contained in the Board's Decision; and his client did not volunteer nor did the Board condition its approval on "no outside animal activity".

Mr. DiMondi's June 26, 2020, email cites two cases: Miller v Board of Adjustment of Dewey Beach and Beiser v Board of Adjustment Town of Dewey Beach. Mr. Tucker noted that in both cases a timely appeal of the Decision was filed. Mr. Tucker stated that Mr. DiMondi did not file a timely appeal of the Board's 2017 Decision, and because a timely appeal was not filed, neither case applies in the present situation.

In conclusion, Mr. Tucker stated it is too late for Mr. DiMondi to challenge the use of the subject property.

Mr. Losco noted that Mr. DiMondi also makes complaints about the odors and noises from the property and asked if Mr. Tucker had any rebuttal to that assertion. Mr. Tucker stated that in 2017 the Applicant agreed to a condition that the SPCA "will commit to apply deodorizer to the grassy area behind the building to address smells from any lingering animal waste after ordinary clean-up" and agreed that the Applicant should be compliant with that condition. Mr. Fenstermacher stated that he is not aware of

any recent complaints regarding odor, and the SPCA continues to practice good animal husbandry by cleaning up the site after the animals and applying deodorizer in the grassy area. Mr. Fenstermacher also stated the SPCA will commit to treat the area prophylactically.

Mayor Quaranta stated for the Record that the City Administrator was not aware of any complaints received in the past 24 months regarding the SPCA.

Mayor Quaranta stated that the Board would hear final comments from Ms. Scott.

New Castle Sailing Club

Ms. Scott stated she did not feel the number of Club members, their residence, or any agreements the Club may have had regarding parking 20 years ago are relevant to the Application.

Ms. Scott stated that pursuant to the Code the Club is required to provide one off-street parking space per 150 square feet above 2,400 square feet of building. The house being used as the Club Headquarters is approximately 2,400 square feet; therefore one off-street parking space would be required. Mr. Constable noted that the Club has an agreement with the Medori property to park on a section of their property and the lot previously owned by Brosius and Eliason is no longer available for their use.

In response to a question regarding landscaping, Mr. Constable stated the Club would be open to adding landscaping to provide visual relief from the fence.

There being no further comment or discussion, a Motion to adjourn to the Business Meeting was made, seconded, and unanimously approved.

Business Meeting

Brandywine Valley SPCA

Mr. Athey stated his concern for the ramifications of the SPCA receiving complaints and the Applicant being required to come back to the Board. Mr. Losco stated it is uncommon to have a stipulation where the Applicant could have the Board's Decision revoked and noted that there is no mechanism in place to bring the Applicant back to another hearing. After discussion it was agreed that option would not be pursued.

Mr. Athey suggested that the SPCA might consider enclosing the area entirely in vinyl for aesthetics and sound. In the alternative, he suggested landscaping or privacy slats to screen the existing chain-link fence.

Mr. Athey expressed his concern with the total amount of time dogs would be exercising in the enclosure and questioned whether the hours of play yard operation could be addressed.

Mr. Losco stated that he has serious issues with the Application.

Mr. Losco stated the Savings Clause in the Code has language that permits these kinds of fences in unique circumstances, specifically when "privacy or security concerns exist that cannot be practically addressed through other reasonable alternatives." Mr. Losco stated that the testimony from the SPCA did not address this circumstance and the SPCA concerns are for the convenience of staff and the health of the dogs. He added that exercise is beneficial for the

mental and physical health of the dogs; however, that argument has nothing to do with privacy or security.

Mr. Losco stated that in §230-21.1, the conditions for special exceptions in the DG Zone include that the special exception won't substantially injure or detract from the use of neighboring property. He stated the SPCA proposes to have groups of 10-15 dogs exercise in the play yard on a rotating basis every day approximately once an hour, and opined that will cause a negative visual and sensory effect on neighboring residents.

Another condition in §230-21.1C is that the special exception will "serve the best interests of the City, the convenience of the community, and benefit the public welfare." Mr. Losco stated that the Application serves the best interest of the SPCA, but does not serve the best interests of the City, nor does it benefit the public welfare. He added there are two neighbors who would be directly affected by the play yard. Mr. Losco opined that even if landscaping or vinyl fencing around the entire enclosure were being offered by the SPCA that would still not solve the larger problems inherent with the play yard.

Mr. Losco opined that the SPCA's compliance with any conditions imposed by the Board cannot be monitored.

Mayor Quaranta stated if he were to approve the application it would be conditioned with all non-conforming fencing being replaced with 6' high vinyl fencing within visual sight lines of neighboring properties and that landscaping be used on the exterior of the fence facing the adjacent properties. He opined that another option would be to replace the existing chain-line fence around the enclosure with vinyl fencing and add chain link fence where the SPCA is proposing vinyl.

Mayor Quaranta stated that limiting of the number of hours the play yard would be in operation needs to be considered and suggested 8 am – 5 pm daily and a maximum time of 25 minutes per play group.

Mayor Quaranta also noted that the grass should be maintained.

Mayor Quaranta added that the non-profit status of the SPCA, which is tax status, should not be a motivating factor in any Decision by the Board.

Mr. Losco expressed his appreciation for the comments about the mis-matched fencing made by the Mayor and Mr. Athey and noted that it might help with noise and visual reduction if the fencing were consistent around the entire enclosure.

Mr. Losco commented on Mr. DiMondi's arguments, noting that Mr. Tucker was effective in rebutting those arguments. He stated that in accordance with §230-55 of the Code Mr. DiMondi had the right to make an appeal within 30 days of the Decision in 2017 and within 20 days of the Certificate of Occupancy being issued in 2015, and he did not do so in either instance.

Mr. Losco stated that to the Mayor's point about the SPCA being a large organization that knows how to run animal shelters, he felt the SPCA was aware of the conditions of the property when it took possession in 2015. He added that in 2017 the SPCA received a variance to enclose a portion of the rear of the

property and now they are pushing the envelope further to create a play yard for the dogs. The conditions of the property have not changed since 2015 and Mr. Losco stated he was bothered by the fact that after five years the health of the animals suddenly requires packs of 10-15 dogs to run loose in an enclosure adjacent to residential properties.

During further discussion it was noted that if the Applicant is not satisfied with the Decision of the Board they can appeal the Decision to the Superior Court.

A Motion to deny the Application was made and seconded. On vote:

Mr. Losco voted to deny the Application as presented and stated the rationale for his vote:

- He is not in favor of the mis-matched fencing;
- He thinks the Applicant understood the conditions of the property, they have operated at the site for five years, and there are no special circumstances that warrant a special exception;
- He does not think the Applicant has provided any evidence of privacy or security concerns that would justify a special exception under §230-21.1E1;
- He does not think Application is in the best interest of the City, the convenience of the community or the benefit of the public welfare, which is a condition of §230-21.1C2(c);
- He does think the enclosure will substantially detract from the use of neighboring property; the sights, sounds and smells of packs of dogs coming out seven days a week is negative in a visual, privacy, and sensory sense;
- He does not think that any restrictions offered can be enforced with any consistency;
- He does think the number of dogs in each play group is too much, the frequency is too often and the hours proposed seven days a week during waking hours is too much; and
- He does not think there is any public benefit.

Mr. Losco stated that for those reasons and all of his previous statements he votes in favor of the Motion to deny the Application.

Mr. Athey voted to deny the Application as presented and stated the rationale for his vote:

- He noted that all the Board Members felt a variety of conditions would need to be placed on a Decision to approve and those conditions could not be enforced;
- The chain link fence is not optimal;
- The Applicant did not qualify statements of cost issues;
- Limiting the number of dogs in a group and the hours they would be outside is not feasible;
- The play yard would be in use during the majority of the day; and
- The SPCA was aware of the conditions of the property and is pushing the envelope of what is a reasonable use of the site.

Mr. Athey stated for those reasons and reasons asserted by Mr. Losco, he votes in favor of the Motion to deny the Application.

Mayor Quaranta voted to deny the Application as presented and stated the rationale for his vote::

- There are a variety of conditions that would need to be placed on a Decision to grant the Application and those conditions could not be reasonably enforced;
- The non-conforming fence is an issue;
- As the Downtown Gateway District transforms he would have liked to see many changes to make the site more attractive and limiting the hours; and

- The Applicant did not offer an option to use an area closer in proximity to the main building and farther from residential properties

Mayor Quaranta stated for those reasons and reasons asserted by Messrs. Athey and Losco, he votes in favor of the Motion to deny the Application.

New Castle Sailing Club

Mr. Losco stated that §230.21.1E(1) permits a special exception for a fence where privacy or security concerns exist and the Applicant has met that standard, noting that Mr. Greer spoke to safety and security for boats stored on the site.

Subsection (d) states a fence “must be constructed so that it does not extend into the front yard” and the subject fence does extend into the front yard because it is a corner lot and pursuant to Code a corner lot has two front yards; therefore, a condition of granting the Application is approval of a variance to allow a fence in the front yard.

The Board has the authority to grant the variance pursuant to §230-57 of the Code which states the Board can grant variances from terms of “this Chapter”.

§230-57C(1)(a)(1) of the Code states that the Applicant must show special conditions and circumstances peculiar to the land which are not applicable to other lands, structures or buildings in the same district. Mr. Losco opined that because the property has two front yards the reasonable special circumstances that legitimize a variance in this case have been met.

Mr. Losco stated there is already a fence on one side of the property and extending it with a fence of like kind is not troubling, and the Planning Commission was in favor of it. He opined that a hedgerow would be preferable and understands that the Club members do not want to maintain a hedgerow.

Mr. Losco stated that Ms. Scott laid out the requirements of §230-21.1 well and the unique circumstances for the variances have been met. Mr. Losco concurred with Mr. Athey’s recommendation for landscaping and stated that there is precedence where other Applicants have been required to place plantings along a fence line to improve the sight of the fence.

Mr. Athey stated that he does not have a problem with the Application and noted that the Applicant made a compelling case. He noted that Mr. Constable had offered to paint a mural on the fence and stated that he would not be opposed to that idea; however his preference would be to have landscaping instead and stated an approval of the Application should include a condition to soften the look of the fence.

Mayor Quaranta said absolutely no to a mural; however, he stated he is in favor of landscaping to improve the aesthetics of the fence. He recommended Holly Bushes or other evergreen landscaping as a screen to the fence. The Mayor also stated that in addition to landscaping and the fence he would be in favor of an extension of the sidewalk to improve pedestrian movement along 7th Street.

Mr. Athey confirmed that at the least the Motion would be conditioned with landscaping, but opined that there could be a spatial issue with an extension of the sidewalk. After a discussion of the appropriate amount of landscaping, it was agreed that a landscape plan should be approved by the Building Official

and that the plantings should be Holly Bush or similar evergreen to provide privacy and protection with little maintenance.

Mr. Losco made a Motion to approve the Special Exception and to approve the Variance requested subject to the following conditions: The requested fence will be 6' high and no higher; it will be white vinyl substantially matching the existing white fence on the site; it will be landscaped pursuant to a landscape plan approved by the Building Official that extends from the point where the fence reaches the house all along 7th Street to the existing vehicle gate; and the landscape plan shall include non-deciduous plantings that will reasonably screen the fence. The Motion was seconded by Mr. Athey.

Mr. Losco voted in support of the Motion for reasons previously stated, and:

- the Applicant has shown unique circumstances to justify the variance;
- they are suffering some exceptional practical difficulties in providing privacy and security on site, which also supports the Application for a special exception;
- they have met the other requirements of §230-21.1E for a special exception in this zone; and
- the landscaping plan softens the harsh effect of a continuous 6' high vinyl fence that will surround the corner of this property.

Mr. Losco votes in favor of the Motion to approve the Application..

Mr. Athey voted in support of the Motion for reasons stated by Mr. Losco and added that:

- the Applicant has demonstrated a need and they have met the requirements of the Code; and
- his reservation for a lack of landscaping has been addressed through conditions to the Motion.

Mr. Athey votes in favor of the Motion to approve the Application..

Mayor Quaranta voted in support of the Motion and stated:

- the Applicant has met the test for security and privacy;
- the look of the area will be substantially improved and invasive species will be removed; and
- it is the Mayor's expectation that a very robust and thoughtful landscape plan will be submitted to the Building Official, noting that the location is a very important high-traffic corner in the community and that the end result will be an extremely attractive corner.

Mayor Quaranta votes in favor of the Motion to approve the Application.

Mr. Athey made a Motion to adjourn the meeting. The Motion was seconded by Mr. Losco. On vote, the Motion was unanimously approved to adjourn the meeting at 9:48 p.m.

Kathy Weirich
Stenographer