

**MINUTES
BUSINESS MEETING
NEW CASTLE COUNTY HISTORIC REVIEW BOARD
DEPARTMENT OF LAND USE - NEW CASTLE ROOM
87 READS WAY, NEW CASTLE, DELAWARE
August 4, 2020
5:00 P.M.**

The Virtual Business Meeting of the Historic Review Board of New Castle County was held on Tuesday, August 4, 2020 via Zoom meetings.

The meeting was called to order by John Davis at [5:00 p.m.]

The following Board members were present:

Perry Patel
Karen Anderson
Barbara Silber
Steve Johns
Rafael Zahralddin
John Davis

The following Board members were absent:

John Brook

Historic Review Board, Department of Law

Colleen Norris

The following Department of Land Use employees were present at the meeting:

Betsy Hatch
Marisa Lau

RULES OF PROCEDURE

Ms. Hatch read the rules of procedure into the record.

MINUTES & NOTICE OF DECISIONS

July 7, 2020 Business Meeting Minutes

On a motion made by Mr. Johns and seconded by Mr. Zahralddin, the HRB voted unanimously to approve the July 7, 2020 Historic Review Board meeting minutes.

OLD BUSINESS

None.

NEW BUSINESS

App. 2019-11735: 2203 W Newport Pike. (Located on the north side of W. Newport Pike, at the northwest corner of the intersection with Stanton Road, W Newport Pike, and Rock Avenue). Mill Creek Hundred. (TP 08-051.10-035). Demolition permit to demolish a ca. 1800 dwelling. NC5 Zoning. CD 9.

At a meeting held on August 4, 2020, the Historic Review Board considered the application, public testimony provided at its July 21, 2020 public hearing, as well as the recommendation provided by the Department of Land Use.

On a motion made by Ms. Anderson and seconded by Mr. Johns, the Historic Review Board voted unanimously to **TABLE** the application for 60 days with the understanding that the applicant work with the Department of Land Use on the application and report back to the Historic Review Board with a status update and with the understanding that the nine month hold period does not begin until the Board renders a decision pursuant to the current codes and ordinances (In Favor: Patel, Zahralddin, Anderson, Johns, Silber, Davis). Discussion preceding the vote included the following:

Ms. Hatch gave a brief presentation on the application's background and read the Staff Recommendation into the record. Ms. Hatch noted that the applicant had recently received legal counsel, who requested that the application be tabled until further notice. The Board discussed what would occur if the application was tabled rather than held for nine months according to Section 06.03.020.B of the New Castle County Code. Mr. Johns noted that the code had recently been changed to require that the nine-month hold is now taken from the HRB's date of decision, rather than the date the application was filed with the Department of Land Use. Ms. Norris noted that she could reach out to the applicant's legal counsel to inform her of the code requirements. The Board further discussed the process of tabling applications and how the application would appear back before the Historic Review Board at a later date.

Mr. Johns noted that he wanted the applicant to be aware that the nine month hold does not begin until the HRB renders a decision. He inquired how the application would be impacted if the pending legislation dealing with historic resources would be adopted. Ms. Hatch noted that the Department of Land Use had not received a subdivision plan for the subject site. Ms. Silber and Mr. Zahralddin noted that the Board should receive updates in order to avoid further demolition by neglect on the property so that the application does not get lost in the shuffle.

App. 2020-05981: 565 Walker School Road. (Located on the west side of Walker School Road, north of the intersection with Gardener School Road). Blackbird Hundred. (TP 15-011.00-026). Demolition permit to demolish a ca. 1930 dwelling. SR Zoning. CD 6.

At a meeting held on August 4, 2020, the Historic Review Board considered the application, public testimony provided at its July 21, 2020 public hearing, as well as the recommendation provided by the Department of Land Use.

On a motion made by Mr. Patel and seconded by Ms. Anderson, the Historic Review Board voted to **TABLE** (In favor: Patel, Anderson, Silber, Zahralddin; Opposed: Johns, Davis) the application with the understanding that the Board will be provided with an update by September 1, 2020 at which point the applicant will provide additional information regarding the demolition.

Ms. Hatch gave a brief presentation to the Board and read the staff recommendation into the record. Ms. Silber asked if the Division of Fish and Wildlife was still in consultation with the Division of Historic and Cultural Affairs (DHCA) and asked if Section 106 would come into play for this application. Ms. Hatch noted that the only information the Department had received from Fish and Wildlife was a memo notifying the DHCA of the demolition with CRS forms enclosed and that she did not believe that Section 106 came into play. Ms. Silber noted that Section 6(f)¹ should be looked at in case it did apply in this situation. Ms. Anderson inquired if the applicant was working with the Department on other proposals. Ms. Hatch clarified to the Board that the applicant has only requested a demolition permit.

Mr. Johns stated that it would be great if there was an easy way for a subdivision to occur so that the house could be maintained and sold separate from the land to be preserved. He noted that the subdivision process in New Castle County is difficult and noted his concerns delaying the application and would rather vote for a nine-month hold on the application. Other Board members noted the concerns raised by Mr. Johns and expressed that additional information should be provided to the HRB before they came to a decision. Ms. Silber recommended that the application be tabled for 60 days so that the application does not get lost in the shuffle but that the applicant can provide the HRB with additional information. Mr. Davis noted that the HRB had asked the applicant to provide information between the DHCA and the Division of Fish and Wildlife regarding the demolition and that the applicant only provided a memo that was sent to the DHCA and not a response or determination from the DHCA. The Historic Review Board discussed the appropriate amount of time to table the application. Ms. Anderson made a motion to amend the motion to table the application until September 1st, at which point the applicant should provide the Board with an update.

App. 2020-07988: 212 Woodlawn Road. (Located on the south side of Woodlawn Road, west of the intersection of Woodlawn Road with Rocky Run Pkwy). Brandywine Hundred. (TP 06-029.00-002.) Demolition permit to demolish a ca. 1900 dwelling adjacent to the Pilot School. SE Zoning. CD 2.

At a meeting held on August 4, 2020, the Historic Review Board considered the application, public testimony provided at its July 21, 2020 public hearing, as well as the recommendation provided by the Department of Land Use.

¹ 36 CFR 59.3

On a motion made by Mr. Johns and seconded by Mr. Zahralddin, the Historic Review Board voted unanimously to **HOLD** the demolition permit in order to provide the applicant an opportunity to work with the Department of Land Use to explore other alternatives to demolition of the structure. Discussion preceding the vote included the following:

Ms. Hatch gave a brief presentation on the application and read the Department's recommendation into the record. Mr. Johns noted that this is another example of a situation where an easy way to subdivide and sell the property would be beneficial and noted that the owners should seek an alternative to demolition.

App. 2020-0001: 407 Boxwood Road. (North side of Boxwood Road, 170 feet west of North Avenue.) (TP 07-042.40-180.) Christiana Hundred. Subdivision plan to subdivide an existing parcel into two lots and demolition of the existing dwelling constructed ca. 1800. NC5 Zoning. CD 1.

At a meeting held on August 4, 2020, the Historic Review Board considered the application, public testimony provided at its July 21, 2020 public hearing, as well as the recommendation provided by the Department of Land Use.

On a motion made by Ms. Anderson and seconded by Mr. Zahralddin, the Historic Review Board voted unanimously to recommend **CONDITIONAL APPROVAL** of the minor subdivision plan in accordance with Criteria B, D, and K of Section 40.15.110 of the New Castle County Code with the following conditions:

1. The applicant work with the Department of Land Use on the design and installation of an historical marker, which shall be identified on the plan.
2. A Phase IA archaeological investigation be completed on the property.

Discussion preceding the vote included the following:

Ms. Hatch gave a brief presentation of the application and noted that the existing historic structure had since been demolished due to the nine-month hold period lapsing. Ms. Norris advised the Board that a determination must first be made by the Board if the site has historical value absent the house on the site.

On a motion made Ms. Anderson and seconded by Mr. Zahralddin, the Historic Review Board voted that the site does have historical value due to the agrarian history of the site (In Favor: Patel, Silber, Anderson, Zahralddin; In opposition: Davis, Johns). Ms. Silber noted the likelihood of archaeological resources on the site that could contribute to its historical value. She recommended that a Phase IA investigation be completed on the site to determine if anything could be learned about the occupation of the site and if it met Criterion K under Section 40.15.110 of the UDC. Ms. Anderson noted the site's agrarian history and stated she believed it had historical value enough to warrant an historic marker under Criterion D and B. Mr. Johns stated he was not sure if there was any historic context or value left in the land given the development surrounding the subject site. The Board

discussed various factors that could contribute to whether the site has historic value or not and whether the Board could make a recommendation on the application if there is not historic value on the site absent the house. Ms. Silber noted that there is a potential for archaeological resources that may be disturbed during the development of the property. Mr. Davis stated that he did not believe the site had historic value but did believe the property is still worthy of an historic marker.

Ord. 20-071: Comprehensive Update to amend Chapter 6 (“Building Code”), Regarding Article 2 (“Definitions”), Article 3 (“Administration”), New Castle County Code Chapter 40 (Also Known As The Unified Development Code Or “UDC”), Regarding Article 7 (“Transferable Development Rights And Bonuses”), Article 15 (“Historic Resources”) And Article 33 (“Definitions”) Regarding Code Provisions Relating To Historic Resources.

At a meeting held on August 4, 2020, the Historic Review Board considered the ordinance, public testimony provided at its July 21, 2020 public hearing, as well as the recommendation provided by the Department of Land Use.

On a motion made by Ms. Anderson and seconded by Mr. Johns, the Historic Review Board voted unanimously to recommend **APPROVAL** of Ordinance 20-071 with the understanding that comments received by the Historic Review Board would be taken into consideration.

Discussion preceding the vote included the following:

Ms. Hatch gave a brief presentation on the ordinance and outlined the intent and goals of the legislation, which included housekeeping of the Unified Development Code to ensure that the code functions in tandem, codification of existing Historic Review Board procedures, incentives for Historic Overlay zoning, new adaptive reuse provisions, and the protection of historic resources that are identified on major land development plan. Ms. Hatch noted that the Department intends on incorporating comments received from the State of Delaware PLUS process. Ms. Hatch noted that Ms. Anderson had shared with the Board suggested edits and comments and addressed some of the general questions that were raised.

Mr. Johns inquired about the density bonus that is included in Article 7 and how the process works, whether the bonus received is up to the Department of Land Use or up to the Historic Review Board. He stated that any structure that is determined significantly important to the county should remain, regardless of the 50-year statement. He stated that he did not agree with where the nine-month hold period begins in the proposed legislation. Ms. Hatch clarified that the density bonus language in Article is existing language that has been reworded and the bonus to be received is recommended by the Historic Review Board and is determined in conjunction with the Department of Land Use. Ms. Hatch noted that an applicant would have to submit a pro-forma noting the cost of renovation and the fair-market value of the house, which the Board would use to weigh the density bonus received. Ms. Anderson inquired who would determine fair-market value. Ms. Hatch clarified that

an appraiser determines fair-market value. Ms. Anderson inquired if the code states that a certified appraiser must be utilized in order to assess fair market value.

Ms. Hatch addressed the nine-month hold question raised by Mr. Johns, noting that the code was recently changed in order to ensure the public vetting process had begun for an application in order to avoid applicants applying for a demo permit but not appearing before the Board until several months later. She noted the code was recently changed to state that the nine-month hold period begins once the HRB renders a decision, something they must do within 45-days of application. Ms. Hatch noted that Council wanted to ensure that applicants receive a timely decision, which is why the 45-day provision was added; however due to legal noticing requirements and the nature of the schedule of the Historic Review Board, that often-times cannot be accomplished. Ms. Hatch noted that the proposed ordinance proposes minimum submission requirements for demolition applications and that the nine-month hold begins from the date of a written opinion sent to the Code Official from the Historic Review Board.

Mr. Johns stated that he felt the nine-month hold should be taken from the date of an initial public hearing. Ms. Anderson stated that she agreed with the nine-month hold taking place nine-months from the date a decision is rendered by the Board. Ms. Hatch noted that the Department is proposing minimum submission requirements for an application to appear before the Historic Review Board, which would help the Board be better equipped to render a decision.

Ms. Anderson raised her comments and questions that were shared with the Board. Ms. Hatch outlined the changes to Chapter 6, noting that there are situations where changes are made to a structure that do not require a permit and that the ordinance proposes language that clarifies that within Historic Overlay districts, the Historic Review Board does have purview over the exterior materials of an historic structure within an Historic overlay district. Ms. Anderson recommended making the distinction between an Historic Resource application and demolition application in Section 06.03.020.B of the proposed ordinance. Ms. Hatch outlined the Department's intent to establish an Historic Resource application that specifically deals with items appearing before the Historic Review Board.

Ms. Anderson addressed comments and questions regarding Article 7 of the ordinance. She stated that she felt there could be additional guidance on how the Historic Review Board recommends incentives for a land development proposal. Ms. Hatch noted that language in Article 7 was revised to be under the purview of Historic overlay zoning, while also providing flexibility to the Historic Review Board to make decisions on what is appropriate regarding the preservation of a structure.

Ms. Anderson inquired about the adaptive reuse provisions, noting there should be standards regarding lighting around historic structures. Ms. Hatch clarified that the Unified Development Code has minimum lighting standards, however they are located in another Section of the UDC that requires that a lighting plan be submitted as part of a parking plan.

On a motion made by Mr. Johns and seconded by Mr. Zahralddin, the Historic Review Board voted to recommend conditional approval of Ordinance 20-071 with the condition

that the nine-month hold period included in Section 06.03.020.B begin from a date of an initial presentation by an applicant at a public hearing rather than from the date of a written decision submitted to the Code Official (In Favor: Johns; In Opposition: Davis, Anderson, Patel, Silber, Zahralddin). After the following discussion, the motion failed.

Mr. Johns stated that his concerns arise with the tabling of applications rather than placing a nine-month hold on an application. Ms. Anderson stated that often time applicants come in without the necessary information and the Board had little time to aid an applicant in alternatives to demolition when the HRB deems alternatives are deemed appropriate. She stated that sometimes the Board does not have enough time and information upfront to make a decision and for the public to be adequately involved.

Mr. Johns stated that with the new appendix requirements, the Board should be better equipped to make a decision sooner and tabling may not be necessary. He noted that an adequate amount of time should be expected to be fair to an applicant. Ms. Anderson stated that the Board is tasked with being professional and responsible as well as understanding of the applicants and situations that the applicants find themselves in. She stated that the Board does not table things without reason and that the Board is professionally responsible to assess situations in a fair and reasonable manner. She noted that when the Board had decided to table an application, they did not do it for an indefinite time period but tabled it for a certain amount of time. Ms. Silber agreed with the comments raised by Ms. Anderson and stated that the decision is where the Historic Review Board prompts an applicant to do something. Mr. Zahralddin noted he has concerns about applicants trying to circumvent the system. The Board further discussed the nature of how Board meetings occur, the existing meeting schedule, and what a reasonable time would be for an application to be considered by the Board.

REPORT OF THE PRESERVATION PLANNER

Ms. Hatch stated that the Department is continuing to work on the Historic Marker Program as proposed by Councilwoman Durham and is continuing to work out the logistics of the process. She noted that the program proposed does fall within the purview of the Historic Review Board that could be reviewed at a monthly business meeting. The Board members suggested that a certificate signed by the Historic Review Board could be an appropriate item provided by the Board to accompany the approval of an historic marker.

REPORT OF THE CHAIRPERSON

None.

COMMENTS FROM THE PUBLIC

None.

ADJOURNMENT

The Board voted to adjourn the meeting at 7:53 p.m.

ATTEST:

Richard E. Hall, AICP
General Manager
Department of Land Use

John R. Davis
Chairperson
Historic Review Board