

**CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: Delaware Holding, LLC/Whittaker Brothers
PO Box 531
Delaware City, DE 19706

NCC TAX PARCEL NOS. 22-007.00-062
PUBLIC HEARING DATE: May 23, 2006
DATE OF DECISION: July 31, 2006

REQUESTED: Applicant requested dimensional variances: (i) from the 15 foot front yard set back requirement of the Zoning Code, §46-31 to permit a zero foot set back; (ii) from off street parking requirements of Section 46-96; and (iii) from height limitation of 35 feet set forth in Zoning Code §46-31, all at 59 Washington Street, NCC Tax Parcel No. 22-007.00-062. Applicant further requested a special exception for approval of a condominium project for the Riverview at Washington Street Condominiums per §46-20.

The Board of Adjustment may grant a variance from the area or dimensional requirements of the City of Delaware City Zoning Code where it finds the applicant or property owner is experiencing exceptional practical difficulty, rather than routine difficulty, in complying with the specific standards of the Zoning Code applicable to the subject property.

The Board of Adjustment may grant a special exception to a condominium project in an C-1 Zone pursuant to Zoning Code §46-20(u) and §46-121 (c) 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 subject property is located in the C-1 zone and is in the historic district. The lot is approximately .2 acres in size, 79 feet wide and 108 feet deep. The applicant proposes a new structure comprised of 7 residential condominium units and 2 commercial units on the first floor to be known as the Riverview at Washington Street Condominiums. The proposed structure would be 60 feet wide and no higher than the height of the nearby Olde Canal Inn building. Residential end units and the commercial units will each be 1400 sq. ft. in size including balcony areas. Center residential units will be 1100 sq. ft. The Planning Board has recommended approval of the plan. The site would not have adequate space on off street parking. Instead, the applicant proposes to

install sidewalks, curbing, shoulder, pavement and striping on the Washington Street right of way so as to provide for 9 on street parking spaces to service the project. The subject property is also adjacent to a public off street parking lot that would be available to owners, occupants and guests. As proposed, the structure would have a zero front yard set back while 15 feet is normally required in the C-1 zone. Draft condominium documents (enabling declaration and code of regulations) were submitted to the City Solicitor for comment at least 20 days in advance of the Board of Adjustment hearing.

Testimony was presented by the applicant to confirm that the proposed zero front yard setback is consistent with several other residential structures in the general vicinity. The applicant testified that his intentions are to install 9 angle parking spots (including one handicap spot) in front of the proposed structure and within the City's Washington Street right of way. Parking improvements would include, sidewalks, curbing, paving, landscaping and shoulder installation the details of which would be subject to the approval of the City Manager. The subject property is also adjacent to the DRBA public parking lot. The proposed structure is to be 3 stories to take full advantage of river view and enhance value and marketability. Site configuration, the need for off street parking and the desire to make reasonable improvements lay the foundation for applicant's claim of exceptional practical difficulty in support of the variance requests.

The City Manager testified that the Planning Commission and the Historic Preservation Commission both voted after public hearing to approve the design and construction of the proposed structure, including a zero front set back, with conditions. The City Manager further testified that after due notice, no complaints from the public were received on this application and no members of the public appeared at the Board of Adjustment hearing to make complaint as well.

The City Manager further stated that the City recommends approval of the variances and the special exception with the following conditions:

1. The height of the structure shall not exceed that of the currently existing Olde Canal Inn property.
2. The applicant will construct certain street scape improvements including up to a 16 foot wide sidewalk, landscaping, curbing, nine angle parking spaces (one handicapped space) and pavement widening within the Washington Street right of way for the length of the property frontage as directed by the City Manager and all in accordance with City and DelDOT specifications
3. Prior to commencement of any construction, the applicant will post a bond, letter of

credit or other suitable financial guarantee in form and amount acceptable to the City for the value of street scape improvements including the curbing, parking space, road widening and sidewalk improvements specified above. The City, in its sole discretion, reserves the right to perform such construction work itself and require the applicant to reimburse the City for the cost of such work up to the amount of the bond, letter of credit or other financial guaranty.

4. The condominium documents shall be revised to prohibit any further subdivision of the property or any combination/consolidation of any of the 9 proposed units without first securing the positive recommendation of the City's Planning Commission and approval of the Board of Adjustment for alternation of the special exception granted hereby. The revised condominium documents shall be submitted to the City for approval prior to the sale or occupancy of any unit. Any future change to the condominium documents shall require Board of Adjustment approval as a material alteration of the special exception granted hereby.

The applicant verbally agreed to all conditions proposed. No opposition testimony was presented to the Board.

The Board votes to grant the requested variances and special exceptions with the following conditions:

1. The height of the structure shall not exceed that of the currently existing Olde Canal Inn property.
2. The applicant will construct certain street scape improvements including up to a 16 foot wide sidewalk, landscaping, curbing, nine angle parking spaces (one handicapped space) and pavement widening within the Washington Street right of way for the length of the property frontage as directed by the City Manager and all in accordance with City and DelDOT specifications
3. Prior to commencement of any construction, the applicant will post a bond, letter of credit or other suitable financial guarantee in form and amount acceptable to the City for the value of street scape improvements including the curbing, parking space, road widening and sidewalk improvements specified above. The City, in its sole discretion, reserves the right to perform such construction work itself and require the applicant to reimburse the City for the cost of such work up to the amount of the bond, letter of credit or other financial guaranty.

4. The condominium documents shall be revised to prohibit any further subdivision of the property or any combination/consolidation of any of the 9 proposed units without first securing the positive recommendation of the City's Planning Commission and approval of the Board of Adjustment for alternation of the special exception granted hereby. The revised condominium documents shall be submitted to the City for approval prior to the sale or occupancy of any unit. Any future change to the condominium documents shall require Board of Adjustment approval as a material alteration of the special exception granted hereby.

Otherwise, the Board determined that the requested dimensional changes are minimal in light of the existing lot configuration and the improvements thereon. It is generally compatible with surrounding property uses in the historic district. The lot configuration creates a situation of exceptional practical difficulty in that the owners cannot make normal improvements to the property in compliance with the Code set back requirements without unnecessarily impairing other reasonable uses of the property for parking or other improvements. Moreover, the harm to the applicant if the variance were denied would be greater than the probable effect on neighboring properties if the variance is granted. The granting of the variance will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the Zoning Code. The Board further determined that the proposed use reasonably necessary for the convenience and /or welfare of the public and that the proposed use is not detrimental or injurious to the neighborhood or the City.

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

BOARD OF ADJUSTMENT OF
THE CITY OF DELAWARE CITY


Cordelia W. Bennett, Chairperson

NOTE: This variance 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.