

**CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT
NOTICE OF DECISION**

APPLICANT: Walter Wisowaty
116 Canal Street
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-007.00-137
PUBLIC HEARING DATE: March 30, 2006
DATE OF DECISION: April 6, 2006

REQUESTED: Applicant requested a special exception to allow for two semi-detached houses as well as lot frontage variances for proposed lots B from 50' to 28.30' and for proposed lot C from 50' to 28.30'. Applicant further requested lot area variances for lot B (from 5,000' to' 2016 ') and for lot C (from 5000' to 2016') for the property located at 116 Canal Street (NCC Tax Parcel No. 22-007.00-137) and presently zoned C-1.

The Board of Adjustment may grant a special exception to permit semi-detached houses in an C-1 Zone pursuant to Zoning Code §46-16(t) which permits one family, semi-detached dwellings in an R-1 zone if a special exception is granted by the Board of Adjustment, §46-200(a) which permits R-1 uses in the C-1 zone and §46-121(c)(12) where, after public hearing, it is determined: 1. that a proposed use on a specific lot or parcel is reasonably necessary for the convenience and /or welfare of the public; and 2. that the proposed use on the lot or parcel involved is not detrimental or injurious to the neighborhood or the City. The Board may condition any such grant as the Board deems necessary to protect the health, safety and welfare of the neighborhood and the City.

The Board of Adjustment may grant a variance from the dimensional requirements of the City of Delaware City Zoning Code where it finds the applicant or property owner is experiencing exceptional practical difficulty in complying with the specific standards of the Zoning Code applicable to the subject property and where substantial justice can be done without substantial detriment to the public good and without substantially impairing the intend and purpose of any zoning ordinance, code, regulation or map.

The subject property is an irregularly shaped lot comprising .42 acres and primarily fronting on Canal Street but with a small portion 56.01' wide extending 71.25' from the remainder of the parcel all the way to Clinton Street as shown on a proposed subdivision plan submitted by the applicant to the Board. It is this 71.25' by 56.61' rectangular portion of land that the applicant proposes to subdivide from the parent parcel into two new lots, shown as Parcel C and Parcel B on the aforesaid plan, and that is the object of the pending application before the Board. Specifically,

the applicant proposes to create two new parcels with Parcel C having 28.31' of frontage on Clinton St. and 2016 sq. ft. of lot area and with Parcel B having 28.30' of frontage on Clinton St. and 2016 sq. ft. of lot area. The C-1 zoning for these proposed lots requires 50' of road frontage and 5000 sq. ft. of lot area for each. The applicant seeks dimensional variances from these requirements and a special exception to permit the construction of two semi-detached dwellings on the new lots. §46-121 (c) (12) grants the Board of Adjustment original jurisdiction to grant a special exception of a row house use in R-1 zone and C-1 zoning permits any R-1 zone permitted use.

The testimony and evidence indicated that the property is located in the historic zone. The surrounding block on this side of Clinton St. is predominantly row homes and many of the existing lots have less road frontage and lot area. The proposed lots would be average sized lots in comparison.

The City Manager reported that this City supports this application as being consistent with the surrounding area. The City notes that the Historic Planning Commission ("HPC") will have control over the architectural presentation of the proposed dwellings and their locations on the lots, including front setbacks. It was noted that no side yard setbacks are required in the C-1 zone. The City further noted that the Revised Notice and Agenda for the Board's meeting incorrectly stated that a Lot coverage variance is required for the applicant's proposed use. There is no lot coverage limitation in the C-1 zone. The City thus supports the application subject to subdivision approval by Mayor and Council of the property in substantial conformance with the submitted plan.

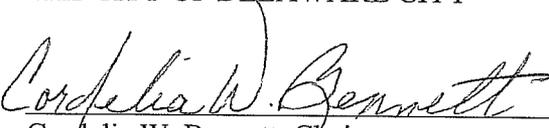
Two members of the public appeared to present objections to this application. The main thrust of their objections were threefold: 1. That insufficient street parking existed for 2 new dwellings in this area of Clinton Street; 2. That this application is premature and should be tabled until the applicant has full approval from HPC on their building design plans; and 3. That adequate space should be reserved on side yards to permit egress from the front of the lots to the rear and to permit the free flow of light and air as well as to permit maintenance of the sides of the adjacent buildings. The objecting neighbors did concede that adequate street parking exists on the opposite side of Clinton St. The applicant was unwilling to voluntarily restrict lot coverage percentage or reserve three foot side yard set backs.

The Board votes to grant the requested special exception for row houses and the dimensional variances subject to: 1. subdivision approval in accordance with the plot plan presented to the Board; 2. the establishment of 3 foot side yard building restriction lines on the external side yards of each of the proposed lots to preserve the free passage of light and air; and 3. an impervious lot coverage limitation of 67.5% of each of the proposed lots. The Board found that the parking concern was not warranted in that public street parking is open to anyone on a first come first serve basis and the construction on one more house that might otherwise be built as a matter of right would not create any additional parking problems of significance. The Board found that the proposed semi detached home use is reasonably necessary for the convenience and /or welfare of the public and that the proposed semi-detached use on the proposed lots involved is not detrimental or injurious to the neighborhood or the City. The Board further found that the applicant is experiencing exceptional practical difficulty with respect to the dimensional variances for the reasons cited by the applicant and the City Manager. The dimensional variances are consistent with other properties in the area

and is generally compatible with surrounding property uses and other uses in the Historic District. Moreover, the harm to the applicant and the community as a whole if the variances were denied would be greater than the probable effect on neighboring properties if the variances are granted. The granting of the variances will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the Zoning Code. The grant of the variances is conditioned upon the subdivision of the property in substantial conformance to the plot plan submitted to the Board by the applicant; the establishment of 3 foot side yard building restriction lines on the external side yards of each of the proposed lots; and an impervious lot coverage limitation of 67.5% of each of the proposed lots.

Vote: 3-0 (Grant: Bennett, Stewart and Losco)

BOARD OF ADJUSTMENT OF
THE CITY OF DELAWARE CITY


Cordelia W. Bennett, Chairperson

NOTE: This special exception and variance 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