

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

APPLICANT: Delaware Holding, LLC.  
PO Box 531  
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-007.00-050 (122 Washington Street)  
PUBLIC HEARING DATE: March 3, 2010  
DATE OF DECISION: March 5, 2010

REQUESTED: Applicant requested a parking variance from 18 spaces to 11 spaces for its commercially zoned property at 122 Washington Street.

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 present application is part of a pending re-zoning application for 122 Washington Street that would in which the applicant seeks to revert to C-1 zoning from C-1L zoning to permit the rental of the first floor of the property to a funeral home business. The property is in the Historic District. By way of history, the subject property was part of a re-subdivision and re-zoning to C-1 status in 2004 at the time the property was sold by the City to the applicant's predecessor in title and affiliate, Whittaker Brothers, Inc., subject to certain deed restrictions dated March 5, 2004 and recorded at the New Castle County Recorder of Deeds office at Instrument No. 200403100027176 (the "Restrictions") that drastically limited the potential C-1 uses permitted on the property. Specifically, the Restrictions limited C-1 uses on the property to the following:

- A. All uses permitted in R-1 Districts as described in the Code;
- B. Social, fraternal, social service, union, historical and civic associations;
- C. Professional and governmental offices;
- D. Building for instruction of dramatics, music, crafts, art or other similar cultural activities;
- E. Retail shops limited to the following: bookstore; gift shop; flower shop; antique shop; dress or clothing boutique (subject to a Special Exception); and
- F. Tea room or "fine dining" restaurant (subject to a Special Exception).

Subsequently, the property was re-zoned with the owner's consent to the C-1L zoning classification that also restricted the possible permitted uses for the property. A funeral home use was not permitted under either C-1L zoning or under the Restrictions. The applicant now seeks to re-zone the property back to the C-1 category and to amend the Restrictions (subject to Mayor and Council approval) to permit the funeral home use. Such re-zoning application will be considered forthwith by Mayor and Council. In anticipation of approval of the pending re-zoning and Restrictions amendment, the applicant seeks a variance from the parking requirements of § 46-96 which require "One (1) space per sixty (60) square feet of floor area available for seating accommodations, plus one per employee." Section 46-99 of the Code further requires one handicapped space for the proposed use. Based on floor area plans submitted by the applicant for a funeral home with one employee, the Zoning Officer has determined that the Code would require a total of 18 off street parking spaces including one handicapped space in this case.

The testimony and evidence indicated that the subject property is the former Delaware City Bank building, a three story structure of historical significance in the City. The applicant (via its Member, Kevin Whittaker) testified that the 2300 sq. ft. first floor would be rented to the funeral home operation. The property is dissected in the rear by a 20 foot wide City owned alleyway that provides access to a total of 11 off street parking spaces---6 directly behind the former bank building and 5 more spaces on a 23 ft. by 85 ft. strip of land on the far side of the alley way. The applicant pointed out that there is also ample angle parking on the 100 ft. wide right of way known as Washington Street directly in front of the former bank building. The applicant testified that most visitors to the funeral home are likely to take advantage of the convenient street parking in front of the building and use the 11 spaces in the rear as overflow parking. The applicant testified that there is only one employee for the funeral business, being the owner/funeral director himself.

The applicant testified that as to any of the uses permitted by C-1 zoning and the Restrictions, a parking variance would be required due to inadequate off-street accommodations with one exception. If the property were used as office space, only 9 parking spaces would be required and no variance would be necessary. All other non-residential C-1 uses permitted by the Restrictions would involve an even greater number of off-street spaces than the funeral home use. The applicant further testified as to the exceptional practical difficulty in locating and keeping an office tenant in the property. He testified that in the 6 years he's owned the property, he has consistently advertised it for rental, generally on Craigslist. In that time, he had one office tenant several years ago and that occupancy lasted only one year. In the last 2 years, he had one office tenant but the tenancy lasted only 4 months and terminated when the Valero oil refinery shut down. The applicant was questioned about traffic complications that might arise from funeral processions. He indicated that little problem has arisen in this regard at another, larger funeral home in the City on a narrower public right of way. The expansive width of Washington Street should easily permit traffic to circumnavigate any funeral processions.

The record reflects that the Planning Commission and Historic Preservation Commission recommended approval of the variance requested. All neighboring property owners were notified of this hearing by certified mail and regular public notices at prominent locations in the City. No letters of support or objection were received.

One member of the public (James Portlock) appeared to express concerns about the variance request. Mr. Portlock owns the residential property directly adjacent to the 23 ft. by 85 ft. parking area on the far side of the alleyway behind the former bank building. Specifically, Mr. Portlock seemed to be under a mis-impression that his own property extended all the way to the alley and he reported having cut the grass there up until the time the applicant paved a portion of this space to create a parking area. Mr. Portlock indicated that his back door and kitchen area were only 15 steps or so from this parking area and that its use for parking is not compatible with his residential use. He complained that headlights would shine in his kitchen at night; that auto emissions would endanger his family's health; and that driver error created the possibility of someone driving their car into his yard and striking his home.

Another member of the public, Mike McMichaels, appeared to say that while he had no problem with the requested variance and the funeral home use, he didn't want visitors to the business to park in front of his nearby driveway. He also expressed concern about fire emergency vehicles accessing the alleyway.

Henry Nickle further appeared but did not oppose the application, but rather wanted better understanding of where people will park in connection with the funeral business. He was concerned that elderly clients of his insurance office on the opposite side of Washington Street would have near by on-street parking to access his offices.

The Board votes to grant the requested parking variance subject to the following conditions:

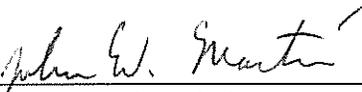
1. The variance is subject to successful rezoning of the property to the C-1 classification and amendment of the Restrictions to permit a funeral home use.
2. The applicant must provide concrete parking blocks or other similar impediment reasonably acceptable to the City Manager to prevent any vehicle from accidentally trespassing on to the Portlock property.
3. The applicant must provide suitable landscaping or shrubbery reasonably acceptable to the City Manager along the property line adjacent to the Portlock property so as to screen headlights from such property.
4. The applicant must provide signage in the parking area adjacent to the Portlock property reasonably acceptable to the City Manager and directing visitors to turn off their headlights and not allow their cars to idle in consideration of neighboring property owners.

While the Board understands the concerns voiced by Mr. Portlock, the fact is that the property is commercially zoned and the applicant is free to use the area adjacent to his home for parking purposes as a matter of right. The Board's sole consideration is whether the proposed funeral home use should be permitted with only 11 off-street spaces. Nonetheless, the Board determined that the conditions listed above should reasonably alleviate the reasonable concerns

voiced by Mr. Portlock. The Board found that the applicant is experiencing exceptional practical difficulty with respect to meeting the Code's parking requirements for the limited uses to which the property may be put. The variance is consistent with the intended use of this historic commercial property and not incompatible with other properties in the area. The variance requested was found to be relatively minor in nature and in light of the ample on-street parking available at this location. The Board found that the variance is generally compatible with surrounding property uses and other uses in the Historic District. 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.

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

BOARD OF ADJUSTMENT OF  
THE CITY OF DELAWARE CITY

  
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John W. Martin, 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.