CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT

NOTICE OF DECISION

APPLICANT: Linda Callahan
220 Hamilton Street
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-009.00-045
PUBLIC HEARING DATE: July 24, 2008
DATE OF DECISION: August 12, 2008

REQUESTED: Applicant requested a dimensional variance to erect a 16' x 16' enclosed addition to her single family residence 0' feet from the side lot line where the Code requires a 5 foot setback for her property at 220 Hamilton Street, Delaware City, Delaware, NCC Tax Parcel No. 22-009.00-045.

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 in the Historic District, the R-1 zone and fronts Hamilton Street on the southeast. The lot is approximately 42 feet wide by 100 feet deep. The applicant testified that the existing house is set back 0 feet from the southwestern border parallel to Third Street and likely represents a pre-existing non-conforming use. The applicant currently has a deck in the location of the proposed addition but has difficulty using it in the summer months due to the prevalence of mosquitoes in the area. Enclosure of the deck area will allow year round, mosquito free uses of this area. The applicant desires to build the addition to the rear of the existing home (as opposed to the northeasterly side) so that there will be minimal visual impact from Hamilton Street and so as to keep the property in character with other properties in the historic zone. The City Manager advised that the Historic Planning Commission recommended approval of this variance since a side yard addition would not be in keeping with the character of the Historic District. The Planning Commission also recommended approval of the variance. The applicant testified that the proposed addition would have the same siding as the existing house. It was noted that construction had commenced on the addition without a building permit or the necessary variance but that construction work had ceased pending decision on this variance application once the owner understood that she was proceeding illegally.

The applicant points to unique circumstances in that the existing house already is built with a zero side yard setback; that it has existed there for many years without complication; and that Historic District considerations preclude any addition in the opposite side yard. She further points out that she canvassed her immediate neighbors and none objected to the application. No neighboring property owners appeared at the hearing or otherwise provided comment on the proposal.

The Board votes to grant the requested dimensional variance. The variance is consistent with the character of the area and the Historic District in general. The applicant's reasonable desire to make necessary enhancements and improvements to her home, as well as the location of the existing house with a zero side yard setback, illustrate exceptional practical difficulty in 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

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.