

**CITY OF NEW CASTLE
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPELLANT: New Castle United Methodist Church
510 Delaware Street
New Castle, DE 19720

PROPERTY INVOLVED: 510 Delaware Street, New Castle, DE 19720
NCC TAX PARCEL NO. 21-015.10-080.
OWNERS: New Castle United Methodist Church
PUBLIC HEARING DATE: November 9, 2020
DATE OF DECISION: December 2, 2020

NATURE OF MATTER: Appellant filed an appeal of the Historic Area Commission's decision at which the Commission denied the Appellant's request to permit the installation of 18 vinyl replacement windows on the side and rear of a Church building located at 510 Delaware St., New Castle, DE 19720, NCC Tax Parcel No. 21-015.10-080.

The Board of Adjustment may hear appeals taken by any person aggrieved concerning interpretations or administration of Chapter 230 (Zoning) of the City of New Castle Code (the "Code"). The subject property, 510 Delaware Street (hereinafter, the "Property"), is an existing church structure in the Historic District. The Appellant is owner of the Property.

Mayor Michael J. Quaranta chaired the meeting conducted on November 9, 2020 commencing at 6:30 p.m. The meeting was conducted using Zoom technology. Also present as Board members were City Engineer David J. Athey and City Solicitor Daniel R. Losco. The Mayor 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.

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

Mr. Bellafore testified that the Church purchased the 18 vinyl replacement windows prior to discovering that the property is located within the Historic District and subject to the Historic Areas Commission Design Guidelines & Standards approved by City Council. Mayor Quaranta

challenged this assertion stating that there were a number of publicized public hearings regarding changes to the Historic District boundaries, the results of which were made available to the community. He noted that there had been a prior instance of the Church purchasing materials for an outdoor sign before obtaining HAC approval. The Mayor expressed his frustration that the Church has twice acted without first knowing the rules; adding that ignorance of the law is not a defense. Mr. Bergstrom clarified that the Church property was incorporated into the City's Historic District in 2016-2017.

Mr. Bellafore introduced a series of 8 photographs identifying the locations of the windows to be replaced. The locations were all located on an addition to the original Church structure that was built in 1954-1956 with wood windows. Seventeen of the original wood windows have already replaced with vinyl prior to the adoption of the Historic Area Commission Design Guidelines & Standards (the "HAC Guidelines"). The Board reviewed each of the photographs individually to clarify whether the windows to be replaced are visible from public streets. Per Mr. Bellafore's testimony, only 2 of the 18 windows located near the back of the graveyard on the property are visible from a public street, but that they are approximately a "half block" away from the public right-of-way.

Mr. Losco noted that the subject property identified as a "Contributing Building" under the HAC Guidelines which state that alternative materials for replacement windows "are not appropriate on elevations of Contributing Buildings...that are visible from the public right-of-way". The HAC Guidelines specifically state: "Vinyl clad replacement windows are NOT appropriate on elevations that are visible from the public right-of-way." Nonetheless, Mr. Losco noted that half the existing windows on the addition building are already vinyl; alternative materials are acceptable on Contributing Buildings not visible from the public-right-of-way; 16 of the 18 windows in question at this hearing are not visible from the public right-of-way; and the 2 windows that are visible from an adjacent street are located at the back of the cemetery area approximately one-half block away from the nearest street. In response to a question from Mr. Losco, Mr. Bergstrom stated it would be difficult for a person to distinguish a wood window from a vinyl window from one-half block away with the naked eye. The Mayor noted that while not visible from a public street, some of the windows adjacent to a rear parking lot are visible from adjacent properties. Mr. Bellafore stated that the Church had not reached out to any neighbors whose property abuts the parking lot to ascertain their opinion.

Mayor Quaranta noted 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. However, Mr. Bellafore argued that the proposed windows are high-performance double-pane and come with a lifetime workmanship guarantee and a lifetime product warranty. He further confirmed that the proposed replacement windows have mullions to match the existing windows on the addition structure.

The meeting was then opened to public comment. Mr. Philip Gross spoke in favor of approving the vinyl replacement windows subject to a satisfactory inspection by Mr. Bergstrom. No other public comments were received.

On motion duly made, seconded and unanimously approved, the Board adjourned the public hearing.

At its business meeting on this appeal, the Mayor noted that he is a proponent of alternate materials; however, he added that not all alternate materials are equal in quality and visual replication of wood. He stated his reluctant to approve the application without the Building Official's inspection and approval of the proposed building materials.

Mr. Athey stated he is inclined to overrule the HAC decision in favor of the Appellant. He felt that the premature purchase of the vinyl windows was not an intentional act. He noted that it would have been beneficial if the City had sent letters of notification when the boundaries of the Historic District were changed to avoid circumstances such as the present one. He stated that it appears the material of the windows in question cannot be readily discerned from any right-of-way. However, he was conflicted about whether to condition an approval on Mr. Bergstrom inspecting and approving the proposed window product. He also was concerned 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. Mr. Athey concluded that he is inclined to overrule the HAC Decision for these reasons.

Mayor Quaranta countered with 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.

Mr. Losco felt that it is irrelevant that money had already been spent and that the Appellant was apparently unaware of the change in the parameters of the Historic Zone. The fact is that the property is within the Historic District and that the HAC Guidelines exist. Those 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. Visibility from a neighbor's property is not the issue. The HAC Guidelines specifically state "vinyl clad windows are not appropriate on elevations that are visible from the *public right-of-way.*" (*Emphasis added*). He felt that the uncontroverted testimony was that 16 of the 18 windows to be replaced are not


visible from the public right-of-way, and that the two windows that are visible are a half city block away from the public right-of-way. Although those two windows are problematic, Mr. Losco felt that requiring two windows to be wood when every other window on the building is vinyl is putting form over substance. He expressed his appreciation that some vinyl products are poor quality, but credited the Appellant's testimony that the proposed windows have a lifetime guarantee and 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 that permits vinyl windows in the Historic District. However, each situation is unique. In this case, only two of more than 30 windows on the building would be vinyl and those two windows are located so far away from the public right-of-way that passers-by cannot discern their material composition. He further noted that a neighbor's possible view of vinyl windows was not a consideration addressed in the Guidelines, and even if it were, no neighbors appeared in opposition to the application. In summary, Mr. Losco felt the Appellant is entitled to relief for the foregoing reasons and that he is inclined vote in favor of overruling the HAC decision.

A motion to overrule the Historic Area Commission decision denying the use of vinyl replacement windows and to grant the Appellant'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. The motion to overrule the HAC decision passed with a vote of 2 to 0 for the reasons stated above, with Mayor Quaranta abstaining

Vote: 2-0. The HAC decision of June 11, 2020 was reversed so as to permit the installation of 18 vinyl replacement windows as requested by the Appellant for property at 510 Delaware Street. (Athey and Losco voting in favor of reversal; Mayor Quaranta abstaining).

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE



Michael J. Quaranta, Chairman

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.