

**MINUTES  
BUSINESS MEETING  
NEW CASTLE COUNTY HISTORIC REVIEW BOARD  
DEPARTMENT OF LAND USE - NEW CASTLE ROOM  
87 READS WAY, NEW CASTLE, DELAWARE  
October 1, 2019  
5:00 P.M.**

The Business Meeting of the Historic Review Board of New Castle County was held on Tuesday, October 1, 2019 in the New Castle room of the Government Center Building, 87 Reads Way, Corporate Commons in New Castle, DE.

The meeting was called to order by Chairperson Barbara Benson at [5:00 p.m.]

The following Board members were present:

Dr. Barbara Benson  
John Davis  
Perry Patel  
John Brook  
Steve Johns  
Karen Anderson  
Barbara Silber  
Rafael Zahralddin

The following Board members were absent:

None

Historic Review Board, Department of Law

Colleen Norris

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

Elizabeth Caufield  
Christopher Jackson  
George Haggerty

The following members of the public were in attendance:

Bill Rhodunda  
Councilwoman Dee Durham

**RULES OF PROCEDURE**

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

**MINUTES**

September 3, 2019 Business Meeting Minutes

On a motion made by Mr. Brook and seconded by Mr. Patel, the Historic Review Board voted unanimously to approve the September 3, 2019 Business Meeting Minutes.

**OLD BUSINESS**

None.

## NEW BUSINESS

App. 2019-0358-S: 851 Corner Ketch Road. (Southwest side of Corner Ketch Rd., south side of intersection with Karrington Dr., northeast side of Meadowbrook Ln.). Mill Creek Hundred, (TP 08-029.10-110). Exploratory Minor Subdivision Plan to establish three parcels. NC21 Zoning. CD 3.

At a business meeting held on October 1, 2019, the New Castle County Historic Review Board considered the public testimony provided by the applicant at its September 17, 2019 public hearing, as well as the recommendation provided by the Historic Preservation Planner. On a motion made by Mr. Brook and seconded by Mr. Patel, the Historic Review Board voted unanimously to grant **CONDITIONAL APPROVAL** of the application based on the submittal of a landscape plan.

In discussion preceding the vote, the Board members offered the following comments:

Dr. Benson stated that she remembered the property owners developing the subdivision wanted to ensure that the Historic Review Board had purview over what happened to the land around the historic buildings. Mr. Brook stated he believes the proposal will not interfere with the historic nature of the buildings that are to be preserved. He stated that the concerns from the surrounding community largely dealt with aspect of the plan that are outside the HRB's purview, including traffic and community association rules. Dr. Benson stated that she drove past the site and it appeared that the new dwelling is proposed to be in a location that is lower in grade than the rest of the property and with buffering, there would be a minimal impact to the historic buildings. Mr. Brook agreed and stated he did believe that it would be important for the new construction to be buffered. Mr. Patel agreed and stated that he supports the subdivision of the land if the new construction is buffered.

Ms. Silber noted that the subject site is located in an area of New Castle County that has a medium to high likelihood of archaeological resource.

Dr. Benson inquired if one of the dwellings was adaptively reused, if it would have to come back before the HRB at that point. Ms. Caufield stated that it would have to come back before the HRB for an adaptive reuse. Mr. Johns inquired if the buildings are within an Historic Overlay District, and if they would be required to place an H Overlay on the property to adaptively reuse the property. Ms. Caufield clarified that if someone wished to use a dwelling as an office within a residential zoning district, then an Historic Overlay would have to be pursued. She stated that if another nonresidential use was proposed, a rezoning would have to be pursued. She clarified that there has not been an application for an adaptive reuse or rezoning on the property.

Mr. Johns inquired what type of buffer should be required, as the UDC has a number of buffering requirements. He inquired if a certain opacity be required as part of the buffer or if the Board should leave it as a recommendation. Mr. Brook stated that he didn't believe there needs to be an absolute requirement, but it would need to be enough to separate the new dwelling from the historic building. Dr. Benson noted the grade difference in the lot. Mr. Johns stated that he house is also proposed to be a one-story residence. Dr. Benson stated that once the HRB votes on the motion, she offered that the Staff would be able to review the landscape plan professionally in order to determine if the buffer is sufficient.

App. 2019-0403-S: 4601 N Market Street. (North side of N Market St., east of intersection with Shipley Rd.). Brandywine Hundred, (TP 06-139.00-017). Exploratory Major Land Development Plan for N. Wilmington Self Storage and proposed demolition of ca. 1950 commercial shopping center. CR Zoning. CD 4.

At a business meeting held on October 1, 2019, the New Castle County Historic Review Board considered the public testimony provided by the applicant at its September 17, 2019 public hearing. On a motion made by Mr. Johns and seconded by Mr. Brook, the Historic Review Board voted unanimously to approve the plan and **RELEASE** the demolition permit of the existing structure at the time of application.

In discussion preceding the vote, the Board members offered the following comments:

Mr. Johns stated he did not find any historical significance in the building and moved that the demo permit be approved.

App. 2019-03091: 1626 Old Coochs Bridge Road. (West side of Coochs Bridge Rd., south of intersection with Old Baltimore Pike). Pencader Hundred (TP 11-014.10-002). Residential building permit to construct a 1,386 sq.ft. addition on a ca. 1842, National Register structure known as Baynard Hall. NC21 Zoning. CD 11.

At a business meeting held on October 1, 2019, the New Castle County Historic Review Board considered the public testimony provided by the applicant at its September 17, 2019 public hearing. On a motion made by Mr. Brook and seconded by Ms. Silber, the Historic Review Board voted unanimously to grant **APPROVAL** of the permit, with a high recommendation that a preliminary archaeological study of the area of disturbance be completed prior to the addition's construction.

In discussion preceding the vote, the Board members offered the following comments:

Mr. Brook stated that he thought the applicant's presentation was well done and that he appreciated the use of the structure to encourage aging in place. He stated that he did have a number of concerns, including the fact that the property sits in the area of where the skirmish of Cooch's Bridge occurred during the Revolutionary War and there are a number of archaeological resources in the area, as well as the site is near an ancient Paleolithic settlement that was built on the banks of a lake at the end of the last ice age that had never been disturbed. He stated he didn't know if the site had been surveyed for these types of resources and that the Board's archaeologist provide guidance on how to ascertain if there are things of historical interest.

Ms. Silber stated that there is a significant amount of archaeological potential at the subject site. She stated that constructing an addition on a portion of the property that has not been disturbed before does cause some concern. She stated that an archaeological assessment of some sort is recommended for the site to ascertain if there are archaeological resources present. She stated that a Phase IA or IB would be appropriate, depending on whether there is potential for in-tact archaeological deposits. She stated that it can be completed with background research as well as on-site testing as shovel tests. She stated that it would be a small effort completed by an archaeological team that meet professional standards.

Mr. Zahralddin inquired what the consequences would be if something were to be found during the construction of the dwelling. Ms. Silber stated it depended on what was found. Ms. Caufield clarified that if human remains were to be found, that the applicant / property owner would be subject to Delaware Code regarding unmarked human remains. Ms. Silber stated that she believed one of the benefits of having an archaeological study completed is that the property owner would have an idea of whether something is there. Ms. Caufield clarified that there is a patio and pool in the vicinity of the proposed addition.

App. 2019-11372: 3506 Philadelphia Pike. (Southeast side of Philadelphia Pike, located at the east corner of the intersection with Wiltshire Rd.). (TP 06-071.00-205). Demolition permit to demolish a commercial gas station canopy constructed ca. 1955. CN & HTO Zoning. CD 8.

At a business meeting held on October 1, 2019, the New Castle County Historic Review Board considered the public testimony provided by the applicant at its September 17, 2019 public hearing, as well as a recommendation provided by Staff. On a motion made by Mr. Brook and seconded by Mr. Patel, the Historic Review Board voted unanimously to **HOLD** the demolition permit to provide the applicant with an opportunity to find alternatives to demolition, as the repair of the structure would cost the same as a new canopy structure and the existing canopy is an integral part of the character of the building and surrounding area.

In discussion preceding the vote, the Board members offered the following comments:

Mr. Brook stated that the applicant is intending to tear down the existing gas canopy and replace it with a new canopy. He stated that it appeared the only issue with the existing canopy is that the roof leaks, based on the applicant's testimony at the hearing. He stated that it did not appear that the existing canopy had any sort of structural problems, and that the style of canopy present on the site is typical of a 1950s station which fits the character of the neighborhood. He stated that he would recommend that the applicant repair the structure over pursuing demolition.

Dr. Benson inquired who has jurisdiction within Hometown Overlay Zoning Districts. Ms. Caufield clarified that any new construction must be approved by the Claymont Design Review Advisory Committee (DRAC). Mr. Brook stated the applicant testified that the repair of the structure would cost roughly the same amount as the construction of a new canopy. Mr. Johns inquired if the owner had been given any sort of complaint from the County or if there is any sort of violation on the property. He stated that if the permit is held, then the potential danger of an unsafe structure would remain. Mr. Haggerty stated that he wasn't sure what the code violation was for; however, it appeared obvious that the roof leaked. He stated that he was not sure if it extended to the point of the canopy being structurally unsound; however, if it were determined to be a hazard, the Code Official maintains the ability to step in and require that it be demolished. Mr. Brook stated that it should be noted there is a fence around the property to prevent people from coming into the site.

Ms. Silber stated that the HRB should take into consideration that the canopy is an integral part of the structure and if the canopy is removed, the structure as a whole could be impacted. Ms. Anderson stated the applicant had stated the goal was to demolish the canopy, construct a new canopy, and utilize the building as a convenience store. Dr. Benson stated that the applicant did not provide any plans outlining as such.

Mr. Johns stated that he was concerned whether the canopy meets the standards for modern gas stations, and that the slope of the roof may be considered too low. He stated that in that case, he would understand the applicant wanting to take the existing canopy down. Dr. Benson stated her sense was the applicant came in early and perhaps it would be beneficial if the applicant were to come back with more defined plans for the site. She stated the Claymont community would also have input when it comes to the new construction of a canopy. Mr. Zahralddin inquired if there was a planned tenant for the site, as if there were a gas-station tenant asking for the canopy to be demolished; however, it did not sound like that were the case. He stated that if there are height issues, then the application appeared before the HRB prematurely. Ms. Silber stated that there also is no additional information on the state of the rest of the building. Mr. Brook stated that the canopy was an integral part of the roofline. Mr. Patel stated that it was unclear who the tenant would be and what the exact plans are for the site.

Prior to deliberating on the proposed piece of legislation and draft legislation, the Board members discussed the role of the Historic Review Board in accordance with Section 40.30.330 of the Unified Development Code, which established the Historic Review Board's responsibilities. On a motion made by Mr. Brook and seconded by Mr. Patel, the Historic Review Board voted unanimously to discuss the proposed legislation and draft legislation. The Board members offered the following comments:

Mr. Brook stated that the ordinances presented to the HRB were presented in order to hear the HRB's opinion. He stated that the nature of the Board is that it can offer professional expertise on legislation impacting historic resources. He stated that the UDC lists a number of duties the HRB is responsible for and what it shall do. He stated that it does not state what the Board cannot do, and he did not believe providing a Councilperson with input on legislation is an unusual request. Dr. Benson stated that the Board has previous precedent in regard to commenting on proposed legislation.

Ordinance No. 19-080: To amend New Castle County Code Chapter 6 ("Building Code"), Article 3 ("Administration"), Sec. 06.03.020. ("Special Guidelines for Work Done on Historic Structures") regarding issuance of a demolition permit by the Historic Review Board.

- *This Ordinance proposes to amend the New Castle County Code to provide that the Historic Review Board may order a delay of issuance of a permit to demolish a historic property not to exceed nine (9) months from the date the written opinion was issued to the applicant, not the date of receipt of the permit application as currently applied.*

At a business meeting held on October 1, 2019, the New Castle County Historic Review Board considered the public testimony provided by the applicant at its September 17, 2019 public hearing, as well as a recommendation provided by Staff. On a motion made by Mr. Brook and seconded by Mr. Patel, the Historic Review Board voted to **APPROVE** Ordinance No. 19-080 (In Favor: Benson, Davis, Brook, Patel, Anderson, Silber, Zahralddin; In Opposition: Johns).

Preceding the vote, the Board offered the following comments:

Ms. Caufield read in the Department's recommendation for approval of Ordinance 19-080 into the record. Mr. Brook stated he supported the Department's position, as it allows for a full nine months to work with an applicant rather than appearing before the Board some time after the date of application without any information. Mr. Johns stated he had a concern with the Ordinance proposing the nine-month hold beginning at the date of a written decision, as the HRB could extend the nine month period by not making a decision or opinion. He stated that he believes that it would be a disservice to the public, and that he proposes the nine months should start from the date of the initial hearing.

Dr. Benson stated that the Board could not hold a permit in perpetuity. Mr. Johns inquired if the HRB could table something in perpetuity in order to stop a decision from occurring. Mr. Haggerty clarified that the Board could not table an application in perpetuity. He stated that the system is as it is now requires some improvements, and the proposed ordinance takes the opportunity away from an applicant coming before the HRB with an incomplete presentation, and then the HRB never hearing from the applicant again. He stated it would foster both parties getting to a resolution quicker rather than later.

Mr. Johns inquired if an applicant were to come in and make an incomplete presentation, how that would stop the Board from not coming to a decision and holding an application in perpetuity. He stated he did not believe that the current Board would do as such, however a future Board could. Mr. Zahralddin stated that if the Board were to hold a permit forever, that it would likely lead to some legal action. Mr. Johns stated that the HRB does not have power to require an archaeological study or require certain materials be utilized if a property is not within an Historic Overlay. Dr. Benson stated that the reason the ordinance was proposed was because an application had appeared before the Board with the nine months already ticking.

Mr. Brook stated that applicants have appeared before the Board with absolutely no information and then never return with information. Mr. Johns stated that if it is understood that Board will render a decision with a certain timeframe after the public hearing, then the applicant would be

provided with some certainty. Ms. Anderson stated that the HRB is required to work in a timely manner as listed in the UDC. She stated that the Board has an attorney to make sure that the Board follows the code and is not arbitrary and capricious. Ms. Caufield stated that the HRB is required to complete Historic Overlay reviews within a timely manner based on the requirements of the Unified Development Code. Mr. Haggerty stated that a number of times an applicant will choose not to appear or engage with the Board, as the process is set up in more of an encouraging manner rather than incentivizing an applicant to appear before the Board.

#### Tax Exemptions and Historic Overlay Properties in New Castle County

- Chapter 14 of the New Castle County Code, Tax Exemptions

The Board members offered the following comments on the proposed piece of draft legislation:

Ms. Caufield gave a brief synopsis of the proposed draft language. Mr. Haggerty stated that he believed there was more work on an ordinance that needs to be done and that the Department was looking for some guidance and thoughts from the Historic Review Board. He stated that the sponsor was targeting review for non-profits seeking tax exemption status when utilizing an historic structure.

Ms. Anderson stated that it seemed that it would penalize a nonprofit, organizations that historically have monetary struggles, and are often times required to spend money on their missions only rather than outside of a mission's purview. She stated that she didn't understand why commercial or corporate entities wouldn't be included in an ordinance like this, as they have access to more resources and could use this as a marketing item and attractive quality. She stated that it may not be targeting the correct group.

Dr. Benson inquired if the draft addressed new nonprofits only. Councilwoman Durham clarified that the proposed draft was for new nonprofits applying for tax exemption with the County and that the proposed draft would not impact a nonprofit's overall tax-exempt status with the IRS. She stated that every time a nonprofit changes hands, a nonprofit does have to come back to the County for tax exemption on property tax. She stated that this could be an opportunity to place protections on an historic resource, as a nonprofit could save a significant amount of money through a property tax exemption.

Mr. Johns stated concerns over a nonprofit purchasing a property, finding out it is historic and then being required to place an Historic Overlay on the property. He stated that should the nonprofit want to then make modifications to the historic structure, they would be required to go through the process, use higher quality materials, and have to spend more money in the long run. Ms. Norris clarified for the Board that the proposed draft ordinance would add an additional requirement to the existing property tax exemption application requirements, which would be that if a property is historic, a rezoning would be required prior to receiving a property tax exemption.

Ms. Silber stated that historic based nonprofits would find the proposed draft ordinance ideal; however, if there were nonprofit that was not historic preservation based and historic preservation was not part of the mission statement, the draft ordinance will discourage nonprofits from purchasing historic properties and may feel like they were in a position where they could not grow. The Board agreed that requiring an H Overlay could discourage nonprofits from purchasing historic properties in general and may result in nonprofits seeking non-historic properties. The Board agreed that there would need to be an incentive to place an Historic Overlay on the property in addition to a property tax exemption.

Ms. Anderson stated she appreciated that there is a group that is focusing on how to improve historic preservation in Delaware. The Board concurred that the dialogue is helpful to understand what obstacles exist in order to make improvements to historic preservation efforts. Ms. Silber stated that there should be incentives to help with the perception that an Historic Overlay is an ominous thing. Mr. Zahraiddin

stated in places like Virginia, who has a very mature tax credit program, historic preservation is a significant economic incentive.

**REPORT OF THE PRESERVATION PLANNER**

Ms. Caufield reiterated that there may be some other new ideas coming before the Board in regard to legislation and strengthening historic preservation policies.

**REPORT OF THE CHAIRPERSON**

None.

**COMMENTS FROM THE PUBLIC**

None.

**ADJOURNMENT**

The Board voted to adjourn the meeting at 6:19 p.m.

**ATTEST:**



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



Dr. Barbara Benson  
Chairperson  
Historic Review Board