

**CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: Wilmington Savings Fund Society, FSB
145 Clinton St.
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-007.00-150
PUBLIC HEARING DATE: September 29, 2009
DATE OF DECISION: October 8, 2009

REQUESTED: Applicant requested a variance to allow construction of an enclosed ATM facility set back zero feet from the front property line for a property zoned C-1 which otherwise requires a 15 foot setback. The subject property is known at 145 Clinton Street, Delaware City, Delaware, NCC Tax Parcel No. 22-007.00-150.

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 the case of use variances) or exceptional practical difficulty (in the case of dimensional variances) 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 currently composed of a small, one story building roughly 30 feet by 50 feet in size facing Clinton St. in the historic commercial district of the City. The lot in question is approximately .07 acres in gross area. The applicant proposes to construct an automatic teller machine ("ATM") and a structure to enclose same at the northeastern front corner of the property zero feet from the front property line and zero feet from the side lot line. The applicant has secured a positive conditional recommendation from the Historic Planning Commission ("HPC") for an ATM and a 55.375"wide, 93' high and 36" deep enclosure structure constructed of brick veneer with painted canopy matching the brick color and otherwise consistent with the architectural design of the main structure on the property. The ATM structure would be located zero feet back from the front lot line which would be consistent with the placement of the existing structure on the property.

Thomas Stevens testified for the applicant as an ATM design and servicing specialist. He testified that the applicant is experiencing an exceptional practical difficulty in competing with other banks and in providing consistent services to its customers. All WSFS bank branches have ATM's other than this site. Virtually all other banking institutions provide ATM services at their facilities as well. As such, the applicant testified that the ATM and enclosure structure is a reasonable improvement to their commercial property and a natural extension of modern banking services to Delaware City residents.

Mr. Stevens further testified as to the exceptional practical difficulties associated with improving the property and the applicant's business by locating the ATM machine at other points on the property. There is room in the rear of the property for the ATM structure, however, the area is poorly lighted and not plainly visible from the surrounding roadways. As a result, most residents will not see the structure to use it, and if they do the risk of criminal activity, especially at night will be greatly enhanced. Mr. Stevens explained that the interior of the existing building is too small and cannot support the ATM machine and the existing fixtures already in the building. Mr. Stevens further elaborated that the ATM machine cannot be reasonably placed along the southwesterly side of the property facing Second Street for several reasons including the presence of curbing that would make access to the ATM non-compliant under ADA guidelines or the loss of up to 3 needed parking spaces to access the ATM if the curbing were removed.

Mr. Stevens produced documentary exhibits describing the proposed ATM facility as being a 55.375" wide, 93' high and 36" deep enclosure structure constructed of brick veneer matching the existing building and with painted canopy matching the brick color. The facility would have downward pointing lighting providing safety to users without glare to neighboring properties. He pledged that all HPC recommendations would be followed. He pledged no signage on the ATM or structure other than brass lettering or painted wooded letters saying "ATM".

The City took no position on this application and no members of the public appeared at the hearing. No letters of support or complaint were received by the City to supplement the record. Proper notice to surrounding residents was provided by the City in accordance with City Code.

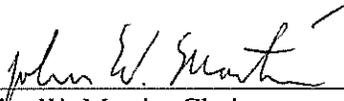
The Board votes to grant the requested variance subject to conditions. The variance is consistent with this and other properties in the Clinton Street business district in that many building in this area have a zero front set back. The proposed addition of an ATM machine at the applicant's site is a reasonable improvement to remain competitive with most other bank branches the vast bulk of which have ATM facilities. HPC has approved the setback and facade design as consistent with the Historic District. Moreover, the harm to the applicant (in terms of competitive disadvantage) and the community (in terms of inconvenience and lack of access to an ATM at the bank) as a whole if the variance were denied would be greater than the probable effect on neighboring properties if the variance were 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. The grant of variance is conditioned upon the following:

1. No signs will be attached to the ATM structure other than brass or wooded painted letters stating "ATM".

2. Any lighting attached to the ATM structure will be pointed in a downward direction to minimize glare on to other properties.
3. All other HPC recommendations and conditions with respect to the ATM facility shall be followed.

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

BOARD OF ADJUSTMENT OF
THE CITY OF DELAWARE CITY



John W. Martin, 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.