

**CITY OF DELAWARE CITY  
BOARD OF ADJUSTMENT**

**NOTICE OF DECISION**

APPLICANT: PSC Properties, L.L.C.  
c/o Preston S. Carden, Jr.  
PO Box 9053  
Newark, DE 19714-9053

NCC TAX PARCEL NO. 22-007.00-115  
PUBLIC HEARING DATE: August 4, 2010  
DATE OF DECISION: August 11, 2010

REQUESTED: Applicant requested a three (3) year temporary use variance to allow one residential apartment unit in the rear of the first floor of a property zoned C-1 (which otherwise allows only R-1 residential uses) located at 84-86 Clinton Street, Delaware City, Delaware, NCC Tax Parcel No. 22-007.00-115.

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 intent and purpose of any zoning ordinance, code, regulation or map.

Prior to receiving any testimony in this matter, Board member Losco advised the Board that he would recuse himself from consideration of this matter due to potential conflict of interest as he represents the applicant in connection with other legal matters.

The subject property is comprised of a two (2) story structure facing Clinton Street in the historic commercial district and includes a first floor commercial/retail unit and a first floor efficiency apartment being 16' x 25' in size and located in the rear and with a rear entrance not visible from Clinton Street. The applicant advised that he currently has a disabled resident living in the first floor efficiency unit. He stated that the first floor commercial unit has had sporadic commercial/retail occupants but that, generally, those leases have been of temporary, short-term duration. At one point he leased the commercial space at a minimal rental rate to Main Street Delaware City, but even that lease was of short duration. At another point, the commercial space remained vacant for a full year. He would be willing to expand the commercial space into the efficiency apartment area if he could find a commercial tenant willing to rent the entire

first floor, but none has been forthcoming in spite of efforts to market the property on Craigslist, through "For Rent" signs and via other sources. He argued that the efficiency apartment does not hurt the town or offend the spirit and intent of the Zoning Code since the efficiency apartment is not visible from Clinton Street and has its own entrance located at the rear of the property. The applicant stated that his marketing efforts for a long-term commercial tenant are ongoing. The applicant said that a commercial tenant would produce greater rents than a residential tenant so that he remains motivated to find a long-term commercial user. The three (3) year temporary variance requested is intended to deal with the short term hardships caused by the recent economic downturn.

The City Manager indicated that the City does not oppose the application and stated that he believed unnecessary hardship existed in requiring the applicant to retrofit the efficiency apartment to retail use by removing a permanent wall that separates the two (2) areas when there is no apparent market for such use currently. The City sees this rear area of the first floor as unusable commercial space at present. He felt that the efficiency apartment would have no impact on the downtown commercial district since no apartment entrance exits on Clinton Street and a commercial sign remains in the front of the building. The City also noted hardship to the applicant in that no stable retail tenant has been found in spite of significant exterior improvements made to the property by the applicant over the past several years. The City Manager further noted that the Planning Commission voted unanimously to recommend the grant of this temporary three (3) year variance under the circumstances.

Rita Marocco appeared as a member of the public and asked whether the applicant had a certificate of occupancy for the efficiency apartment. The applicant testified that the current configuration is the same as when he purchased the property and to his knowledge there is a certificate of occupancy. The City Manager further indicated that this property may pre-date the Zoning Code and may thus be a permitted non-conforming use. Nonetheless, the applicant made clear that it's his choice to only seek temporary relief by means of the variance requested and not to seek the permanent right for the efficiency apartment to remain.

Ms. Marocco further questioned whether this application had anything to do with the City Solicitor's prior recommendation to Mayor and Council that the Zoning Code be amended with respect to apartment units in the C-1 zone and whether that recommendation amounted to a conflict of interest. It was explained that the Solicitor merely pointed out to Mayor and Council that an inconsistency exists in the Code as it relates to apartments in the commercial zone. He made no recommendation on how that inconsistency should be resolved. That issue is currently before the Planning Commission, which will make independent recommendations to Mayor and Council.

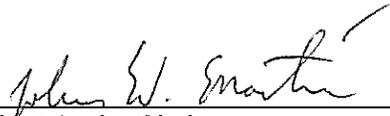
Ms. Marocco further stated that she did not like taking an illegal use and making it legal by variance. However, it was pointed out that the variance procedure provided for in the Zoning Code is intended to do just that in cases where unnecessary hardship or exceptional practical difficulty exist.

No other members of the public expressed concerns about the temporary variance request and no correspondence was received from any member of the public commenting on this application following public notice as required by Code. The City Manager confirmed that certified mail notice was issued to surrounding property owners as required by Code.

The Board votes to grant the requested three (3) year temporary variance. The variance does no harm to other properties in the Clinton Street business district and is generally compatible with surrounding property uses since it presents no visible signs of the efficiency apartment use. The Board found that the applicant is experiencing unnecessary hardship in locating any stable commercial users for the property due to current economic conditions and that requiring a first floor expansion of the commercial unit when no tenant is readily available would further work an unnecessary hardship. The Board found that no precedent is being created here since the apartment use was pre-existing at the time of the applicant's purchase and no other property on Clinton Street has a similar history. The temporary nature of the variance and the rear entry further distinguish this case from others. 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. This use variance shall expire three (3) years from the date of this decision.

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

BOARD OF ADJUSTMENT OF  
THE CITY OF DELAWARE CITY

  
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John 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.