

**New Castle City Board of Adjustment Meeting Minutes**  
**Meeting via Zoom**  
**November 9, 2020 – 6:30 p.m.**  
**City of New Castle**

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

**Also Present:** Jeff Bergstrom, City Building Official & Fire Marshall

Mayor Quaranta convened the meeting at 6:30 pm and introduced the Board members.

Mayor Quaranta read the first Application on the Agenda.

**An application has been filed by New Castle United Methodist Church, 510 Delaware Street, New Castle, DE 19720 (Owner & Applicant) regarding a property located at 510 Delaware Street; Tax Parcel No. 21-015.10-080, appealing the June 11, 2020 decision of the Historic Area Commission denying use of vinyl replacement windows on side and rear of church building.**

Mr. Losco noted for the Record that the Application was published in the News Journal and the New Castle Weekly, properly posted on October 22, 2020, and affidavits of publication and photographs of the posting are part of the Record.

Mr. Michael Bellafore, President of the New Castle United Methodist Church Trustees, and Rev. Raymond Eck, Pastor of the New Castle United Methodist Church, were sworn in by Mr. Losco.

Mr. Bellafore testified on behalf of the Church, explaining that an Application was submitted to the Historic Area Commission in June 2020 requesting approval to install 18 vinyl replacement windows on an addition at the back of the Church. After careful consideration the Historic Area Commission denied the Church's Application. Thereafter, the Church submitted the current Application for consideration by the Board of Adjustment to overturn the HAC decision.

Mr. Bellafore explained that the Church purchased the vinyl replacement windows before it was understood that the Church is within the Historic District and subject to the Historic Area Commission Design Guidelines & Standards in the City Code.

Mr. Bellafore presented a number of photographs identifying the location of the windows to be replaced. The addition was built in 1954-1956 with all wood windows. Seventeen of those windows were replaced with vinyl prior to the adoption of the Historic Area Commission Design Guidelines & Standards. Mr. Bellafore noted that the Trustees were unaware that the Church had been in the Historic District since 2015.

Mayor Quaranta stated that there were a number of public hearings and meetings that were publicized throughout the City regarding changes to the Historic District boundaries, the results

of which were made available to the community. He noted that installation of the Church's outdoor sign was another time when the Church purchased materials before obtaining clarification of the rules, and approval for the sign was only granted after modification and several different meetings. The Mayor expressed his frustration as a member of local government that the Church has twice acted without first knowing the rules; adding that rules and regulations change and ignorance of the law is not a defense.

In response to a question from Rev Eck, Mr. Bergstrom stated the Church was incorporated into the City Historic District in 2016-2017.

Mr. Bellafore reiterated that the Church was unaware that it had been incorporated into the Historic District, and stated the Trustees would consult with the Historic Area Commission before proceeding with any other work on the Church buildings. Mayor Quaranta reiterated that changes to the Historic District were communicated in a number of different ways in local publications.

Rev. Eck stated that the Church wishes to be a good steward and thanked the Board for its consideration.

Mr. Bergstrom stated there was discussion at the HAC meeting of using vinyl replacement windows in the back of the building. He expressed his opinion that having the windows operational was important and replacing the wood windows with vinyl was acceptable.

Mr. Athey clarified that the Church proposes to replace 18 windows with vinyl and that they are all on the addition built in 1954-56. With regard to visibility from the public right-of-way, Mr. Bellafore stated two windows might be visible. It was clarified that the Church has not reached out to any neighbors whose property abuts the parking lot to ascertain their opinion. In response to a question relative to communications, Mayor Quaranta advised the City does not notify property owners if their homes have been incorporated into the Historic District.

Mr. Bergstrom suggested that if, at the time the first 17 wood windows were replaced with vinyl, the Church asked for blanket approval to replace "all" windows, the approval might be grandfathered.

Mr. Losco clarified that the building is a Contributing Building, and noted that the Guidelines state alternative materials for replacement windows "are not appropriate on elevations of contributing buildings ... that are visible from the public right-of-way" He added that according to testimony, only the two windows at the back of the graveyard are visible from the public right-of-way. Mr. Bergstrom explained that if the windows are a certain distance from the public right-of-way they are considered not to be visible, and that measurement is determined by the HAC Architectural Consultant. Mr. Bellafore stated those windows are at least one-half block from the public view.

The Guidelines further state “Vinyl-clad replacement windows are **NOT** appropriate on elevations that are visible from the public right-of-way.” Mr. Losco summarized that: half the windows are already vinyl; nothing is visible from the public right-of-way; alternative materials are acceptable on Contributing Buildings not visible from the public-right-of-way; and two windows toward the back of the cemetery are theoretically one-half block away from public rights-of-way. In response from a question from Mr. Losco, Mr. Bergstrom opined it would be difficult to discern a wood window from a vinyl window from one-half block away with the naked eye; and even more difficult because the windows have triple-track storm windows.

Mr. Losco noted that the June 2020 HAC Minutes specifically state “alternative materials, **not including vinyl,**” (*emphasis added*) would be appropriate and asked for comment. Mayor Quaranta responded as a former member of the HAC, stating that because a number of historic venues allow non-wood materials (Winterthur, Williamsburg, the White House, etc.) the City decided to provide a level of acceptance of alternative materials. He added that alternative materials have improved over the past 10-15 years to closely imitate wood; however, vinyl is not one of them and can look inferior. Mr. Bellafore added that the windows are high-performance double-pane and come with a lifetime workmanship guarantee and a lifetime product warranty.

Mr. Losco confirmed that the proposed replacement windows have mullions to match the existing vinyl windows.

### **Public Comment**

#### Mr. Philip Gross

Mr. Gross spoke in favor of approving vinyl replacement windows and suggested that a condition of an approval be inspection of the product and the specs by Mr. Bergstrom to ensure the windows are satisfactory.

Mr. Gross clarified that the Historic Area Commission Design Guidelines & Standards apply to all structures in the Historic District relative to being visible to the public right-of-way.

There being no further public comment, Mayor Quaranta called for a Motion to conclude the hearing and defer the Business Meeting to the conclusion of the hearing on the second Application.

A Motion to conclude the Hearing and defer the Business Meeting to the conclusion of second Application Hearing was made, seconded, and unanimously approved.

Mayor Quaranta read the second Application on the Agenda.

**Continuance of an application filed by John Di Mondri Enterprises LLC., 300 West Seventh Street, New Castle, DE 19720 for a property located at, 300 West Seventh Street, New Castle, Delaware, parcel number 21-014.00-396, seeking a special exception to permit the expansion of an existing self-service storage facility use in the Downtown Gateway – DG zoning district.**

Mr. Losco noted for the Record that the Application was published in the News Journal and the New Castle Weekly, properly posted on October 22, 2020, and affidavits of publication and photographs of the posting are part of the Record.

Mayor Quaranta read into the Record a communication from Mr. DiMondi that was sent to the Board on November 9, 2020.

Mr. DiMondi offered no additional testimony. There were no questions for Mr. DiMondi from the Board, and Mr. Bergstrom had nothing to add.

Mr. Athey raised a procedural question relative to the Board's deferral of action on the Application presented at the September 23, 2020, BOA meeting pending compliance with certain conditions, and the Applicant's decision not to comply with those conditions.

Mr. Losco explained that the Board invited the Applicant to use a professional to design a plan for reasonable screening, and the Applicant is entitled to supply testimony and/or documents in support of his Application. He added that when the DG Zoning was adopted, it prohibited self-storage facilities; however, an exception was made largely for Mr. DiMondi's operation. The only thing the City requested was that Mr. DiMondi provide evergreen vegetation screening. Mr. DiMondi came before the Board of Adjustment on two prior occasions requesting expansion rights and in both cases the Board required landscape screening, to which Mr. DiMondi readily agreed. The landscape screening was not implemented in the manner dictated by the Board and was not maintained. Mr. Losco noted for the Record that between the time of the earlier 2020 hearing and the present, Mr. DiMondi submitted photographs indicating he replaced vegetation with evergreen plantings in three pots as screening. Mr. Losco further noted that the Code describes the requirements for a special exception in the current circumstance, the Applicant has made a record and it is what it is; and the Board's decision is to be based on the state of the Record.

### **Public Comment**

#### **Mr. Phil Gross**

Mr. Gross asked if the Board had received pictures of the screening and noted that the screening had been increased. Mr. Losco stated he received a photo showing an evergreen planting in a pot. Mr. Gross stated that the proposed storage units are not visible from any public right-of-way, and opined that should not be a reason to deny the Application.

Mr. DiMondi stated that he replaced and enhanced vegetation screening in front of the facility and provided pictures of the screening. He added that it was not a requirement that he have a professional Landscape Architect provide a screening plan. He further stated that the current Application to add storage units has nothing to do with prior Hearings and conditions of landscape screening agreed to at those hearings.

In order to help the Applicant build a Record, Mr. Losco asked if Mr. Bergstrom had anything to add. Mr. Bergstrom concurred with Mr. Gross that the new storage units are not visible from the street; however, he deferred to the Board relative to the screening requirements. He added that Mr. DiMondi made an effort to replace the vegetation in the pots with evergreen plantings. He also agreed with Mr. DiMondi that DelDOT was responsible for killing the vegetation. In response to a question from Mr. Losco, Mr. Bergstrom stated there is one evergreen planting per section of fence along the 7<sup>th</sup> Street side and they are farther apart than 5', and that the height of the plantings is approximately 4' or more including the pots.

There being no additional comments, Mayor Quaranta called for a Motion to end the hearing and move to the Business Meeting for both Applications.

A Motion to close the hearing and move to the Business Meeting was made, seconded, and unanimously approved.

### **Business Meeting**

**New Castle United Methodist Church, 510 Delaware Street, New Castle, DE 19720**

Mayor Quaranta reiterated his frustration with the fact that the current circumstance is the second occurrence by the Church to act without proper information and compliance with Code requirements resulting in accommodations being granted.

The Mayor noted that a number of windows have very limited visibility to the public right-of-way and stated he is a proponent of alternate materials; however, he added that not all alternate materials are equal in quality and visual replication of wood. The Mayor further qualified the decision of the Preservation Committee to eliminate vinyl as an approved alternate material.

The Mayor stated he would be reluctant to approve the Application without the Building Official's inspection and approval of the proposed building materials. He opined on the two windows by the cemetery that may be visible to the public right-of-way, and the windows next to the parking lot that abut residential properties and the lack of communication with those property owners.

Mr. Athey stated he is inclined to overrule the HAC decision in favor of the Applicant. He opined it was not an intentional act, albeit an unfortunate circumstance. He noted that New Castle is among the more communicative municipalities, but opined that it would have been beneficial if the City had sent letters of notification when the boundaries of the Historic District were changed.

Mr. Athey noted that it appears the material of the windows cannot be discerned from any viewshed. Mr. Athey noted he was conflicted about conditioning an approval on Mr. Bergstrom inspecting and approving the proposed product; nor was he comfortable with setting a precedent. Mr. Athey stated that the fact that half the windows were replaced with vinyl and the requirements changed subsequent to that time was a consideration as well.

In conclusion, Mr. Athey stated he is somewhat inclined to approve voting to overrule the HAC Decision.

Mayor Quaranta interjected additional comments, stating:

- The Historic Area Review Commission was created and months of work went into the effort of adjusting the boundaries; the proceedings were all public;
- Maps, pictures and descriptions were put into several editions of the paper;
- A number of parishioners live in the City;
- There was ample opportunity to become familiar with the communications; and
- To his recollection, a defense of “not knowing” the rules has not been presented by another Applicant.

In summary the Mayor stated that the foregoing speaks to the understanding people have of the fact that New Castle is a Historic Area, there are rules, and there is an expectation of compliance.

Mr. Losco stated it is irrelevant that money has already been spent and that the Applicant was unaware of the change in the parameters of the Historic Zone. He further stated that the fact is that the property is within the Historic Zone and that the Historic Area Commission Design Guidelines & Standards exist.

Mr. Losco stated the Guidelines state that for contributing buildings alternate materials for replacement windows may be considered if they are not visible from the public right-of-way ... not the neighbors' property, but the public right-of-way. The Guidelines also specifically state “vinyl clad windows are not appropriate on elevations that are visible from the public right-of-way.” (*emphasis added*)

Mr. Losco added that the testimony heard is that 16 of the 18 windows to be replaced are not visible from the public right-of-way. He added that the two windows that are visible are a half city block away from the public right-of-way. Although those two windows are somewhat problematic, Mr. Losco opined requiring two windows to be wood when virtually everything else is vinyl is putting form over substance. He expressed his appreciation that some vinyl products are poor quality; however, the Applicant testified that the windows have a lifetime guarantee and they have the mullions to match the remaining vinyl windows.

With regard to precedent, Mr. Losco stated he is not in favor of setting a precedent; however, the only real precedent would be the two windows adjacent to the graveyard and he felt they were far enough away from the public right-of-way for passers-by to discern they are made of a vinyl product. He further opined that the neighbors' view was not relevant since it is not addressed in the Guidelines; however, no neighbors appeared in opposition to the Application.

In summary, Mr. Losco reiterated that the only problematic windows are the two by the cemetery; but stated he felt the Applicant is entitled to relief and that he is inclined vote in favor of overruling the HAC Decision.

A Motion to overrule the Historic Area Commission June 11, 2020 decision denying the use of vinyl replacement windows and grant the Applicant's appeal was made and seconded.

Mayor Quaranta called for a vote, stating he would abstain from voting due to the fact that he is a parishioner of the New Castle United Methodist Church.

On vote the Motion passed with a vote of 2 to 1:

Mr. Losco – aye

Mr. Athey – aye

Mayor Quaranta – abstain

**John Di Mondì Enterprises LLC, 300 West Seventh Street, New Castle, DE 19720**

Mayor Quaranta stated that it is within the purview of the Board of Adjustment to request screening and appropriate amenities in the DG Zone as has been done with other Applicants to improve the quality of the streetscape and the sightline from other properties. He added that the back of the proposed storage units would, in fact, be visible from South Street or Young Street. He opined that it was a missed opportunity to improve the sightline of the property, and added that the goal was to have the Applicant present a well-thought-out plan that would be worthy of a conversation.

Mr. Athey noted that the Applicant's position is that he has made a good-faith effort to comply with the screening requirements of the Code, and the only pictures he has from Mr. DiMondi are dated September 23 and September 25. He expressed his concern for setting a precedent since the Board conditioned an approval in September on the Applicant coming back with a professionally designed landscape plan and the Applicant opted not to do so; thereby, in essence, asking the Board to change its conditions. Mr. Athey opined that would be a precedent he is not willing to set and would stand by his position from the September meeting. He added that he is inclined to keep the conditions set forth in the Board's September Decision in force, noting that if the Applicant does not meet those conditions the Special Exception would not be approved.

Mr. Losco stated it was not troublesome that Mr. DiMondi did not engage a Landscape Architect to provide a landscape plan. He noted that at the September hearing the Board discussed what the Applicant could do to properly and reasonable screen the facility in a manner consistent with §230-21.1(D), which requires screening for expansion of a self-storage facility in this Zone. An Ordinance was passed relative to self-storage facilities, and the one request the City had in exchange for the expansion rights was for appropriate screening and landscaping. Mr. Losco noted that in discussions in September, the Board felt the Applicant would benefit from the services of a Landscape Architect; however, he would not penalize the Applicant for his decision not to engage the services of a professional to submit a landscape screening plan.

Mr. Losco noted Mr. Bergstrom opined DelDOT sprayed and killed the existing vegetation and there is no evidence that the City was responsible and therefore that is not impactful in a decision.

Testimony from the Applicant and Mr. Gross indicated the proposed storage units would not be visible from the street; however, Mayor Quaranta countered that stating they would be visible on the back side from South Street and Young Street.

Mr. Losco stated that the major consideration is that §230-21.1(D) (b) states: “an application to expand an existing self-service storage facility **use**, ... shall [have] visual screening ... to ... shield said **use**.” (*emphasis added*) The Code speaks to the use, not the individual storage units. In April 2019, the Board approved an expansion and the Board was satisfied with screening in the form of evergreen plantings on 5’ centers, the height of which shall be a minimum of 4’ high including the height of pots, along the western part of the property along the front property line from the existing one story building to the Barnette property, and in reasonable equivalence on the eastern part of the property, with the exception of the existing entrance.

Mr. Losco stated he could not justify rejecting Mr. DiMondi’s Application if he can meet the Board’s standard from the April 2019 Decision. He added the only additional requirement he would impose is a condition on the Applicant of continuously maintaining that landscaping screen in a neat and healthy condition, replacing plantings as they need to be replaced.

Mr. Losco added that it is bothersome that in September 2020 there were only three pots with vegetation along 7<sup>th</sup> Street and that does not live up to the spirit of the 2019 Decision; nor does it provide any screening from the self-storage use, which is the one thing required by the Code for the Applicant to expand its use.

A Motion to approve the request for a special exception based upon the three conditions contained in the April 9, 2019 Board of Adjustment Decision on this matter for this property with the additional requirement that the Applicant shall continually maintain such landscaping screen in a neat and healthy condition, making appropriate replacements as necessary was made.

Mayor Quaranta asked how many pots are required based on the length of the area described in the April 2019 Decision. Mr. Bergstrom opined the Applicant had approximately another 100’ to do.

Mr. Losco read the three conditions in the April 9, 2019 Decision into the Record:

- (1) a continuation of the existing fence across the western entrance that is to be closed off; (Mr. Bergstrom stated there is a gate across the western entrance)
- (2) landscape screening in the form of evergreen plantings on 5’ centers, the height of which shall be a minimum of 4’ high including the height of pots along the western part of the property along the front property line from the existing one story building to the Barnette property, and in reasonable equivalence on the eastern part of the property, with

the exception of the existing entrance; (Mr. Bergstrom stated the only pots currently on the site are along 7<sup>th</sup> Street.)

(3) construction to commence within one year of the Decision and construction of all three units to be completed within two years.

Mr. Losco added that the only other condition he would require is that the landscaping be continuously maintained in a healthy condition with appropriate replacement plantings made.

Mr. Losco stated the Motion would be challenging to enforce, and if the Applicant does not comply with the conditions, there is not much the City can do. He added that if the Applicant would not comply with the conditions, he would not be in favor of further expansion of the facility, noting that if the Applicant did not comply it strikes him as being bad faith.

Mr. Athey stated he is not comfortable that conditions were made in September 2020, and those conditions are being revisited and changed. He added that in hindsight citing the April 2019 conditions in the September 2020 Decision would have been optimum.

In response to a question from Mr. Athey, Mr. Losco stated that requiring a Landscape Architect was a condition of the continuance of the September hearing; however the Board cannot tell the Applicant how to present their case. The Board did strongly recommend that it would be helpful to present that kind of evidence; however the fact that the Applicant did not engage a Landscape Architect is not prohibitive to his case and the Code does not require a Landscape Architect Plan. Mr. Losco opined that the services of a Landscape Architect might have provided the Applicant with options that were more permanent, easier to maintain, or less expensive.

Mr. Losco stated that in April 2019 it was acceptable to the Board to grant the special exception based upon conditions listed in the Decision, and asked why it is not acceptable today when two of the three Board members are the same. Mr. Athey responded that in September 2020 he was on Record as stating that the conditions set forth in the April 2019 Decision clearly did not work for the long term, and added he is not comfortable reverting to the April 2019 Decision conditions again. Mr. Losco noted that in the September 2020 hearing Mr. Bergstrom stated that the Board did not require maintenance of the landscaping in the April 2019 Decision, and opined that the Board could correct that issue. He added that conditioning an approval on continuous maintenance of the landscaping of the “use”, would enforce the requirements to meet the goal of the DG Zone.

Mayor Quaranta referenced the Board’s expectations relative to its Decision of landscape screening for the Sailing Club, and stated that the goal is to improve the look of the entire area in the DG Zone. He added that the Code is quite clear, and his expectations for landscape screening are the same for the current Applicant. He opined that the Board should be consistent in its treatment of all Applicants. Mr. Losco clarified that the Sailing Club Application was for a variance and the current Application is for a special exception which is a permitted use that mandates reasonable screening. He added that his suggestion does not require “continuous

screening” because of the nature of the property involved. The Mayor reiterated that the goal is to make the streetscape as visually attractive as possible.

The Motion was not seconded and the Motion failed.

Mayor Quaranta noted that the intent of the September Decision was to have the Applicant come back with a reasonable plan that provides full screening for the operation. Mr. Athey agreed that a better good-faith effort from someone with a level of professionalism would have been preferred.

Mr. Losco stated that it would be acceptable if the Board denied the Application because the Applicant did not present a reasonable landscaping screen plan; however, he stated it would be problematic if denial of the Application was because the Applicant did not engage a Landscape Architect.

A Motion to continue the hearing for 60 days to give the Applicant an opportunity to prepare a plan that will demonstrate screening of the use as well as a maintenance schedule of activities that will occur was made.

The Motion was not seconded and the Motion failed.

Mr. Losco opined that the Applicant had the opportunity to provide a plan for appropriate screening and opted not to engage a professional to assist in a landscape plan.

In response to a question from Mr. Athey, Mr. Bergstrom said he did not think there was a sunset provision for a special exception.

Mr. Losco renewed his Motion to approve the Application based upon the 2019 conditions plus the condition that the Applicant continuously maintains the landscaping screen in a neat and healthy condition making appropriate replacements as necessary.

Mr. Athey stated he would not second a Motion that he could not support. He added that the property has sufficient area to accommodate additional storage units and the Applicant could conceivably return to request future expansion. Mayor Quaranta reiterated it was a missed opportunity and stated he would not support the Motion.

The Motion was not seconded and the Motion failed.

A Motion to deny the special exception was made and seconded.

Mr. Losco stated he wanted to find a way to approve the Application; however, the Applicant did not provide a reasonable landscape plan. He added that the issue is whether there is reasonable screening as required by Code, and the conditions from April 2019 were not sufficient to ensure an ongoing reasonable landscape screen. There is currently no real plan with the exception of a

number of pots with plantings. Mr. Losco stated that for those reasons he would support the Motion.

Mr. Athey stated he is not comfortable with approving the Application when it didn't work in 2019. He added that if the Motion passes, Mr. DiMondi will have had an opportunity to hear the Board's deliberations and can consider those discussions and reapply for a new hearing. For those reasons and for Mr. Losco's reasons as well, Mr. Athey stated he would support the Motion.

Mayor Quaranta stated the Board offered a delay of deliberations so a serious conversation of what appropriate screening would look like could be held; however, the Applicant chose not to present a suitable plan. He added the Applicant can reapply when a more thoughtful conversation of appropriate Code-compliant screening could occur. He added that for those reasons and for reasons previously stated he would support the Motion.

Mr. Losco clarified that the Board is not requiring or insisting on a Landscape Architect designed plan, but simply a reasonably well-thought out plan that provides reasonable screening, has permanence, can be maintained, and is consistent with the Code.

On vote, the Motion was approved with a vote of 3-0

Mr. Losco – aye

Mr. Athey – aye

Mayor Quaranta – aye

There being no further business to discuss, Mayor Quaranta called for a Motion to Adjourn.

Mr. Athey made a Motion to adjourn the meeting. The Motion was seconded by Mr. Losco. On vote, the Motion was unanimously approved and the meeting adjourned at 8:36 p.m.

Respectfully submitted,

Kathy Weirich  
Stenographer