

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

APPLICANT: Whittaker Brothers, Inc.  
604 Front Street  
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-007.00-199 & 201  
PUBLIC HEARING DATE: October 23, 2007  
DATE OF DECISION: October 26, 2007

REQUESTED: Applicant requested lot frontage variances for lot 1 (tax parcel 22-007.00-199) and lot 3 (tax parcel 22-007.00-201) from 50' to 28'. Applicant further requested lot area variances for lot 1 and lot 3 from 5000 sq. ft. to 2800 sq. ft. for the property located at 604 Front Street and zoned C-1.

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 subject property located in the Historic Zone has been the subject of two prior Board of Adjustment applications by former owners, Donna Brady and Preston S. Carden, Jr., resulting in a decisions dated January 5, 2005 and April 6, 2006. The Brady application was made in conjunction with a application to redone the premises from C-1 to C-2 to permit its use as a contractor's office with voluntary deed restrictions running in favor of the City. The Brady use was never implemented and she contracted to sell the property to Preston S. Carden, Jr. Mr. Carden proposed to down zone the property back to C-1, seek relief from Mayor and Council from the voluntary deed restrictions recorded by Ms. Brady, and then subdivide the property into 4 lots with three of the lots slated for construction of row homes while the fourth lot (lot 4) was to be reserved for an existing historic garage structure. The Carden application resulted in the grant of a special exception per §46-121 (c) (8) to permit a row house use in a C-1 zone. Mr. Carden further secured lot area and lot frontage variances for the three proposed row house lots permitting 34' lot frontages and 3400 sq. ft lots on lots 1 & 3, and a 20' lot frontage and 2000 sq. ft. area for lot 2.

The present application is part of a pending re-subdivision application for lots 1 - 3 that would sever 12' of Front Street road frontage from lot 3, with the severed strip of ground to be combined with an adjacent tract of land owned by the applicant to the rear known as 74 Washington Street (tax parcel 22-007.00-058) and adjust the lot lines separating lots 1 -3. The effect of this re-subdivision would be to reduce the lot widths of lots 1 & 3 from 34' to 28'. The

reduction in lot width for lots 1 & 3 reduces the area of those lots from 3400 sq. ft. to 2800 sq. ft. Dimensional variances are required to permit these reductions in lot frontage and lot area for lots 1 & 3.

The testimony and evidence indicated that the approved lots in question are currently unimproved rectangular parcels each measuring 34' in width along Front Street and 100' in depth. The subject lots are in the historic commercial district of the City. As noted above, a re-subdivision plan has been submitted. The Planning Commission recommended approval of the re-subdivision plan and the plan has been approved by Mayor & Council at its October, 2007 meeting conditional upon approval of the present variances currently sought by the applicant.

The applicant submitted a plot plan indicating that the applicant intends to re-subdivide Lots 1 & 3 which will be used for the erection of row houses under the previously granted special exception. C-1 zoning requires 50' of lot frontage on a public road. Lots 1 & 3 have proposed lot frontages of 28'. C-1 zoning further requires 5000 sq. ft. of lot area. Lots 1 and 3 have proposed lot areas of 2800 sq. ft. each. Thus, lot frontage and lot area variances are requested for both lot 1 and lot 3. The applicant reported that few C-1 properties in the City have a full 50' of frontage and most range from as little as 16' to 30'. He further pointed out that the proposed use is a residential one in keeping with surrounding area and that the lot frontages and lot areas of the proposed lots are compatible with surrounding properties. The applicant explained that this re-subdivision of the lots is intended to provide a 12' wide private access way over a portion of the current lot 3 to the much larger 74 Washington Street property to which it will be combined via the re-subdivision. The applicant indicated that 74 Washington Street will someday be developed, perhaps with two sets of four town homes fronting on Washington Street, and the additional access to Front Street via the 12' wide strip of ground will ultimately serve as a secondary point of ingress and egress to 74 Washington Street that will facilitate on site parking and access for fire and emergency vehicles, as well as garbage and delivery trucks.

The City Manager indicated that the City supports the application as being in keeping with the surrounding area and property uses and especially as it will facilitate on site parking at 74 Washington Street whenever that property is developed. The applicant illustrated that the conditionally approved re-subdivision plan does in fact combine the land to be severed from current lot 3 with the 74 Washington Street property also owned by the applicant.

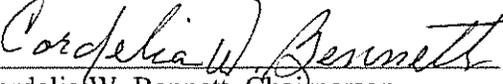
The City Manager reported that proper legal notice and posting of this variance hearing was duly made. No members of the public appeared to express concerns about the variance requests.

The Board votes to grant the requested dimensional variances subject to the condition that the land being severed from lot 3 be combined with the 74 Washington Street property as a result of the re-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 from the already approved lot dimensions for lots 1 & 3, 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 prompt recordation of a re-subdivision plan combining the ground to be severed from current lot 3 with the 74 Washington Street property in substantial conformance to the 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.