

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

APPLICANT: Whittaker Brothers, Inc.
118 Clinton Street
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-007.00-098 (118 Clinton Street)
PUBLIC HEARING DATE: October 23, 2007
DATE OF DECISION: October 26, 2007

REQUESTED: Applicant requested lot frontage variances for proposed lot 1 and lot 3 from 50' to 25' and for proposed lot 2 from 50' to 20'. Applicant further requested lot area variances for lot 1 and lot 3 from 5000 sq. ft. to 2500 sq. ft. and for lot 2 from 5000 sq. ft. to 2000 sq. ft. for the property located at 604 Front Street and zoned C-1. Applicant also sought front setback variances from 20' to 0' for all three proposed lots. All of the variances relate to the proposed subdivision of 118 Clinton Street into three separate building lots.

The Board of Adjustment may grant variances 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 intent and purpose of any zoning ordinance, code, regulation or map.

The present application is part of a pending re-subdivision application for lots 1 - 3 that would permit the construction of three building lots on which three row house structures would be built for either residential or mixed use purposes with rear access garages accessible via an 8' wide public alley that runs behind the property. The lot as is measures 70' wide along Clinton Street and 100' deep and is oversized in relation to most other properties in this portion of Clinton Street. The property is zoned C-1 and is in the Historic District. The applicant proposes a subdivision of the property into three lots with the outer lots (lots 1 and 3) being 25' by 100' (2500 sq. ft. of lot area) and the middle lot (lot 2) being 20' by 100' (2000 sq. ft. of lot area). The proposed structures would be located as close as 0' to the Clinton Street right of way. Dimensional variances are required to permit these reductions in lot frontage and lot area and to permit the front setback reduction.

The testimony and evidence indicated that a subdivision plan has been submitted to the City and conditionally approved at the October, 2007 Mayor & Council meeting subject to the grant of the variances at issue in this application. The Planning Commission recommended approval of the subdivision plan and all variances requested (including the 0' front setbacks).

The Historic Planning Commission (“HPC”) also approved the plan but with 4' front setbacks for the buildings so as to allow for a planting strip along Clinton Street and for improved passage of light and air consistent with other properties in the Historic District..

The applicant submitted a plot plan indicating that the applicant intends to subdivide the property into 3 lots which will used for the erection of row houses. C-1 zoning requires 50' of lot frontage on a public road. Lots 1 & 3 have proposed lot frontages of 25'. Lot 2 has 20' of road frontage. C-1 zoning further requires 5000 sq. ft. of lot area. Lots 1 and 3 have proposed lot areas of 2500 sq. ft each; lot 2 proposes 2000 sq. ft. The applicant indicated that he would accept the recommendation of the HPC to utilize 4' front set backs for all lots. Thus, lot frontage, lot area and front set back variances are requested for all lots. The applicant reported that few properties in this area of the City have a full 50' of frontage and most range from as little as 18' to 27'. It was noted that the neighboring property at 124 Clinton St. is, however, 50' wide and is used as a blacksmith shop. He further pointed out that the proposed use (either residential or mixed use) is in keeping with surrounding area and that the lot frontages, lot set backs and lot areas of the proposed lots are compatible with surrounding properties. The applicant indicated that the existing lot is over sized and that subdividing into only two lots would not be economically viable.

The City Manager indicated that the City supports the application as being in keeping with the surrounding area and property uses and promotes the use of off street parking (as required by Code) and accessed from the rear (desirable in the Historic District). The City conditioned its support on the grant from the applicant of a 4' wide easement along the rear of all three lots for public ingress, egress and regress, to supplement the exiting, narrow 8' wide public alley. In the future, other property owners in this block may be encouraged to grant similar easements if needed to facilitate traffic flow.

The City Manager reported that proper legal notice and posting of this variance hearing was duly made. One member of the public (Kerry Rhoades, 124 Clinton Street) appeared to express concerns about the variance requests related to increased traffic congestion in the 8' wide alley and the ponding of water at the rear of the properties following heavy rains. Mr. Rhoades further indicated that he would not voluntarily grant a similar 4' wide easement along the rear of his adjacent property in expand the alley way.

The Board votes to grant the requested dimensional variances provided that the front set back shall be set at 4' and further subject to the condition that the applicant provide a suitable 4' wide easement for public access along the rear of the property to supplement the existing alley. The form and substance of the easement must be acceptable to the City Solicitor and the easement must be recorded before or simultaneous with the recording of the subdivision plan conditionally approved by Mayor & Council. The Board 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, relatively minor in nature when compared to other properties in this 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. plan conditionally approved by Mayor & Council at its October, 2007 Council meeting.

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

BOARD OF ADJUSTMENT OF
THE CITY OF DELAWARE CITY


Cordelia W. Bennett, Chairperson

NOTE: This 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 Adjustment.