

NOTICE OF DECISION

- a. The suitability of the property for the use desired, assuring itself that the proposal is consistent with the spirit, purpose and intent of the Code and, the City's Comprehensive Plan;
- b. Whether the proposed will substantially injure or detract for the

use of neighboring property or from the character of the neighborhood and that the use of the adjacent property is adequately safeguarded;

c. Whether the proposal will serve the best interests of the City, the convenience of the community, and benefit the public welfare;

d. The effect of the proposal upon the public services and facilities, such as public water, sewers, police and fire protection, and public schools;

e. The probable effects upon highway traffic and pedestrian movements, and assure adequate access and circulation arrangements in order to protect major roads from undue congestion and hazard; and

f. The application of sound standards of subdivision and land development practice where applicable.

The Board may further prescribe conditions and safeguards as are necessary to assure that the intent of the Code is complied with. *See*, §230-57 B (2).

Mayor Michael J. Quaranta chaired the meeting. Present as Board members were Steven Zorrer and Robert Irwin. Also present was City Solicitor N. Christopher Griffiths. Mayor Quaranta read into the record the official notice of the hearing. That notice was published in accordance with the law and a copy of the notice was admitted into the record.

Shawn Tucker, Esq. represented the applicant ONC Investments LLC (hereinafter, the "Applicant") before the Board. Also presenting testimony for the Applicant were George Velitskakis, its manager, Kevin Wilson, an architect with the firm of Architectural Alliance, Mark Ziegler, a civil engineer with the firm of Mcbride & Ziegler, Inc., and Gary Bertram, a landscape architect.

Mr. Tucker orientated the Board with the two (2) parcels that are the subject of the Application (collectively, the "Property") using a Powerpoint presentation (hereinafter, the "Presentation") and advised that the parcels are approximately one (1) acre in size and will be combined into a single parcel by removing the existing lot lines if the Application is approved. The Presentation also included an aerial view of the Property and surrounding areas showing an

existing office use on one of the parcels (which will remain) as well as a nearby shopping center and drug store. Mr. Tucker explained that the Applicant is not seeking any rezoning for the Property as the Property is not zoned residential, but rather commercial as reflected on the City's Comprehensive Development Plan and Code. Mr. Tucker then highlighted various potential uses for the Property that are permitted by-right under the Code and, therefore, would not require the Applicant to first obtain a special exception from the Board. These uses included a 45-foot hotel or motel, liquor store, retail service center and restaurant. Mr. Tucker stated that, given that the Property will be developed at some point, the use proposed by the Applicant is a more friendly alternative than the by-right uses permitted by the Code. Mr. Tucker further advised that the City's Planning Commission had reviewed the concept plan for the Property and, following an advertised public hearing, it made a favorable recommendation approximately two (2) months prior to this hearing. Mr. Tucker explained that the pending Application seeking a special exception for the proposed use of the Property for a multifamily apartment complex (hereinafter, the "Project") was the next step in the land use process required by the Code.

Mr. Tucker then introduced Mr. Ziegler, a civil engineer, to provide testimony regarding the Application. Mr. Ziegler was sworn in by the City Solicitor. Mr. Ziegler explained the specifics of the Project as follows: the Applicant intends to build a 14,000 square foot, 35 to 38 story high apartment building on the Property consisting of 32 one (1) and two (2) bedroom apartment units. Mr. Ziegler testified that he originally created a concept plan with a four (4) story building that was the maximum height allowable by Code, which would have allowed for 40 units; however, this plan was scaled back and the density was reduced at the request of the Applicant. As to parking, Mr. Ziegler testified that 48 parking spaces are presently in the plan and that this complies with the Code and no parking variances are required. Mr. Ziegler also testified that the point of ingress/egress to the Property would be shifted to a single point on Seventh Street. Currently, there are two (2) points of ingress/egress to the Property, each on Delaware Street that will be removed as part of the plan. Mr. Ziegler testified that Delaware Street has 13,000 to 14,000 vehicle trips per day and is considered a "major" street by the Delaware Department of Transportation ("DELDOT"). Because of this, Mr. Ziegler testified that DELDOT wanted the ingress/egress point to the proposed project to be off

Seventh Street, which has less traffic and is considered a “minor” street. Mr. Ziegler testified that the reason for this modification is safety because the existing entry points are near flexible barriers and a traffic signal. The newly configured entrance on Seventh is being placed farther away from the intersection of Seventh and Delaware to provide more stopping time and a better sight angle. Mr. Ziegler testified that he believes this is even better than what currently exists at the Property today.

Mr. Ziegler then provided testimony regarding traffic stating that he has been a civil engineer for over thirty-five years and both he and his firm have performed traffic analyses for projects. Mr. Tucker questioned Mr. Ziegler regarding the traffic standards set forth in section 230-57 D 1-2 of the Code asking, after reading the standards, out loud (and showing them on Slide 48 of the Presentation) if Mr. Ziegler’s firm performed the required analysis. Mr. Ziegler testified in the affirmative and stated that DelDOT did so as well. Mr. Ziegler then explained that DelDOT has a traffic plan for this area that is to be implemented sometime in 2024 such that Delaware Street will be realigned to go directly into the shopping center and pedestrian access will be provided on Seventh. Mr. Ziegler stated that the Property will benefit from these modifications.

Mr. Tucker then presented traffic generation statistics garnered from DelDOT’s manual to the Board including: (1) a multifamily housing unit consisting of 32 units, which is what the Application seeks approval for, would generate 280 weekday trips over a 24 hour period; (2) a hotel with 48 units for rent would generate 291 weekday trips (4% more than the Applicant’s proposed use); (3) high turnover restaurant would generate 536 weekday trips (91% more than the Applicant’s proposed use); (4) medical/dental office would generate 665 trips (138% more than the Applicant’s proposed use); and (5) a liquor store would generate 726 trips (159% more than the Applicant’s proposed use). Mr. Tucker then returned to section 230-57 of the Code and stated that, in looking at the permitted uses versus the proposed multi-family use before the Board, the proposed use has significantly less traffic impact than those that are permitted by-right and without need for a special exception.

Mr. Tucker then returned to the testimony of Mr. Ziegler who confirmed

that his design ensures adequate access to the Property by eliminating two curb cuts near an existing traffic light on Delaware Street, and that the access point was moved from a very busy street to a minor street with far less traffic and also away from the intersection. Mr. Ziegler also testified that the Project does not have any dead-end parking and there is adequate circulation provided by the design. Mr. Ziegler further testified that, in his opinion, Seventh Street is not a major road, but Delaware is because of its intersection with Route 273. His congestion and traffic testimony are based on DelDOT's manual and its concept of peak hour (AM and PM) trips between the hours of 7 AM and 9 AM and 4 PM and 6 PM when the roadway is most congested and the impact on the roads during these hours can be ascertained. Mr. Ziegler testified that during both the AM and PM peak hours, the Project would generate 33 and 34 trips, respectively. He testified that these estimates were considered by his design.

Mr. Tucker then turned the focus of the Presentation to landscaping and directed the Board's attention to Slide 6. Mr. Tucker called Mr. Bertram to testify, and Mr. Bertram was sworn in by the City Solicitor. Mr. Bertram provided his educational background and stated that the landscape design was fully compliant with the Code. Mr. Bertram testified that, in order to develop this landscape design, he reviewed the entire Code to determine the landscaping requirements and the ordinances pertaining to the Project are basically a "catch all" for the DG which states the goal is to create a pedestrian oriented neighborhood commercial district and to enhance the aesthetic appearance along streets, parking lots and other pedestrian areas. That is basically the overall goal few and the few stipulations in the Code are to the accentuate of building entrances, provide shade trees, street lighting of maximum 50 feet for sidewalk illumination and to provide benches or other street furniture at appropriate locations.

Mr. Bertram also testified regarding the parking lot landscaping stating that Section 230-28(g) provides parking requirements that relate to where the parking lot is located. Mr. Bertram then used the Presentation to discuss where the back of the building where the parking lot is, landscaping would be placed in order to provide screening from the street. The planned landscaping contemplates a 26-inch-high brick wall or combination of steel and ornamental fencing with evergreen hedge and that interior landscaping constitutes 10% of

the interior and that plan shows 10.29%. It also requires that there be a minimum of one (1) shade tree for every five (5) parking spots and we have that. Mr. Bertram stated that the initial plan did not show fencing, but this was added because the Applicant was concerned about the views into the parking lot. The fencing was not required by the DG ordinance, but the 6-foot-high fence proposed on the south side of the project where the parking lot was added after a meeting between the Applicant and neighboring properties.

Mr. Bertram then testified regarding the foliage components of the landscaping plans explaining where trees would be placed in relation to Delaware Street, the front of the building and the landings and that the main entrance to the building would have two (2) benches. Mr. Bertram then testified regarding the planned lightening at the project stating that light posts would be added along the street, and the position of the lights are compliant with Code requirements which require that lights be provided at an appropriate location. Mr. Bertram testified that, in his opinion, the appropriate location is near the front of the building and the sidewalk. Mr. Bertram noted that furnishings could be required by the town if they desired through the site plan. With respect to lighting in the rear of the building, Mr. Bertram stated that there is no plan, but he believes the lighting would be from the building downward and, the way that current lighting design is to have lights that are recessed with a cutoff so the beam would not be directed toward neighboring properties. Mr. Bertram further testified that the fence would serve as an additional barrier to any light that would come across it. While he stated that he is not a light expert, he believes that any shielding on the lights can be used to avoid directing the light at the neighboring properties.

Mr. Tucker then focused his Presentation on the buffer area between the Property and surrounding residential uses. Mr. Tucker advised that the fence is opaque and will act as a shield. Additionally, there will be large River Birch trees and flowering Hawthorne trees as well as holly trees that will cover a large area. Mr. Tucker also reminded the Board that Mr. Ziegler previously testified that 25% of the open space on the Property is being preserved. Kevin Wilson, an architect with 25 years of experience and a principal at Architectural Alliance was called to testify by Mr. Tucker regarding the architectural drawings in the Presentation. Mr. Wilson testified that he prepared Slide 15 of the Presentation

which shows the front elevation of the building facing Delaware Street as well as the slide showing the rear elevation. Mr. Wilson stated that the trees shown on the rendering of the rear of the Property will not actually be planted, but rather, are shown only for rendering and scale purposes. However, the trees shown on the front elevation will be planted and are shown in their approximate actual locations. Mr. Wilson further testified that he had to adhere to standards in the Code for designing the Property including the standards for the DG and he went through these carefully such that, in his opinion, the design complies with all of the standards. Mr. Wilson then testified that, while he would not go through all 15 of the standards, but the flavor is that the design is brick and stucco which sticks with the surrounding area. The windows are vertical and proportionate in a residential style and are double hung. The roof has a decorative cornice and parapet. Additionally, because the building is long, it is broken up horizontally and vertically. Mr. Wilson stated that this building complies with the spirit of the design standards, which he went through and addressed each of them in his design.

Mr. Tucker then recalled Mr. Ziegler to testify regarding the improvements to Delaware Street planned by DelDOT. Mr. Ziegler testified that an exhibit in the Presentation shows the proposed improvements which are aimed to make the intersection at Delaware and Seventh more pedestrian friendly. The green circle shown on the slide in the Presentation will turn into a grassy area in order to divert some of the traffic and to line up the road with some of the turn lanes. The green hill or hump in the middle of the slide is a traffic calming technique that will replace the existing flexible barricades which present safety concerns. The calming techniques proposed will try to centralize the traffic. Mr. Ziegler testified that the DelDOT project generally includes crosswalks and 10-feet of sidewalk in front of the Property which will connect near the grass hill/hump and then connect to crosswalks. The Project design was oriented with the DelDOT improvements so that people could walk to the shopping center. Mr. Ziegler testified that he was not sure if there were any planned improvements to the railroad crossing that is to the southwest of the Property along Delaware Street.

Mr. Tucker then asked Mr. Ziegler to drill down on the vestry and orientation of the Project. To do so, Mr. Tucker utilized Slide 34 of the Presentation which shows the Property surrounded by several rings that were used to determine the number of bus stops within the radius of the Property. Mr. Ziegler

testified that there were two (2) bus stops at Delaware and Sixth, two (2) at Tremont and Sixth, several more near the shopping center and then four (4) approximately 1,000 feet from the Property. Mr. Ziegler also noted that blue arrows on the slide were used to indicate the head of the trail system, which is about 1,000 to 1,500 feet from the Property. Mr. Ziegler then testified about the walkability from the Property to Battery Park. Finally, Mr. Ziegler testified regarding the water connections and drainage for the Property and confirmed that both water and sewer were available. With respect to drainage, Mr. Ziegler testified regarding how storm water management would be handled in the future versus how it is handled now explaining that, presently, there is a dwelling and 2 parking lots, and the lots are elevated. He showed a low-lying area that will be made into a catch basin which will then tie into another existing storm water management system that will then drain behind the shopping center.

Mr. Tucker advised the Board that a picture of the City's Comprehensive Plan was included in the Presentation that were configured to show the Property in a block of blue, that the commercial zoning for the Property is shown in red and also shows special use along the Route 9 corridor, which the front of the building would largely be facing. Mr. Tucker then pointed out what other uses were surrounding or nearby: (i) office use and commercial across the street (Walgreens and liquor store); and (ii) residential. Mr. Tucker stated that the proposed use of the Property fits with these surrounding uses and noted that the Applicant could put a commercial use on the property but is not asking for that. Mr. Tucker stated that, with approval, the Applicant could do both a commercial and residential mixed use together on the Property, but the Applicant is not asking for that either. Mr. Tucker also noted that the Project contemplates the consolidation of parcels, a single curb cut and a reduction in the number of driveways – things that are encouraged by the comprehensive plan and are achieved with this plan.

Mr. Tucker continued to speak to the requirements of section 230-57 of the Code stating that: (i) testimony regarding landscaping and opaque fencing demonstrated that there would not be any injurious impact to the neighboring properties; (ii) the project serves the best interests of the City, the community and public welfare because the idea of a "gateway" to the City was envisioned by the prior planning commission and is encouraged by section 230-57 of the Code, which takes its language directly from the City's Comprehensive Plan; (iii) letters were received in support of the Project including one from a prior city counsel member who served at the time the DG and the Comprehensive Plan were

developed and states that the proposed use is exactly what was contemplated at the time; (iv) although more detailed designs are still needed, the Applicant has spoken to the chief of police and fire and the current plan is consistent with sprinkler system requirements and necessary connections for fire equipment and, while the chief of police did have concerns about traffic, the Applicant is in compliance with section 230-75 B-2; and (v) there is no issue with respect to impact on the public school system other than Colonial School District is building more schools and, if required, an impact fee will be paid by the Applicant. Finally, Mr. Tucker discussed the possibility of having parking from the Project bleed onto Seventh, something that he does not think will happen because the Project is compliant with the parking required by the Code and the intent is for the Project to be walkable. Notwithstanding the foregoing, Mr. Tucker explained that he took pictures along Seventh at 5:02 p.m., 5:40 p.m. and 5:49 p.m. and that, in addition to Mr. Ziegler's testimony regarding parking compliance, the photographs show that there does seem to be street parking available if necessary.

Mr. Tucker then called the principal of the Applicant, George Velitskakis, to testify. Mr. Velitskakis was sworn in by the City Solicitor and stated that, although he is in real estate now, he previously owned a store in the City. Mr. Velitskakis then spoke about the Project stating that it is a three (3) story apartment building with 32 units, which he elected to build after doing research which showed that 830 apartment complexes are needed to be built every year to keep up with demand. Mr. Velitskakis testified that he met with two of the neighboring property owners to discuss their concerns. One of the concerns discussed was the parking lighting coming through and vehicles. In response to this concern, Mr. Velitskakis testified that the previously discussed 6-foot fence was added, coverage for the dumpster was added to cover it and the landscaping was designed to create a good buffer. Mr. Velitskakis testified that this Project is a massive improvement over what currently exists at the Property, and that he believes the divided lines of the building to pull out the historic element combined with the stucco and the brick will make the entrance to the City look nicer.

Mr. Velitskakis further testified that he attended a meeting of the transportation board and was on the advisory counsel as well with respect to the railroad tracks. He testified that these tracks will be redone and then there will also be a bump out on nearby property that will slow down traffic and a realignment of the traffic lanes to be more pedestrian-friendly. Mr. Velitskakis testified that he bought the Property because it was rezoned to encourage redevelopment and he

wanted to brighten up the area and provide something that would provide more support for local businesses, noting that three restaurants have closed in the past year, and also meet the demand that exists for housing.

The floor was opened to public comment and several parties appeared both in support and in opposition to the Application. The Mayor advised that several letters and emails were received by the Board prior to the hearing and that he would read them into the record following live comment.

Phil Cannon spoke on behalf of his mother, Linda Cannon (703 Tremont Street). Mr. Cannon stated that his mother and the Applicant have a disagreement regarding ownership of a certain portion of the Property. Mr. Cannon explained that there is an alleged discrepancy between county records and the Applicant's documents regarding the depth of his mother's property, that his mother has paid taxes for 66 years on the land in question and has all of the deeds and other records regarding her ownership. Mr. Cannon advised that they have retained a lawyer, but the lawyer could not attend the hearing. Mr. Cannon stated that his mother is 87 years old, he grew up in the house and it is a family home that they do not want to sell. However, his mother should be able to place her trashcans in her backyard and, under the proposed plan, there will be trashcans from 32 families next to theirs. Mr. Cannon advised that he showed Mr. Velitskakis where the property line is for his mother's property and, in response, Mr. Velitskakis stated that he would take care of it. Mr. Cannon stated that, with this assurance, he did think he needed to retain a lawyer earlier, but then found out he lost a battle that he did not know he was in. Mr. Cannon asked the Board not to reach a decision on the Application so that this issue could be figured out.

Paola Ciskanik (who resides at 36 W Seventh Street) owns a property that adjoins the Property with her husband Lawrence. She advised the Board that they previously spoke with Mr. Velitskakis regarding the project but are asking that the Board not take any action on the Application tonight because, among other reasons, the property dispute raised by Mr. Cannon needs to be resolved. Ms. Ciskanik also stated that Mr. Velitskakis' prior testimony regarding the need for housing is not accurate as the need is for affordable housing, which this Project is not. Ms. Ciskanik also stated that traffic on Seventh Street is a concern

because parking on both sides of the street is permitted and this can make the road impassable. Ms. Ciskanik also stated that the Applicant's presentation did not address the flood zone or the Project's impact thereon. Ms. Ciskanik stated that she understands that the Property will be raised, but questioned what will happen to the water table, the flood plain and the other houses surrounding the Project and later stated that this particular corner is already flooding. Ms. Ciskanik also noted that there is a change in the administration coming in two (2) weeks and thinks that this Application should be considered and voted upon by the new council once in place. Ms. Ciskanik noted that the plans for the Project are not finalized and that the Board is being asked to make decisions on a non-finalized Project. Ms. Ciskanik said that also noted that, while parking does comply with the DG, limiting parking to 1.5 people means that parking will be spilling over into on street parking, and this will compound traffic issues. Additionally, the approved plan to cut off Eighth Street will force traffic over to Seventh and no one pays attention to no left turn restrictions. Ms. Ciskanik stated that Mr. Tucker did a good job with the Presentation, but he focused on what could have been there and, instead, the Board should concentrate on what the Applicant wants to put there. Ms. Ciskanik believes that the Project could be somewhere else, and this location presents too many issues including having only one means of egress/ingress which will be a problem when a garbage truck or other trucks utilize the Property. This is a tight turn, especially when you have cars parked on both sides of the street and other cars trying to get in and out. This will create a dangerous situation. Ms. Ciskanik stated that this is really about our town and what it means for our town our town and that this Project will put 32 more people on the street up against our homes.

Victor Bryson, (604 Clark Street), spoke next. The speaker stated his opposition to the Project. He noted that Eighth Street was closed to traffic, and, in his opinion, that was long overdue. There have been three (3) train wrecks in the last two weeks, and here the train is going right in front of the point of entry to the Project. He does not believe the building here will hold up and it will look bad in a few years, and it will be right at the entry to the City. He believes that a Project like this belongs in Newark or Middletown. He also stated they are contemplating running the drainage from the Property into the ditch near the railroad track and that he hopes the Applicant is going to dig this out because it is currently all filled, and he does not know where the water will go. He also stated that he knows the

former council made the Comprehensive Plan and thought it would be great for the City of New Castle and it is not working. However, the Board needs to listen to the people in this room who do not want this Project in their town. The town does not want this, and the town would rather deal with the penalties. He noted that building is already occurring on the wetlands and there is nowhere for the water to go. He questioned the ability of the Board to take this street and then build a 32-unit apartment building there. He stated that the Board should not be worried about the legal points – if no one in the City wants it, then the Board cannot approve the Project there. In conclusion, he stated that this Project is all wrong.

Sally Denton (Second Street) commented in support of the Applicant. She stated that the Property has been vacant for years and is continually deteriorating. The City and the Property deserve better than this. Ms. Betner stated that replacing the buildings with a new building that would enhance the Town and the entry to the town is a good idea because it provides more density to support businesses and restaurants. Ms. Betner also commented that there is a large demographic in New Castle that needs one (1) floor living, and this Project would allow many who have lived in New Castle their whole life to go there and stay for the rest of their years. This also allows people who want to live in New Castle, but cannot afford the houses, to live here. Ms. Betner said that she did not realize that the owners who sold the Property to the Applicant could have put restrictions on the Property. Having heard this tonight, she stated that the prior owners should have done this or went to their neighbors. Ms. Betner commented that New Castle cannot keep going the way it is, but this is a great Project and opportunity for the town. She hopes the Board votes on the Application tonight because it needs to move forward. Time is money and the Applicant has already spent a lot of money and, the more the Board holds it up, the more money it will cost the Applicant.

Alicia, a resident at 702 Delaware stated that she has enjoyed living there with her fiancé and children because it is walkable and a nice place to live and looks forward to other people having that opportunity. She noted that despite what some have said, the building is not falling apart. It is a really great place to live.

Toni, a resident of the town (209 Deemers Landing) commented that he lived here her entire life. She shared that that recently, his landlord had to sell the place he was renting because of the market, which resulted in a long search for a new place in the town. She explained that she went to Deemers Landing only to

find it was filled with a waiting list. She ended up having to move in with her parents until she was able to get bumped up the waiting list and lease an available unit. She stated she supports this Project because there is a need for it and the area needs support.

Theodore Megginson (605 Tremont Street) commented on the photos provided in the Presentation of Seventh Street stating that the photographs made the street appear much wider than it really is. He has lived her for 53 years and have never seen Seventh Street look like the photographs shown – even when the street sweeper goes through, there is more traffic on the street. He advised that when there are two cars coming at the same time, one needs to stop because they both cannot get by. He stated that side mirrors have been taken off by passing cars and cars have been scratched. Seventh Street is probably the narrowest street in New Castle. He further advised that, if the Council says that you can park only on one side of the street, there will be a huge crowd protesting. It was also noted that Seventh Street was made a one-way street at one time and, while it worked well for a little bit, but it was a huge mistake because the traffic then used other streets. Perhaps if the one block closest to the Project was one way, that may work because once you get past Tremont, the road widens for some reason.

Barbara Wright (123 W Seventh) asked where the photographs of Seventh Street in the Presentation were taken because the street is always crowded. She stated that on a Friday night you cannot even get out of the driveway because of traffic. She also commented that the 1.5 parking ratio will require people to park past Tremont so she is concerned about more parking and traffic on our street.

Mr. Cannon commented again to state there should be no hurry to vote because the property located at 604 has been rented for a year.

Mike King stated that he owned one (1) of the three (3) shuttered businesses. He commented that change is hard and, while he recognized that he is not from New Castle and has not lived here for decades, there will be a benefit from this Project. He commented that his business would have benefited from it. He stated that while everyone talks about change and progress, if the Applicant decides that this is not worth the headache, then he can sell the Property. He asked everyone to consider whether they would want someone with roots in New Castle to build here or if they would prefer someone else coming in and building a liquor store or a hotel. The Board posed a question to Mr. King regarding the number of staff that

would be required for a restaurant with a 100-guest capacity, but Mr. King advised that he was not qualified to speak and did not want to create an issue. He did state that he lives on a small street in New Castle and does understand the aggravation.

Rob Miller commented that he would much rather see single family development although he has nothing against multi-family housing, which everyone has had to live in at some point. He stated that he is sad to hear that hear people cannot find it, but owner occupation is better and other options are possible for this Property, but apartments would generate more income. Mr. Miller stated that, while he could be wrong, he does not see any of the other possibilities for the Property suggested by Mr. Tucker going here. Mr. Miller commented that his biggest gripe is traffic – it is bad. He further stated that, while he has not been paying attention to DelDOT's plans, he had been in almost three (3) major accidents from people running the red lights. He also commented that everyone is aware of the illegal left turns from Seventh Street and that, technically, traffic comes from 9 directions, and it is very confusing. Mr. Miller stated that he knows the Applicant has good intentions, but it is not the Board's concern how much money has been spent – the Applicant made the decision and that is up to him. Mr. Miller stated that he wants the Board to deny the Application, but it would probably be better to postpone the vote because the new council coming in. Mr. Miller commented that there is a change in the times, a lot of people are upset about this Project, a lot of people are upset about the Lukins Drive project, and this is a terrible spot for this Project. Mr. Miller commented that he would, again, would rather see owner-occupied, single-family homes on this Project and that he does not agree with the said trend that everyone will be renting in the future. Mr. Miller is sorry if people want to live in New Castle, but he would like to keep it more desirous because transient means they come and go. Mr. Miller concluded by stating that things can change in the future and what happens if there is no need for this type of Project in the future.

Mike Dialessandro (38 W Seventh Street) commented that he has lived in New Castle for 5 to 6 years. In that time, his vehicle has been hit two (2) times sitting in front of his house. He advised that one time a cop witnessed the event, but otherwise the damage was his responsibility. Mr. Dialessandro also stated that customers for the barbershop and beauty shop park in front of his home and that

parking on Seventh Street is a problem. In the summer you cannot cross the street because of the beach traffic.

Robert Blakely (26 Edgewood Drive) stated that he backs all of the people speaking before him. While he is not affected by the Project because he lives a mile outside of the historic area, he does work in the area. He stated that he lives off Route 9 and has to wait to get out. He stated that this had never happened before. He also stated that he feels sorry for the residents on Seventh Street because, if Sixth Street is crowded, people do go down Seventh Street instead. In conclusion, he stated that he is against the Project because it is not consistent with historic New Castle where people who have lived here forever do not want this Project. The City is supposed to be kept intact and this is not keeping it intact. This is not the City I knew as a kid, and I am against it.

Eric Frederick (102 W Seventh Street) explained that Seventh Street is a residential street. When the street was first built, it met the need for what was there. However, if you were to design a city for hotels, a bigger street would have been necessary to handle. Mr. Frederick commented on the photograph of the street provided in the Presentation and stated that the photograph is wide angle and misleading. Mr. Frederick stated that you cannot park on both sides of the street with plenty of room left. Mr. Frederick also noted that driveways are used when people cannot navigate the street. Mr. Frederick also commented that the corner of Seventh Street and Delaware Street requires someone to move over to let people go through because two (2) cars cannot go through when there are cars on both sides. Mr. Frederick noted that Seventh Street was not designed to be a main street and that a traffic study should be done on this road. He also commented that he agreed with the comments so far regarding overflow parking. Mr. Frederick also stated that there is a property ownership dispute and noted the risk of what would happen if the dispute were not resolved in favor of the Applicant and would result in less parking. Mr. Frederick stated that everyone has more than one car these days so overflow is likely, it will go down the street exacerbate the parking and traffic issues. Mr. Frederick asked the Board to table the Application so that everything can be figured out in order to see what can really be done on the Property.

Pete Toner (603 Delaware Street) advised the Board that he has lived here for 53 years and, since he has never seen the Pompeii, it has been more than 53 years since it was on the Property. Mr. Toner commented that as he looked around

the room, he saw a number of people like me who buy old houses and renovate and, if he wanted to do that, he would be able to do it if zoning permitted. Mr. Toner stated that he was horrified for Mr. Velitskakis. Mr. Toner stated that the person who sold MR. Velitskakis the Property was present and is now against the Application. Mr. Toner stated that he has friends on both sides of this issue; however, no one is telling him anything he does not already know about traffic and impact studies – and he is sure that Mr. Velitskakis looked at this as well. Mr. Velitskakis' reputation is that he takes old buildings and turns them into something of value. Mr. Toner commented that the buildings on the Property have not been anything other than an eye sore in his lifetime. Mr. Toner further stated that if the public is upset and are here to fight development, he questioned where they were at when Deemers and other projects were approved. He agreed that they should be upset, and he wants them to be upset, but not at this project. Mr. Toner advised them to get upset at Medori, at Cirillo, at other projects – but not at Mr. Velitskakis or this Project. Mr. Toner concluded by saying that if you buy a property and its zoned, you should be able to build it.

Jackie Metz Frederick responded to Mr. Toner's comments stating that Sixth Street is a State road, but Seventh Street is not. She also stated that I you are going to have more traffic, then you need to have a traffic study and there is nothing in the Application with a street study for Seventh. She understands everyone that says we need progress, and she does not disagree, but this Project presents a specific issue for Seventh Street. Ms. Frederick stated that Seventh Street is difficult to get through and an impact study would be very useful.

Victor Bryson (604 Clark Street) commented again stating that he took issue with Mr. Toner's public comments as multiple people attended meetings in objection to the other projects Mr. Toner mentioned. Mr. Bryson says that people attend but are never listened to. Mr. Bryson advised that, if he was on Council, all they would be doing with these properties is cleaning them up and not touching them.

After a one (1) minute recess, the Mayor read previously submitted letters and emails regarding the Application into the record as follows:

Frank Moriarty wrote that residents were only aware of this Application based on the Board of Adjustment signs placed last week and that this Project has been negatively received throughout Town. The 48-car parking lot component with only one entrance means that either Seventh Street or Delaware Street will be utilized. Seventh Street and Sixth Street are always highly traveled and when it is beach season or an accident happens, traffic on both streets is a standstill. Mr. Moriarty stated that he was previously on the Wilmington Area Planning Commission (WILMAPCO) and the goal was not to increase traffic. Mr. Moriarty having spent two years in the New Castle Community Partnership, also knows that ongoing regional concern is the front door of the City's historic area, now formalized as the DG. He stated that money and funding has been directed to vibrant new signage and landscaping to make a first impression on tourists and travelers and that a 3-story apartment building plopped down at what is the front entrance to the City here does make the area welcoming to the downtown historic area, a sentiment shared by someone on the prior planning commission. Mr. Moriarty does not want to close borders and does not oppose outsiders or apartments in a more suitable area. Mr. Moriarty concluded that he and his wife strongly oppose approval of the Application.

Kathy Iaonnoni submitted that she is opposed to the use of the Property as a new apartment complex. She commented that the congestion imposed on neighborhood and traffic light into town with 70 more vehicles and excess traffic will create too much congestion. The hometown feeling is being relinquished. Ms. Iaonnoni suggested that the Property would be better suited for quaint shops and the like that are better in line with the hometown charm of the City. She concluded that when she moved here from Maryland, she did so based on its charm, Battery Park and the beauty of the town. The last thing this town needs is more traffic and buildings that diminish the character and charm of our town.

Chris Cashman wrote in support of the Application stating that their support was based upon many reasons including a housing shortage and housing that is not keeping up with the creation of new households. It was also noted that renters in New Castle are likely to become homeowners in New Castle and that this will help maintain home value. Overall, this will be a good destination for the elderly residents who need one (1) floor living, but do not want to leave New Castle. It will also provide support for business. A thriving business district is necessary to

keep residents in the town. The applicant's owner always does a good job on his projects and he would rather keep this Applicant than see another come in. He stated that the Project is a better option than what the Property could be used for – the current use is not right, and a hotel is not the answer either. He believes that multifamily use is the best use for this Property.

Susan Hanger commented that the proposed front elevation of the Project and its site plan is an improvement over the existing buildings. Ms. Hanger also noted that there should be a master plan to avoid these properties from be developed in a manner that would detract from the charm of the town. In response, the Mayor noted that he raised the idea of a master plan when he was on the Planning Commission and again when he served on City Council because he believed this was inevitable.

The owner of Cobblestone Antiques stated that, as a downtown business owner, this project can bring more people into the area to utilize our businesses and our shops. This Project is entirely consistent with the DG and should be approved.

Aaron Vederman (206 Delaware Street) wrote that he believes the Project is a beneficial opportunity to correct derelict buildings that are currently in those places. This use is consistent with the DG and should be approved.

Jackie Metz (102 W Seventh) wrote to address concerns regarding the Project. Ms. Metz wrote that traffic issues and conflicts with the zoning ordinance for the DG including the conditions for approval of special exceptions. We could not find a traffic study for Seventh Street and the surrounding three blocks to examine the influx of traffic on Seventh and Tremont. There are existing traffic issues on many of the surrounding roadways and it is unclear if these existing issues will be exacerbated by such a large increase in residents. Traffic issues increase in summer as there are more vehicles and a bottle neck is often created. Ms. Metz strongly believes that a traffic study is needed that takes into account the need for overflow street parking and whether emergency service vehicles can safely navigate the area. Ms. Metz stated that she also did not believe the Project meets the special exception circumstances in the Code and is conflict with many including that the proposal will not substantially injure or detract for the use of neighboring property or from the character of the neighborhood. Ms. Metz commented that historic New Castle prides itself on its charm and a three-story apartment building located on a corner at which many people will enter the City

will detract from that aesthetic. Ms. Metz also stated that the Project conflicts with the requirement that the Board consider the probable effects upon highway traffic and pedestrian movements and assure adequate access and circulation arrangements in order to protect major roads from undue congestion and hazard. Ms. Metz states that the increase in traffic brought to this intersection by 32 new apartments will certainly have a deleterious effect on traffic flow, but also on pedestrian movements. There is a Crosswalk from Chestnut to Delaware Street to access the Ferry Crossing Shopping Center, but there is not one to cross Delaware toward Seventh. This will create more risk for pedestrians.

Thomas and Donna Rash (104 W Seventh Street) wrote that they have concerns and oppose the Project. They stated that they purchased their home on Seventh Street less than three (3) years ago and were surprised by the amount of traffic and trucks. They advised that they have to wait to get out of their driveway. The Rashs believe that a 32-unit apartment complex will increase the traffic and make an already bad problem worse. Aside from personal inconvenience personally, the Board should consider the impact on the entire historic and surrounding area. They commented that ample apartments are available elsewhere and this Project will not maintain the historic character of the City and will strain the ambiance of historic New Castle as well as its resources. They concluded that while the Town could benefit from growth and an increase in revenue that draws tourists, this Project is not the answer to growth within New Castle.

G. Douglas Lovett (208 Delaware and part of 202 and 204 Delaware) wrote that his tenants are important members of the community, and the Property at issue here is not in the historic district and are located across from commercial buildings which are not remotely historic in character. The planned apartments are more historic looking and nicer than those built elsewhere. He also stated that the current houses on the Property are not historically significant and what is behind the area currently is a sea of asphalt that is not the least bit aesthetically pleasing for the community. Mr. Lovett stated that the planned landscaping is nice and will be far more attractive than what already exists. He concluded that apartment dwellers are not 2nd class citizens, they contribute to the City's success and provide support for all local businesses. Mr. Lovett stated that the Project has merit and should be approved.

Chris Castiglia wrote that in 2003-2004, every region of our community met extensively with KCI, the City's planner at the time, to develop a vibrant comprehensive plan. This plan was unanimously adopted by that Council where I served as President. The goal was to extend, update and blend historic area with the entrances of the city center and provide for a diverse commercial development at the entrance to the City. He stated that the DG created this blend, and the Comprehensive Plan has been ratified every five (5) years since. He commented that, while it may take years for the stars to align for projects to materialize caused by demographic shifts and consumer behavior, we are finally ready with the skills and resources of the Applicant to start the vision that was adopted in the Comprehensive Plan and Code. Mr. Castiglia believes the Project meets that vision and recommends approval.

Mr. Tucker was given reasonable rebuttal time to address these objections, re-emphasizing points he had already made in his presentation. Mr. Tucker stated that he heard a lot from supporters of the comprehensive plan which carries the force of law, is supposed to be followed and serves as the blueprint on how property is to be developed. As a result, if someone follows the comprehensive plan, they are doing what they are supposed to do. Mr. Tucker then stated that, if someone follows the law, they would be upset when the decision becomes a popularity vote and people doing whatever they want. Mr. Tucker stated that the lack of rules creates no predictability for the future. Here, he stated, the rules were followed, the factors were met, experts testified and there is nothing in rebuttal to the factors presented by the experts. Mr. Tucker said that the opposition is unfair to his client.

Mr. Tucker reminded the Board that Mr. Ziegler testified that a traffic study was performed that included Seventh Street, where the entrance was going to be, and why that helped the traffic situation. Mr. Ziegler has 30-years' experience and conducted this study, something that DelDOT did not require because the number of trips generated by this Project are so low that a traffic study is not required. This was confirmed by DelDOT in its letter to PLUS that stated that because this project will generate 260 trip ends with 33-34 in the morning and evening rush – a traffic study is not required. Mr. Tucker stated that the Applicant recognizes that there are traffic issues, but the Applicant did not create these issues and the proposed Project adds little load. In sum, Mr. Tucker says that the Applicant

realizes traffic is an important issue, but the Applicant should not suffer based on traffic because he is not adding significantly to the problem, he is following the law, and the zoning permits projects by-right that would create more traffic issues. Mr. Tucker stated that somebody, if not his client, will develop this Property and it could be something with more traffic issues.

Mr. Tucker advised that the PLUS letter noted that the Property was already developed with infrastructure and the Office of State Planning has no objection to the approval of this Project. The Applicant is happy to have a condition placed on the Project regarding the location of the dumpster that one commentator spoke to and could move it toward the railroad tracks.

Mr. Tucker also discussed the property line dispute and stated that the Applicant was represented by Tom Mammerella, Esquire on this issue and, Mr. Mammerella investigated and provided his opinion that there is an error in the deed and believes the Applicant is the owner. Mr. Tucker advised that as long as there is a general finding of legal possession, it is not up to the Board to decide the property dispute issue. This is supported by case law as well and Mr. Tucker entered those cases into the record. The City Solicitor was asked to comment and stated that, while he has not seen anything from the property owner, the Board does not have to allow the land dispute to hold up its decision. Each side has counsel, and they can figure it out. Overall, the City Solicitor advised that the Board could take into account the dispute, but the dispute itself is not a bar to a decision. Mr. Tucker then clarified that his office reviewed separately from Mr. Mammerella and reached the same conclusion. Overall, he stated, the case law states that there are other private mechanisms on how to handle this and using the zoning forum to resolve these issues is discouraged. Mr. Tucker stated that the Cannons have remedies available to them – they can appeal the Board's decision, they can get an injunction on the issuance of a building permit. Mr. Tucker then had Mr. Velitskakis sworn in once again to testify regarding his discussions with the Cannons regarding the dispute. Mr. Velitskakis testified that he met with the owners about 2 weeks ago, they were talking, and said an attorney was involved and determined the property was owned by Mr. Velitskakis. Mr. Cannon stated that Mr. Velitskakis told him he was getting an attorney and Mr. Cannon did not need to worry about it. Mr. Cannon said he pays taxes on it, has a deed, and did not know he had to fight for the land. If this dispute is resolved in favor of Mr. Cannon, five

(5) parking spots would be eliminated. Mr. Tucker advised the Board that this why case law advises against the Board deciding on property ownership because there are things like depositions, etc. that many need to be taken.

Mr. Tucker advised the Board that the Project meets each of the requirements of the Code for parking, which is the common formula used by many municipalities for parking ratios. The Council made the 1.5 ratio for parking, not his client. Mr. Tucker also stated that the disputed photographs in the Presentation were time-stamped, were taken by his paralegal, are right from the iPhone used and there has been no modification made to any of the photographs. Therefore, while there was commentary made that these photographs were taken with a wide-angle lens, this has now been rebutted. Mr. Tucker also stated that the Property is not in a historic zone and, while it is in a flood plain, the City Code requires elevation. In rebuttal testimony, Mr. Ziegler explained that many properties in the City of New Castle are in the 100-year flood plain. We are required by Code to build at 18 inches at the finished floor of the building above the flood plain and we have set the elevation at roughly 2.5 feet above the flood plain, and we have also planned to tie into a drainage system that drains Delaware Street and Seventh Street, and not aware of any drainage issues on those corridors. Mr. Ziegler stated that the raising of the elevation is required by law.

Finally, Mr. Tucker reminded the Board that the Planning Commission voted unanimous in favor on the concept plan and the development is consistent with the Comprehensive Plan. Mr. Rogers from the Planning Commission advised the Board that the concept plan was submitted to the Planning Commission for 12/19 as concept plan and recommendation to Board. The Planning Commission found that the concept plan was consistent with the Comprehensive Plan and recommended that the Applicant provide the following before proceeding to this Board: (1) preliminary architectural plan; (2) preliminary site plans that demonstrate compliance and commitment to the design standards contained in 230-21 – G of the Code; and (3) two written responses to the PLUS comments. Mr. Rogers stated that both of those conditions were satisfied, and the PLUS comments were returned yesterday.

A motion was made to adjourn the hearing, which was seconded and unanimously approved. The Board then adjourned to conduct its business meeting. During the business meeting discussion ensued among the Board as to the special

exception requested, with each Board member being given an opportunity to address their thoughts on the matter. Mr. Zorrer stated that there is nothing in the Code that talks about the number of units per acre except that one spot in the Code that talks about multi mixed use properties and requires that the units be limited to no more than 10 units per acres. Mr. Zorrer stated that he is not sure if this is an oversight in the Code or not, but in his mind, if this was a mixed-use building, I would be seeing 20 units. While recognizing that there is no guidance in the Code and that this is his own interpretation, Mr. Zorrer believes the intent of the Code would be to provide a similar restriction or limitation on multifamily dwellings that do not have a mixed-use element. Mr. Zorrer also believes that this limitation may resolve some of the parking concerns and the traffic congestion. He noted that he has personally never seen Seventh Street as it looks in the presented pictures. Therefore, he is leaning toward no right now and would like to see no more than 20 units.

Mr. Irwin stated that he feels the same way as Mr. Zorrer regarding the 20-unit limitation. Mr. Irwin is also concerned about traffic issues, and he is leaning toward no.

Mayor Michael J. Quaranta stated that it was too bad that over the last ten (10) years there was no chance to master plan the entire area. He noted that you could not design a worse highway, going into a shopping center, with railroad tracks. He noted that the Property currently has several old buildings and when you look at the other buildings in this vicinity, they are also old and tired. Overall, he believes the entire area needs to be master planned. The Mayor further stated that it is quite clear to him that the beauty salon and the barber shop are misplaced at this point, and recognizes it is always a difficult place to park and, if those buildings are ever taken down, the land will need to be thoughtfully redeveloped. The Mayor also commented on the debate between homeowners and renters, stating that he has been both and the truth and reality is that a substantial number of people have student loan debt and do not have the debt ratio necessary to qualified for homeownership. Apartment prices are higher, but renting avoids the downpayment or credit issues otherwise presented. The Mayor also said that the current attitudes are different as people are looking to be transient and to live in walkable communities. He also stated that there are a number of senior citizens in the community that are looking at places with an elevator to serve as de facto

senior housing because they want to continue to live here. The Mayor commented that there are pages and month's long waiting lists to get into these places including The Helm and Deemers Landing. The Mayor also commented that the land on which Deemers Landing was developed required remediation to be used for something because of what it used to be.

The Mayor also noted that the former Pompeii restaurant had seating for 44 patrons and that this Property could serve a 100-patron restaurant. In that case, the Mayor believed you would see far more traffic generated by the staff, deliveries and customers than the proposed 32-unit apartment Project. The Mayor also noted that while retail is an option for the Property, retailers are no longer opting for brick-and-mortar locations with Dollar Tree and Dollar Stores now being the most prolific tenant. The Mayor stated that retail is a tricky business. The Mayor also noted that there was prior interest in the Property for a post-rehabilitation facility and that, in contrast, an apartment complex is only a few cars in and out every now and then. The Mayor stated that residential use is the smartest and least intrusive option for the Property and that he supports the Project because he worries about what comes next. The Mayor stated that if the Project is not approved, then whatever comes next could be a bigger problem because there are other permitted uses for this Property, such as a hotel, which the property owner could build by right. The Mayor stated that this means there would be no public input and no board of adjustment involvement. Overall, the Mayor said that this is a terrific addition and the best option.

Motion on Application:

The Board reasoned that the Applicant had generally met the requirements for approval of a special exception under 230-57 B-2 including demonstrating: (1) the suitability of the property for the use desired, assuring itself that the proposal is consistent with the spirit, purpose and intent of the Code and, the City's Comprehensive Plan; (2) that the proposed Project will not substantially injure or detract for the use of neighboring property or from the character of the neighborhood and that the use of the adjacent property is adequately safeguarded; (3) that the proposed Project will serve the best interests of the City, the convenience of the community, and benefit the public welfare; (4) there

will not be any material effect upon the public services and facilities, such as public water, sewers, police and fire protection, and public schools from the Project; (5) that the Project contemplates, addresses and accounts for the probable effects upon highway traffic and pedestrian movements, and assures adequate access and circulation arrangements in order to protect major roads from undue congestion and hazard; and (5) the application of sound standards of subdivision and land development practice are employed by the Project.

The Mayor moved to approve the special exception as submitted to utilize the Property as a multifamily residential development.

Mr. Zorrer voted no, stating that there needs to be guidance provided by the Code on the number of permissible units for a multifamily dwelling that does not contain a mixed-use element. Mr. Zorrer stated that, based upon everything he heard, less units would be more accepted and that is why he is voting no. Mr. Zorrer advised that if the motion was seeking approval of something in the 20-25 range, he would be agreeable to the Project, but the proposed 32-units is problematic and appears to violate the intent of the Code.

Mr. Zorrer made an amendment to the prior Motion seeking to approve the Application as submitted with the caveat that that the Project be limited to no more than 24 units. Mr. Irwin seconded the amended motion. Accordingly, a new Motion was presented to approve the Application for a special exception up to 24 units given that the Applicant has met all of the other requirements of the Code, and the approval of a special exception application requires the Board to "prescribe conditions and safeguards in addition to those otherwise required by the City Code as are necessary to assure that the intent of this chapter is complied with" Code, Section 230-57 B-2(g). The Motion, as amended and restated, was seconded and then unanimously approved.

There being no further business to discuss, the meeting was adjourned.

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE



Chair

Dated: June 20, 2023

Date filed: June 20, 2023

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.