

**CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: BP Properties, L.L.C.
PO Box 319
Delaware City, DE 19703

NCC TAX PARCEL NO. 22-009.00-004
PUBLIC HEARING DATE: March 26, 2007
DATE OF DECISION: April 9, 2007

REQUESTED: Applicant requested a Special Exception to maintain two single family semi-detached dwellings in the R-1 zone. Applicant further requested multiple dimensional variances to allow such semi-detached dwellings on two proposed building lots in the historic zone located at 226 Washington Street, Delaware City, Delaware, NCC Tax Parcel No. 22-009.00-004.

The Board of Adjustment may grant a special exception to permit semi-detached houses in an R-1 Zone pursuant to Zoning Code §46-16(t) and §46-121(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 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 composed of a fire damaged building in the historic

district of the City. The applicant intends to refurbish the original front facade of the existing building to be located on proposed lot 2, maintain the front portion of the existing dwelling, add a new addition to the rear and construct a second semi-detached dwelling on the adjacent proposed lot 1. The two finished units would be connected by a single party wall. The existing tax parcel is approximately 40 feet wide by 100 feet deep and fronts Washington St. The owner proposes to subdivide the property into two lots: one approximately 22 feet wide by 100 feet deep and the other approximately 18 feet wide and 100 feet deep. In addition to the Special Exception, accomplishing this development requires the following variances:

Proposed Lot 1:

- a. Lot area variance from 3000 sq. ft. to 2164 sq. ft.
- b. Lot frontage variance from 25 ft. to 22.14 ft.
- c. Front set back variance from 20 ft. to .7 ft.
- d. Side yard set back variance from 7.5 ft to 1.4 ft.
- e. Lot coverage variance from 35% coverage to 40% coverage
- f. Variance from 1 off road parking space requirement

Proposed Lot 2:

- a. Lot area variance from 3000 sq. ft. to 1836 sq. ft.
- b. Lot frontage variance from 25 ft. to 17.86 ft.
- c. Front set back variance from 20 ft. to zero set back
- d. Side yard set back variance from 7.5 ft to zero set back
- e. Lot coverage variance from 35% coverage to 50% coverage
- f. Variance from 1 off road parking space requirement

The applicant has presented his plans to the Historic Preservation Commission (“HPC”) and the Planning Commission and they have both recommended approval of the relief requested from the Board. There were no public comments before those Commissions and none presented to the Board after notice.

The testimony revealed that the existing structure is currently an eyesore in the Historic District. Historically, the property had been utilized for 3 apartment units. Since two family dwellings are proposed, density of use will not likely be significantly different and may actually decline under the proposed development. This area of the Historic District is populated with various lots of similar dimensions to that proposed for the two lots with some even smaller in size. Few, if any have off street parking provided and such would not be in keeping with the Historic District in any event. Nor rear alley services the property to provide off street parking from the rear. The applicant testified that the front facade of the existing building would be restored in a

historically accurate manner consistent with the requirements of the HPC. The applicant testified that he would experience exceptional practical difficulty in utilizing the property in the manner proposed without the variances requested since such use would present an awkward configuration inconsistent with the Historic District as it exists in this area.

The City Administration indicated that it supported the variances and special exception requested, in part due to the fact that: (i) a blighted property in the Historic District would be renovated and put to productive use in a historically accurate manner; (ii) the former 3 apartment use of the property was a non-conforming use that would be abated; and (iii) the proposed use is consistent with surrounding properties in terms of dimensions, lot coverage, lack of off street parking and front and side yard set backs.

The Board votes to grant the special exception for semi-detached use and to further grant the requested variances. The requested semi-detached use amounts to no more than one additional home than what would be permitted on the existing lot as a matter of right in an R-1 zone. The additional traffic and congestion caused by that single additional home would not likely create heightened safety issues. Market conditions illustrate demand and need for semi-detached dwellings as have been approved by the City and built in recent years in portions of the City not overly distant far from the subject property. As a result, an important public service is addressed by approval of this application such that the proposed use is reasonably necessary for the convenience and/or welfare of the public. The applicant's proposed use is consistent with the size and dimensions of other lots and dwellings in the Historic District and thus is not detrimental or injurious to the neighborhood. The variances requested are generally consistent with other properties in this block of Washington Street and is generally compatible with surrounding property uses. A non-conforming use would be abated and a public eyesore would be eliminated while the Historic District is enhanced. 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 were granted. The granting of the variances will not cause substantial detriment to the public good, nor will they substantially impair the intent and purpose of the Zoning Code.

Vote: 2-0 (Grant: Bennett and Stewart. Losco abstained due to conflict of interest)

BOARD OF ADJUSTMENT OF
THE CITY OF DELAWARE CITY


Cordelia W. Bennett, Chairperson

NOTE: This Special Exception and grant of Variances 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.