

**CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: John H. Nickle, Jr.
529 Clinton Street
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-010.00-001
PUBLIC HEARING DATE: November 28, 2006
DATE OF DECISION: November 29, 2006

REQUESTED: Applicant requested a dimensional variance to erect a 5 bay accessory garage structure 4.98 feet from the side lot line where the Code requires a 7 foot setback for his property at 529 Clinton St., Delaware City, Delaware, NCC Tax Parcel No. 22-010.00-001.

The Board of Adjustment may grant a variance from the use requirements of the City of Delaware City Zoning Code where it finds the applicant or property owner is experiencing unnecessary hardship 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 currently improved with a detached single family residence and an existing detached garage. The lot is oversized being 175 feet wide by 209 feet deep extending from Clinton Street through to Hamilton Street. The proposed garage building will be located at the northeast rear corner of the property behind and at an angle to the existing garage. The applicant desires to build the proposed structure to house and work on antique cars as a hobby. The testimony revealed that at the time a building permit was procured for this structure, no variance was needed since it was originally to be placed more than 7 feet from the side yard line. Later, the applicant discovered that due to the placement of the new structure close behind and at an angle to the existing garage, he would have difficulty navigating vehicles around the existing garage and into the bays of the new structure. He asked his builder and surveyor if the new structure could be moved closer to the side yard line to allow for easy vehicular access. Apparently believing that a 3 foot County set back line applied, the builder relocated the proposed structure 4.98 feet from the side yard and commenced to construct the foundation without seeking approval from City or County authorities. The error was discovered before the garage was fully constructed and this application resulted. The City Manager testified that he is satisfied that this is a case of innocent error rather than intentional

disregard for City law.

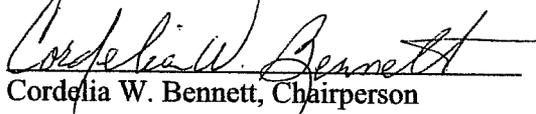
The applicant points to unique circumstances in that the original placement of the structure behind and at an angle to the existing garage made vehicular access to the new structure difficult and impractical. From review of the plot plan provided by the applicant, similar problems of access would exist if the structure were built behind the residence on the lot.

Robert Haugh, the neighboring property owner most directly affected by this application appeared at the hearing to register "no objection" to the grant of the variance. Under the circumstances of this case, the City Manager also indicated that the City has no objection to this application. He emphasized, however, that this variance is due to unusual circumstances involving the applicant's reliance on his builder and surveyor to have properly placed the foundation and that it should not be considered as a precedent in future variance applications. No other members of the public appeared at the hearing to comment on the application.

The Board votes to grant the requested dimensional variance. The variance is minimal in nature and reasonably consistent with the character of the area. The applicant's desire to make reasonable improvements to his property, combined with the shape of this lot and the placement of the existing improvements, illustrates exceptional practical difficulty in utilizing the proposed structure while complying with the Code. Finally, 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.

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.