

**CITY OF DELAWARE CITY  
BOARD OF ADJUSTMENT**

**NOTICE OF DECISION**

APPLICANT: PSC Properties, L.L.C.  
PO Box 9053  
Newark, DE 19714-9053

NCC TAX PARCEL NO. 22-007.00-115  
PUBLIC HEARING DATE: October 14, 2009  
DATE OF DECISION: October 15, 2009

REQUESTED: Applicant requested renewal of a five year temporary use variance (originally granted in 2004 but never implemented) to allow two (2) residential units in a property zoned C-1 which allows only one (1) commercial and one (1) residential unit in the subject property located at 84-86 Clinton Street, Delaware City, Delaware, NCC Tax Parcel No. 22-007.00-115. Applicant further requested renewal of an area variance (also granted in 2004 but never implemented) permitting a 0 foot front setback (15 feet normally required) to erect a new building along the Washington Street frontage of the subject parcel.

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 was the object of a 2004 variance decision by the Board of Adjustment granting a five (5) year temporary use variance to allow for a new structure facing Washington Street comprised of two (2) residential units on this C-1 zoned property. The 2004 decision further granted an area variance permitting the proposed structure to be built with a zero foot front setback. These variances were never implemented within one year of the date of the Board's 2004 decision and have thus expired per the terms of §46-62(a) of the Delaware City Code.

As in 2004, the subject is currently composed of a two story building facing Clinton in the historic commercial district of the City. The lot in question extends all the way through to Washington Street. The applicant proposes to construct a new two story structure along the

Washington St. frontage of the parcel. He has secured approval of the building facade design from the Historic Planning Commission (“HPC”) and his request for a 0 foot front set back was recommended by HPC as being consistent with other similar properties in the Historic Zone.

The Board takes notice of its prior findings of fact in this matter and the applicant’s prior testimony concerning exceptional practical difficulty in renting the first floor of the proposed property to a commercial tenant as the Code requires and the unnecessary hardship in utilizing the property with only one (1) residential unit. The Board concludes that these findings remain valid today.

The City Manager recommended approval of the temporary variance request subject to substantially the same conditions as were imposed on the 2004 variances but with minor variations, to wit: (a) The Temporary Use Variance will be in effect only five (5) years from the date of the issuance of a Certificate of Occupancy for the proposed structure. Thereafter, the first floor space must be converted to a permitted C-1 use without further notice from the City; (b) The applicant must construct a concrete sidewalk, up to twelve (12) feet wide, with curbing and pavement widening on Washington Street for the length of the property frontage and directed by the City and in accordance with City and DELDot specifications (the “Curbing and Sidewalk Work”); (c) The applicant must post a bond or other financial guarantee (the “Bond”) in form and substance acceptable to the City in an amount equal to the value of the Curbing and Sidewalk Work; (d) The City may, at its sole discretion, perform the Curbing and Sidewalk Work and the applicant agrees to reimburse the City for the cost thereof on demand up to the amount of the Bond; (e) The applicant shall provide two (2) paved off street parking spaces on the subject property and two (2) paved, angle parking spaces in front of the proposed structure on the Washington Street right of way. The private driveway to access the parking spaces shall also be paved; (f) No more than 2 adults and 3 children shall reside in each residential unit and no pets shall be permitted in the residential units. The applicant voluntarily agreed to all such conditions.

No members of the public appeared to express concerns about the variance requests and no correspondence was received from any member of the public commenting on this application following due notice as required by Code.

The Board votes to grant the requested variances subject to conditions. The variance is consistent with other properties in the Clinton Street business district and is generally compatible with surrounding property uses. HPC has approved the setback and facade design as consistent with the Historic District. Moreover, the harm to the applicant and the community as a whole if the variance were denied would be greater than the probable effect on neighboring properties if the variance is granted on a temporary basis. The granting of the temporary use 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:

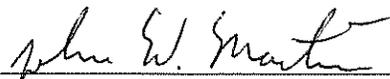
1. The Temporary Use Variance will be in effect only five (5) years from the date of the issuance of a Certificate of Occupancy for the proposed structure. The applicant should be aware, however, that the requirements of §46-62(a) must still be met, i.e., that construction of the improvements permitted by these variances must commence

within twelve (12) months of the date of this decision or the variances are null and void. Following the five (5) year variance period, the first floor space must be converted to a permitted C-1 use without further notice from the City;

2. The applicant must construct a concrete sidewalk, up to twelve (12) feet wide, with curbing and pavement widening on Washington Street for the length of the property frontage and directed by the City and in accordance with City and DELDot specifications (the "Curbing and Sidewalk Work");
3. Prior to issuance of a building permit, the applicant must post a bond or other financial guarantee (the "Bond") in form and substance acceptable to the City in an amount equal to the value of the Curbing and Sidewalk Work;
4. The City may, at its sole discretion, perform the Curbing and Sidewalk Work and the applicant agrees to reimburse the City for the cost thereof on demand up to the amount of the Bond;
5. The applicant shall provide two (2) paved off street parking spaces on the subject property and two (2) paved, angle parking spaces on the Washington Street right of way directly in front of the subject property. The private driveway to access the parking spaces shall also be paved; and
6. No more than 2 adults and 3 children shall reside in each residential unit and no pets shall be permitted in the residential units.

**Vote: 2-0 (Grant: Martin and Stewart. Losco abstained due to conflict of interest)**

BOARD OF ADJUSTMENT OF  
THE CITY OF DELAWARE CITY

  
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John W. Martin, Chairman

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.