

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

NOTICE OF DECISION

APPLICANT: Trustees of New Castle Common
201 Delaware Street
New Castle, DE 19720

OWNER: Trustees of New Castle Common
201 Delaware Street
New Castle, DE 19720

NCC TAX PARCEL NO. 21-015.30-194
PUBLIC HEARING DATE: November 12, 2018
DATE OF DECISION: January 24, 2019

REQUESTED: Applicant requested a special exception under §§230-28.1 and 230-57 B of the Zoning Code of the City of New Castle (the “Code”) to allow a surface parking lot within the Historic Residence District on a parcel known as 27 West 3rd Street, NCC Tax Parcel No. 21-015.30-194.

The Board of Adjustment may grant a special exception for a parking lot in the HR zone to permit uncovered, ground-level public or commercial parking lots in the Historic Residence District where, upon written application, the Board finds: (1) that the applicant has satisfied the enumerated criteria in section 230-28.1 and (2) 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.

Mayor Jimmy Gambacorta chaired the meeting. Also present at Board members were City Engineer David Athey and City Solicitor Daniel R. Losco.¹ Also present was Mr. Jeffrey Bergstrom, New Castle Code Official. The record reflected that the matter was noticed in accordance with the law and a copy of the notice was admitted into the record.²

¹ Prior to the commencement of the hearing, a member of the public requested that Mr. Losco recuse himself from consideration of the matter as he had helped draft the ordinance that this application was proceeding under (§230-28.1). After a brief discussion, Mr. Losco declined to do so. His role, in drafting the Ordinance, was limited to that of a scrivener. He had no role in any aspect of the application before the Board. City Council ultimately reviewed, modified and adopted the Ordinance in accordance with the rules and procedures applicable to Council. Were Mr. Losco’s role as the scrivener of the Ordinance sufficient to require his recusal as a member of the Board, such an argument could be used to compel recusal in almost every matter that comes before the Board as each application seeks relief under ordinances that the City Solicitor has or may have reviewed, drafted, interpreted or considered.

² The matter was first noticed for hearing on October 23, 2018. The matter was continued from that date, without

Andrew Taylor, Esq., represented the applicant, Trustees of New Castle Common, at the hearing. He was accompanied by Andrew Hayes, P.E., from Foresite Engineering. Mr. Taylor, over the course of the hearing, introduced 23 exhibits into the record addressing the history of the application and the design of the parking lot. These will be discussed in turn.

Pursuant to §230.28.1, eight separate criteria must be satisfied as part of the Board's review of this matter. A number of these items are objective in nature and were easily satisfied by this application. The proposal did not call for a multi-level structure in violation of subparagraph A and was not proposing the use of chain-link fence or barbed wire in violation of subparagraph C. In addition, the matter had been previously vetted by and received favorable recommendations or approvals from both the Planning Commission and the Historic Area Commission ("HAC") prior to being submitted to this Board for consideration in compliance with subparagraphs G and H. Thus, this decision will focus on the design elements in the Ordinance and the analysis required by §230-57.B.

Mr. Taylor and Mr. Hayes presented the application for the Trustees. Mr. Taylor provided the history behind the selection of this parcel for a public parking lot. He noted that the Trustees began accumulating these parcels in the 1960's, with plans for a parking lot first drafted in 1974. While none was constructed, by 2009, the City's Comprehensive Plan noted several parcels for potential use as a public parking lot, a list which included the subject parcel. While the parcel formerly housed (at least in part) a bowling alley, Mr. Taylor noted that there were no fewer than five (5) surface parking lots where buildings once stood and that there are presently six (6) surface parking lots within the HR zoning districts in the City.

Focus on a new parking lot renewed in earnest in 2014 and, by 2016, the Trustees had commenced work on the current proposal. The lot is proposed to be open to the public and would be operated by the City. The Trustees confirmed, however, that it would not charge any fees for the use of the parking lot. The funds for the design and construction of the parking lot were exclusively the responsibility of the Trustees.

Mr. Hayes walked the Board through the current design of the parking lot, noting that, should the Board grant the special exception, the plan will be reviewed by the City and/or outside agencies for compliance with the technical requirements of the State and City Codes, as well as returned to the Planning Commission for a review of the final site plan. Indeed, it was noted that the Planning Commission, in its review of the plan, specifically declined to provide site plan approval during its review of the plan as it preferred to wait until it could review a plan that incorporated any comments offered by HAC or this Board.

substantive discussion of the application, due to the lateness of the hour.

Mr. Hayes walked the Board through the existing drainage patterns in the area of the proposed parking lot and noted ongoing projects designed to alleviate flooding concerns in this area of Battery Park. He noted that the pending plan, pursuant to state law, would treat run-off from the parking lot for pollutants and that the drainage system for the lot would be in conformity with the requirements of state law. Much of this was being achieved through a project that was currently under construction in and around Battery Park.

As to the design of the lot itself, Mr. Hayes noted that the design before the Board reflected the comments offered by the HAC. As such, certain retaining walls and fencing had been removed and blacktop had been eliminated in favor of additional brick and concrete. While some reinforced turf was used within the lot (in designated overflow areas), its use was not widespread due to longevity concerns if used by parked vehicles too frequently. The lot, as designed, proposed 42 parking spaces (including 3 overflow spaces). In consultation with the Planning Commission, a 4-foot high evergreen buffer was placed between this lot and the adjacent M&T parking lot.³ Along 3rd Street, a brick sidewalk would be in place, along with an iron fence with brick columns. Evergreen screening would be incorporated in the corner adjacent to M&T. Small ornamental trees were incorporated with the iron fencing so as to add design elements while not impeding site lines or inhibiting ADA compliance. When questioned regarding the chosen location for ADA compliant parking spaces, Mr. Hayes noted the desire to place those spaces closer to the park and the walkway to be constructed there.

Mr. Hayes noted that, at most, one on-street parking space could be lost on 3rd Street. The existing fire hydrant will be relocated to avoid any conflicts and that the exit for the parking lot is to be aligned with Foundry Street, across 3rd Street from the exit. While the entrance/exit was approximately 25-30 feet from the entrance/exit to the adjacent M&T lot, this location was vetted by both the Planning Commission and the City Code official. He noted that traffic exiting the parking lot would be limited to left turns on 3rd Street (which is one way) or crossing 3rd Street to Foundry Street, thus limiting conflicts with the M&T parking lot.

Finally, Mr. Hayes walked the Board through the interior design of the proposed parking lot, noting the landscaping to be incorporated within. The landscaping, which will be maintained by the Trustees, is designed to incorporate flowering species while, at the same time, utilizing evergreen species for screening. A stormwater management facility will be constructed between the lot and Battery Park. Mr. Hayes walked the Board through the design and impact of this facility, noting that it would work in concert with the new drainage improvements being

³ During the hearing it was suggested that this lot should be combined with the adjacent M&T lot, however, the applicant testified (without contradiction) that, while M&T was approached with this thought, it declined to participate in the project or agree to a combined entrance.

constructed in the Park. In addition, he walked the Board through the lighting plan for the project. In concluding the presentation, Mr. Taylor noted that there will be two security cameras installed within the parking lot, with wiring for additional cameras if needed. The Trustees will coordinate with the police department regarding the monitoring of these cameras. Mr. Hayes noted that this same infrastructure could be utilized by the City to incorporate a pay kiosk or gate system at the parking lot.

Following the conclusion of the Trustees presentation, the Mayor opened the floor to the public for comment. Approximately 18 people took advantage of this invitation, with three people speaking in favor of the application and 15 people testifying either in opposition or asking questions about the proposal. In addition, those opposed to the application introduced 10 items into evidence. Those speaking in favor of the application noted the need for such a facility, the benefit to the City from additional off-street parking, the increase in the number of visitors anticipated by the Town, the improvements to the drainage system in this area, and the benefits to surrounding residents of additional off-street parking.

Those speaking in opposition raised a number of concerns. These included the lack of voluntary participation by residents of the City in the prior parking surveys, the desire for private business to share parking for public purposes, the impact on the Historic District, concerns with the ability of the Trustees to maintain the landscaping on the property, the scale of the 42 space parking lot in proximity to the Park, compliance with ADA requirements, the narrowness of 3rd Street (which is one way) and related traffic concerns with the addition of a 42 space, off-street parking lot in this area. In addition, several members of the public questioned the need for a parking lot in this area, citing the availability of on-street parking on 3rd Street or the infrequency of high parking demands in the City. A number of residents signed a petition opposing the parking while others testified that such a lot could have negative impacts on their property values. Several residents testified that, in their opinion, the property should be left as open space. Finally, several residents raised questions regarding storm water management, noting the proximity of the parking lot to areas of Battery Park that are prone to flooding.

In rebuttal, the Trustees were asked to respond to these concerns. At the outset, the Trustees noted that the property did not carry with it an open space zoning designation, noting the intended use (as well as the prior bowling alley use) was not constricted by such a requirement. It noted that the construction of the parking lot, as well as the location chosen, was in direct response to the studies and resolutions commissioned or adopted by the City seeking to create additional off-street parking opportunities. Mr. Hayes responded to the concerns raised regarding flooding. He noted that the storm water designs would be reviewed by both the City and the New Castle Conservation District and will be required to comply with all relevant (and current) storm water regulations, including those regulating floodplains. The City would have to

issue any approval to disturb or construct within the floodplain. Mr. Hayes noted that, in addition to the overall storm water management improvements being constructed in Battery Park, the storm water facility to be constructed as part of this project was designed to address overland runoff from areas beyond the boundaries of the parking lot. With regard to scale, Mr. Hayes noted that the parking lot's size had been reduced by approximately 1,100 square feet as the plan has progressed through the process. While the initial desire was to achieve approximately 50 parking spaces, as the design progressed and landscaping was added, 42 spaces was the most that could be achieved. Finally, Mr. Hayes noted that the slopes proposed within the parking lot property are consistent with those found within the Historic District.

Following the conclusion of the rebuttal, the Board closed the public hearing and proceeded to its business meeting. With regard to the remaining design criteria, the record was clear that these had been satisfied (with the condition imposed below). The design of the parking lot has incorporated appropriate visual screening through a mix of landscaping, brick columns and iron fencing (§230-28.1.B), no solid walls are incorporated as part of the design, rendering §230-28.1.D moot), and the exterior landscaping was designed to consist of primarily evergreen vegetation with sufficient gaps incorporated for access and security (§§230-28.1.E & F). The Board found that the design had been subject to design review by both the Planning Commission and HAC and that the result of those meetings was a pared down parking lot proposal that incorporated more landscaping than originally proposed, fewer parking spaces than desired, and revised landscaping to better fit into the area.

With regard to the question as to whether the special exception is in harmony with the purpose and intent of the Code and will not adversely affect the public interest, the Board acknowledged the concerns raised by those testifying on this matter while also acknowledging that the Applicant's proposed use was permitted, with certain design requirements, in the Historic District (subject to this Board's approval). Whether there was a need for additional parking, however, is not a component of this analysis. Instead, the focus of the analysis is on the requirement that any grant of a special exception must not "adversely affect the public interest". In examining this criterion, the Board did not limit its examination to immediate neighbors but focused on the public at large in examining this question.

After additional discussion, the Board votes to grant the special exception subject to the following conditions: (1) that the size of the parking lot be reduced from 42 parking spaces to 32 parking spaces; (2) that at least four of the eliminated parking spaces be located along 3rd Street such that additional landscaping can be installed in this area; (3) that that landowner be perpetually responsible for the maintenance of at least two security cameras within the parking lot; (4) that the landowner be perpetually responsible for the maintenance of the landscaping in and around the storm water management facility as well as the landscaping proposed to be added

to the site by the finally approved plan; and (5) that construction commence on the parking lot within two (2) years of the date of this decision, provided, however, that such time will be tolled during the pendency of any appeal of this decision.

Otherwise, the grant of the special exception to permit the use of the subject property as a surface parking lot in the manner described by the applicant is reasonably necessary for the use and convenience of New Castle residents. The Board finds that the grant of the special exception is in harmony with the purpose and intent of the Code and will not adversely affect the public interest. Potential concerns regarding the scale of this project were mitigated by the reduction in the size of this parking lot from 42 parking spaces to 32 spaces. In addition, the removal of parking spaces coupled with the requirement for additional landscaping will serve to further insulate neighboring properties from the parking lot. Finally, concerns over storm water management are mitigated by the ongoing work the Trustees are presently engaged in in the area of the site as well as by the fact that the final site plans for the parking lot will be required to comply with existing City and state code provisions addressing these matters.

Vote: 2-1 (Grant: Athey and Losco, Deny: Gambacorta)

BOARD OF ADJUSTMENT OF
THE CITY OF NEW CASTLE

Jimmy Gambacorta, 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.