

**THE CITY OF NEW CASTLE
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: John DiMondi Enterprises LLC
PO Box 72
New Castle, DE 19720

NCC TAX PARCEL NO. 21-014.00-396
PUBLIC HEARING DATE: September 23, 2020
CONTINUED HEARING DATE: November 9, 2020
DATE OF DECISION: December 2, 2020

REQUESTED: Applicant requested a special exception under section 230-21.1(D)(4) of the Zoning Code of the City of New Castle (the "Code") to allow for the expansion of an existing and operating self-service storage facility at a property zoned DG (Downtown Gateway) known as 300 W. 7th Street, NCC Tax Parcel No. 21-014.00-396.

The Board of Adjustment may grant a special exception for expansion of an existing and operating self-service storage facility in the DG zoning district under §230-21.1(D)(4) and §230-57 B of the Code where, upon written application, the Board finds that the special exception is in harmony with the purpose and intent of the Code and will not adversely affect the public interest, subject, however to such conditions and safeguards as the Board deems appropriate.

I. Proceedings of the September 23, 2020 hearing.

Mayor Michael J. Quaranta chaired the meeting conducted on September 23, 2020 commencing at 6:30 p.m. The meeting was held using Zoom technology. Also present as Board members were City Engineer David J. Athey and City Solicitor Daniel R. Losco. Mr. Losco read into the record the official notice of the hearing. That notice was timely published in accordance with the law and a copy of the notice was admitted into the record. Photographic evidence confirmed that the property had been posted prior to the hearing according to New Castle ordinance requirements. The applicant was not present initially, but John DiMondi joined the meeting by telephone at 6:37 p.m. on behalf of the applicant. Mr. DiMondi was asked to present his application to the Board but instead stated he had nothing further to add to information provided in the written application to the Board. The application materials included:

1. Application for hearing before the Board of Adjustment seeing a special exception for a self-storage facility in the "western gateway";
2. A letter signed by Mr. DiMondi describing the addition of 2, five unit self-storage buildings to be located in the right rear of the subject property; and

3. A 6 page Heritage Building Systems Purchase order providing certain dimensions and specifications for the proposed self-storage buildings, including building and floor plan diagrams.

The applicant produced no further testimony or documentation relating to his application but stated that he was willing to respond to questions.

Mr. Losco stated that the applicant's written submission did not address the requirements of §230-21.1 D (4) which states:

"In an application to expand an existing self-service storage facility use, the Board of Adjustment shall give primary consideration to the mandatory provision of visual screening in the form of walls or fencing in combination with suitable landscaping to reasonably shield said use and the public right-of-way and property lines."

Mr. DiMondi responded that the proposed buildings are shielded by existing warehouses and will not be visible from Seventh Street. Mr. Losco stated that the grant of a special exception requires "visual screening" in the form of fencing or suitable landscaping and that the screening requirement applies to the site as a whole. Mr. Losco then referenced prior decisions of the Board on similar self-storage expansion applications at this property from 2014 and 2019 that conditioned the special exceptions on the installation of "4' high plantings, evergreen in nature." Mr. DiMondi stated that he did install flower pots in front of the existing iron fencing after the earlier self-storage expansions, but Mr. Losco pointed out that only 3 flower pots exist, each containing only dead flowers. He stated that the 2019 Board decision required the applicant to install a "landscape screen in the form of evergreen plantings on 5' centers, the height of which should be a minimum of 4' height, including the height of any pots", and these do not exist at the present time. Mr. Losco further explained that the applicant's failure to abide by the conditions in the 2019 Board decision was not the issue. Rather, the Code requires landscaped screening as the primary consideration in granting a special exception under §230-21.1 D (4), none exists at present and the applicant has offered nothing in the way of a proposed landscape screen in the present application. Mr. DiMondi responded that he has been unjustly treated in his past dealings with the Board.

Mr. Athey stated that based on the 2019 Board decision and the size of the property involved, there should be more than 3 planting posts along the front of the property. Building Official Jeffrey Bergstrom confirmed that only 3 pots exist.

The Mayor confirmed that the provisions of the Downtown Gateway zoning ordinance, including §230-21.1 D (4), have not changed since adoption in 2013 and noted that an important

feature of that ordinance was to improve the appearance of this portion of the City. He noted that another recent Board decision concerning a nearby property (the New Castle Sailing Club at 614 South Street) included the condition of landscape screening.

Mr. Bergstrom commented that Mr. DiMondi added quite a few planting pots after the 2019 Board decision, but through attrition, the number of pots decreased to the 3 remaining pots. He stated that the City did not use any form of herbicide on the plantings at the site.

The application was then opened to public comment. Philip Gross testified that the applicant could be given the opportunity to submit a new landscape plan for Board approval prior to construction of the new storage buildings. He further noted that there is no grassy area along Seventh Street to do plantings and suggested the Board discuss appropriate options to evergreen trees.

There being no further public comment, Mr. Athey made a motion to close the hearing and enter into the Board's business meeting.

Mr. Athey noted that the Board approved the use of a potted landscape screen on 5' centers in 2019 due to the applicant's argument that it would be very expensive to otherwise address landscaping given the lack of a non-concrete planting area. In response to Mr. Athey's question, Mr. Bergstrom suggested that the Board might condition an approval of the special exception on a landscape plan being submitted by a Landscape Architect. The Mayor asked Mr. Losco what options the Board had in this matter. He stated that the Board could continue the hearing to a later date to give the applicant time to submit a landscape plan or other documentation. Otherwise, the Board could decide the application as submitted with or without conditions.

Mayor Quaranta then made a Motion to continue the hearing for a period of up to 60 days to invite the applicant to submit a sustainable evergreen-based landscape plan prepared by a licensed Landscape Architect consistent with the terms of §230-21-1 D (4) of the City Code. Mr. Athey seconded the motion.

In discussion on the motion, Mr. Losco stated he is torn because the Applicant came unprepared. He stated it is not his intention to punish the Applicant, however, he expects Code compliance. In the spirit of trying to give the Applicant every opportunity to comply with the Code, Mr. Losco voted in favor of the Motion.

Mr. Athey voted in favor of the Motion as well, noting that the Board is empowered to establish reasonable conditions for granting a special exception and feels the Board has struck a good balance and discussed the issue adequately, and the conditions will make it reasonably

consistent with the Board Decision made in the recent the Sailing Club application.

Mayor Quaranta also voted in favor of the Motion to give the applicant the opportunity to reconsider and look at the existing Code and amend the application for Board review. He added that the applicant is under no obligation to respond or incur any expense if he does not wish to address the existing requirements in law. He stated that the Applicant is not being advantaged or disadvantaged in the way any other applicant would be treated. He expressed his expectation that the submitted plan would support the goal of improving the DG District and would be akin to what the Board required in the recent Sailing Club decision.

The motion to continue the matter was approved by 3-0 vote and the meeting was then adjourned.

II. Proceedings of the Continued Hearing on November 9, 2020.

The Board reconvened the special exception hearing on the application of John DiMondi Enterprises LLC continued from September 23, 2020 via Zoom technology on November 9, 2020. That initial hearing had been continued for a period of up to 60 days to invite the applicant to submit a sustainable evergreen-based landscape plan prepared by a licensed Landscape Architect consistent with the terms of §230-21-1 D (4) of the City Code.

Mr. Losco noted for the record that notice of the hearing was properly advertised and the property properly posted in advance of the continued hearing as required by Code, as evidenced by affidavits of publication and photographs of the posting which form part of the record.

The applicant's representative, John DiMondi, was present by telephone but declined to offer any additional testimony or evidence other than a letter he had submitted which the Mayor read into the record. The letter raised various allegations of unfair treatment by the City and referenced other matters unrelated to the instant application or the property at 300 W. Seventh Street that Mr. DiMondi had previously raised with City officials. The letter pointed out that the applicant had not been cited for a Code violation and claimed that landscaping requirements do not apply in this case since the 2 proposed self-storage buildings will not be visible from any public way. The applicant provided no landscaping plans, whether professionally prepared or otherwise, to satisfy the requirements of §230-21.1 D (4).

The Board had no questions for Mr. DiMondi.

Mr. Athey noted the lack of any landscape plans submitted by the applicant and noted that the predicate for the grant of a continuance from the September 23, 2020 hearing was the submission of a professional landscape plan. As to this point, Mr. Losco explained that the

Board merely invited the application to use a professional to design a plan for reasonable screening, and that the applicant is permitted present his case in any manner it deems appropriate. Despite the fact that no further testimony or evidence was actually produced by the applicant at the continued hearing, Mr. Losco noted for the record that he is aware that Mr. DiMondi submitted photographs to the Building Official subsequent to the September 23, 2020 hearing suggesting that he had replaced certain plantings in several pots along the Seventh Street side of the subject property. The height, spacing, species and number of these new potted plantings was not a part of the record before the Board at the continued hearing. He stated that the Board's decision must be based on the record as submitted by the applicant.

The Mayor opened the hearing to public comment. Mr. Phillip Gross testified that the proposed storage units are not visible from the public right of way and opined that should not be a reason to deny the application.

Mr. DiMondi then stated that he replaced and enhanced vegetation screening in front of the facility. He added that it was not a requirement that have a professional landscape architect provide a screening plan. Mr. Losco asked Mr. Bergstrom to report on the current condition of the subject property. Mr. Bergstrom stated that the applicant made an effort to replace the dead vegetation with evergreen type plantings in pots. He stated that there is one pot per section of fence along the Seventh St. side and they appear at least 4 feet high (including the pots), but they are spaced farther apart than 5 feet as required by the Board's 2019 decision.

There being no further public comments or testimony, the hearing was closed and the Board moved to its business meeting.

Mayor Quaranta noted the Code requirement of landscape screening in this application and the fact that the Board has required other applicants in the vicinity of this property to provide reasonable landscape screening. While the proposed buildings may not be visible from Seventh St., he noted that they would, in fact, be visible from South Street or Young Street. He stated that it was a missed opportunity for the applicant to not present a well thought out landscape plan for the Board's consideration.

Mr. Athey noted that the applicant takes the position is that he has made a good faith effort to comply with the screening requirements of the Code, but expressed concern for setting a precedent since the Board specifically conditions the September continuance approval on submission of a professionally designed landscape plan and the applicant opted not to do so.

Mr. Losco was not troubled by the applicant's failure to engage a landscape architect to provide a landscape plan, but noted that a reasonable landscaping screen is the one essential Code requirement for expansion of a self-storage facility in the DG zoning district. It's not

sufficient that the proposed buildings may not be visible from Seventh St. Section 230-21.1D (4) requires that the “use” be screened---not just the proposed expansion buildings. Despite the absence of any sustainable landscape screening plan and the failure of the applicant to maintain the potted plantings that were a condition of its 2019 special exception grant, Mr. Losco felt that the Board could approve the application based on the 2019 conditions, including 4’ potted plantings at 5’ intervals, if it were additionally conditioned on continuous maintenance of the landscaping screen in a neat and healthy condition, replacing plantings as needed. Accordingly, Mr. Losco moved to approve the request for special exception based upon the same 3 conditions contained in the April 9, 2019 Board of Adjustment decision relating to this property with the additional requirement that the applicant continually maintain such landscaping screen in a neat and healthy condition, making appropriate replacements as necessary was made. The 3 conditions contained in the April 9, 2019 decision were:

- (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 7th 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’s motion did not receive a second and so the motion failed.

Mr. Athey argued that the conditions set forth in the April, 2019 decision clearly did not work for the long term and he wasn’t comfortable with imposing the same conditions again. Discussion ensued with the Mayor noting that the purpose of the continuance grant on September 23, 2020 was to give the applicant the chance to come back with a reasonable screening plan. Mr. Athey agreed that a good-faith, professionally designed landscape plan would have been preferred given the historic failure to maintain a reasonable landscape screen as the Code requires.

A motion was thereafter made to grant a second continuance for an additional 60 days to give the applicant further opportunity to submit a plan that will demonstrate screening of the use as well as a maintenance schedule. The motion was not seconded and so the motion failed.

Mr. Losco then renewed his prior motion to approve the application subject to the same conditions set forth in the April 9, 2019 Board decision with the additional condition that the

applicant continuously maintain the landscaping screen in a neat and healthy condition making appropriate replacements as necessary. Mr. Losco's renewed motion did not receive a second and so the motion failed.

A motion was thereafter made and seconded to deny the special exception application. The motion was approved by unanimous vote. As to voting rationale, Mr. Losco stated that 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. The record is devoid of a reasonable, sustainable landscape screening plan. Mr. Losco stated that for those reasons he voted in favor of the motion to deny the application.

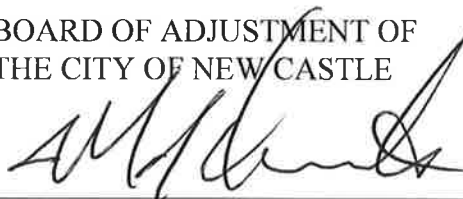
Mr. Athey stated he was not comfortable with approving the application with same conditions that did not work in 2019 and no other landscape plan has been submitted. He noted that the applicant can consider the Board's deliberations and can reapply for a new hearing to present the evidence required to meet the conditions of §230-21.1 D (4). For these reasons, and for those stated by Mr. Losco as well, Mr. Athey stated he voted in favor of the motion to deny.

Mayor Quaranta stated the Board offered a continuance in September, 2020 so that serious conversation of what appropriate screening would look like could be held; however, the applicant chose not to present a suitable plan (or any plan whatsoever). He added the applicant can reapply whenever it elects to submit an appropriate, Code-compliant landscape screening plan. For those reasons and for the reasons previously stated by the other Board members, he would support the motion to deny the application.

The Board concluded by stating that it is not requiring or insisting on a professional 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.

Vote: 3-0 (Deny: Quaranta, Athey and Losco)

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE



Michael J. Quaranta, Chairperson

NOTE: This decision is neither a building permit nor a Certificate of

Occupancy. Appropriate permits must be obtained from the applicable governmental agencies prior to construction or establishment of any use on the property. This decision should be kept in a safe place with the property deed. This decision may be appealed to the Superior Court by any person aggrieved by it within 30 days of its filing in the Office of the Board of Adjustment.