

**CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: Whittaker Brothers, Inc.
137 Jefferson Street
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-007.00-013
PUBLIC HEARING DATE: January 29, 2009
DATE OF DECISION: February 12, 2009

REQUESTED: Applicant requested a dimensional variance to erect an attached garage as close as ten feet from the rear lot line where the Code requires a 25 foot setback for its property at 137 Jefferson Street, Delaware City, Delaware, NCC Tax Parcel No. 22-007.00-013.

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 in the Historic District is at the corner of Second and Jefferson Streets. The lot has dimensions of 78 feet wide by 100.50 feet deep. The applicant desires to build a four bedroom home with an attached garage in the rear of the property that will be approximately 24 feet wide by 22 feet deep. The property is bordered at the rear by an 8 foot wide public alleyway that has not been improved by paving and is not commonly used by the public. The applicant points to several aspects of exceptional practical difficulty in complying with the Code due to several unique property circumstances. First, since the property is in the Historic District, architectural details and the location of site improvements are subject to the approval of the Historic Preservation Commission (the "HPC"). The HPC has approved this site layout with the garage in the rear since a more visible garage would not be in keeping with the historic character of the neighborhood. Placing the garage in the rear necessitates this variance application. Second, the application points out that this property is located in the flood plan thus eliminating the possibility of a basement for household storage. With a larger, four bedroom

home proposed, a double garage of the type proposed is necessary to provide adequate family storage room. Third, one of the reasons for positioning the garage so deeply in the lot is to avoid an existing telephone pole that would otherwise block a portion of the driveway leading to the garage from Second Street. Without the pole, a lesser variance might be possible. Finally, the applicant points out that the City's unimproved alleyway to the rear provides an additional eight foot buffer that minimizes any possible negative impact from the rear garage. The applicant indicated that it has no intention of seeking access to this property or its garage via the unimproved alleyway.

No members of the public appeared to speak in favor or against this application. No written comments from the public were submitted to the City. Neighboring properties owners were notified of this application and hearing date via certified mail as required by the City Code. The City did not oppose this application but did not take any formal position. The City did point out that the applicant had not yet paid the \$500 application fee for this variance hearing.

The Board votes to grant the requested dimensional variance with conditions. The variance is consistent with the character of the area as determined by the HPC. The applicant's need to construct the garage in the rear of the property to ensure consistency with the historic character of the area and surrounding properties, as well as the existence of the property in the flood plain and the reasonable need to provide adequate storage area in lieu of a basement, together 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. Nonetheless, these variances are conditioned on the following: 1. Payment of the \$500.00 variance application fee no later than ten (10) days from the date of this decision; and 2. No vehicular access to the property shall be permitted via the eight foot wide alley at the rear of the property, whether such alley is ultimately improved at a later date or not.

Vote: 2-0 (Grant: Stewart, and Losco; Mayor Bennett absent)

BOARD OF ADJUSTMENT OF
THE CITY OF DELAWARE CITY


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.