

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

APPLICANT: MHA, Inc.
Delaware City Trailer Court
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-011.00-001
PUBLIC HEARING DATE: August 26, 2008
DATE OF DECISION: September 15, 2008

REQUESTED: Applicant requested a use variance to permit the expansion of an existing trailer court facility so as to maintain up to six additional mobile homes on property zoned R-3 (multi-family). In addition, the applicant requested dimensional variances: (1) to permit a 16.4 foot landscape buffer where the Code requires 25 feet along the southern border adjacent to an Army Corps of Engineers "spill area"; and (2) to permit a zero foot landscape buffer where the Code requires 25 feet along the eastern border adjacent to lands of the City of Delaware City. The property involved is the Delaware City Trailer Court property, tax parcel 22-011.00-001 and is zoned R-3.

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 Board of Adjustment may grant variances from the use requirements of the City of Delaware City Zoning Code where it finds the applicant or property owner is experiencing an unnecessary hardship in complying with the use regulations of the Zoning Code applicable to the subject property and that the spirit of the ordinance, code or regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code, regulation or map.

The applicant appeared through its representatives, Wendy Stabler, Esq. and Roger Brickley, P.E. The present application results from the applicant's desire to expand its existing 90 plus lot mobile home community on the subject parcel totaling approximately 21 acres in size. The area affected by this application represents approximately 1.34 acres of uplands—the remainder of the undeveloped portion of this property being designated as undevelopable wetlands. The applicant seeks to erect 6 new mobile home lots and a 27 foot wide paved private roadway to service same. All lots will be sized according to Code. However, the 1.34 acre area to be developed is zoned R-3 (multi-family residential) and a use variance is necessary to utilize it for a mobile home park. In addition, the Code requirement of a 25 foot landscape buffer (*see*, §46-19(a)(14)) cannot be met under the proposed plan in that only 16.4 feet is proposed for the buffer area along the southern border adjacent to the Army Corp "spill area" and none is proposed along the planned private drive adjacent to the eastern border. Along these lines, the applicant requested an amendment to its application to clarify that its dimensional variance request for relief from the landscape buffer requirement includes a request to permit no landscape buffer along the eastern border of the property. Upon motion duly made and seconded, the Board voted unanimously to permit this clarifying amendment.

The testimony and evidence indicated that there is a strong need for manufactured housing to be served by the proposed expansion of the trailer park. In addition, the expansion proposed on the 21 acre parcel owned by the applicant is modest—only 6 new lots are proposed and these are to be the last mobile home lots to be proposed. The applicant's representatives testified that there will be no significant visual impact on surrounding properties since the expansion area is surrounded to the south by the undeveloped Army Corps "spill area", to the east by City owned wetlands (including the historic African Union Cemetery), to the west by existing manufacturer home lots and to the north by other lands of MHA, Inc. Most importantly, the representatives testified that there are no other legitimate R-3 uses to which the property can be reasonably put. Single family homes are impractical for various reasons including: (1) complex cross access easements would be needed to cross the trailer court lands and other private drives to access proposed homes; (2) single family homes would be undesirable and incompatible with the existing mobile homes to the west; (3) the current lack of economic need for additional single family homes; and (4) the developable area is otherwise landlocked from public roads. In addition, the representatives testified that utilizing the property in question for a multi-family building on the small 1.34 acre area in question is also not reasonably possible under current Code. By way of example, the representatives cited the fact that a multi-family structure under Code would require a reservation of 25% of the lot area to be left as open space and would involve 40 foot front set backs, thus severely limiting the land that could be developed. In addition, a minimum of 50 feet of road frontage would be required. No public road frontage exists to service the site in question. The City Manager testified that the City would oppose any attempt to erect a multi-family dwelling on this site due to the negative impact a taller building would have on the adjacent and historic African Union Cemetery. The representatives testified that an apartment building would create Fire Code problems for fire truck access and turnaround facilities on this small site. They further pointed out that permanent multi-family dwellings on this site would create greater areas of impervious surface thus exacerbating flooding and drainage problems for neighboring property owners. Finally, the representatives argued that a future possible redevelopment of the entire mobile home park would be impaired by the presence of

permanent structures like single family and multi-family dwellings.

The applicant's representatives next turned to the dimensional variances requested. Their testimony indicated that the landscape buffer requirement was not essential in this unique circumstance due to the City owned wetlands to the east and the Army Corps spill area to the south. No development of any nature will take place in these areas and so no one could be negatively impacted for want of the landscape buffer. In addition, the applicant's representatives offered to voluntarily grant a conservation easement to the applicant's remaining undeveloped property in this area comprised of approximately 5.79 acres of wetlands. This easement grant would prohibit any further residential or commercial development of the applicant's property further mitigating the lack of the Code required landscape buffer.

The City Manager reported that proper legal notice and posting of this variance hearing was duly made. No members of the public testified to the proposed variances and no letters in support or complaint were received. The City Manager noted that the Planning Commission recommended denial of this application but Board members noted that the Planning Commission meeting minutes provide no reasons whatsoever for its recommendation.

It was noted by the applicant's representatives that the private service road to provide access to the 6 new lots crosses over into a small portion of City owned lands such that an easement would be required from the City to erect the road. The City Manager advised that the City Council has already resolved to grant such an easement in the event the applicant is successful with the present Board of Adjustment application and the applicant is otherwise prepared to grant a conservation easement in favor of the City for its remaining undeveloped lands.

The Board votes to grant the requested use variance and dimensional variances with conditions. The Board found that the applicant is experiencing unnecessary hardship in utilizing and improving the property in question for a use consistent with R-3 zoning for the reasons provided by the applicant's representatives as set forth above. Likewise, exceptional practical difficulty exists with respect to the dimensional variances due to the uniquely isolated location of the proposed lots adjacent to undevelopable and uninhabited lands owned by the City and the Army Corps of Engineers. The variances are consistent with the existing structures in the area and compatible with surrounding property uses. 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 applied for is conditioned, however, upon: (1) the negotiation, execution, delivery and recordation of a non-exclusive easement from the City to the applicant granting the applicant the right to erect a paved private roadway to service the proposed lots on approximately 1498 sq. ft. of City owned land adjacent to proposed lots, in form and substance acceptable to the City Solicitor; and (2) the negotiation, execution, delivery and recordation of a conservation easement in favor of the City on the applicant's remaining

undeveloped lands on this site (comprising approximately 5.79 acres) prohibiting further commercial or residential development of such property, granting the City the right to maintain such eased lands, and otherwise in form and substance acceptable to the City Solicitor.

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.