

**CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: Stephen Tait
121 Colonel Clayton Drive
Middletown, DE 19709

NCC TAX PARCEL NO. 22-007.00-148
PUBLIC HEARING DATE: November 10, 2010
DATE OF FILING DECISION: November 15, 2010

REQUESTED: Applicant requested a special exception under §46.21 of the Delaware City Code to permit a storefront conversion to residential use of a C-1 zoned property at 141 Clinton Street as well as frontage variances (from 50 feet to 15 feet), area variances (5000 sq. ft. to 1500 sq. ft.) and front set back variances (15 feet to zero feet) to permit the subdivision of the property to allow 2 row house type residential dwellings.

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 Board of Adjustment may also grant a special exception to permit the conversion of a storefront to a residential use pursuant to Zoning Code §46-21 where, after public hearing, it is determined: 1. that a proposed use on a specific lot or parcel is reasonably necessary for the convenience and /or welfare of the public; and 2. that the proposed use on the lot or parcel involved is not detrimental or injurious to the neighborhood or the City. The Board may condition any such special exception grant as the Board deems necessary to protect the health, safety and welfare of the neighborhood and the City.

The applicant testified that the subject property is currently composed of a two story building in the historic commercial district of the City that was formerly used as two single family dwellings with a party wall dividing them. The structure is also attached on one side to an adjacent building not owned by the applicant. The testimony revealed that the property is in poor repair and has been largely vacant for six (6) to eight (8) years though it has been used for commercial/office purposes at least in part since the adoption of the Zoning Code. The

applicant testified that he purchased the property understanding that it was zoned C-1. His stated goal is to renovate the structure to return it to its original purpose, i.e., two (2) attached single family residential dwellings. The exterior front façade would be fully restored but would remain identical to its present appearance and window/door configuration. The rear addition would be torn down and rebuilt on essentially the same footprint as exists now at the property, save the fact that it would be extended approximately five (5) feet closer to the rear property line. The front road setback would remain at zero feet. Upon subdivision (application pending), each of the two (2) proposed lots would be 1500 sq. ft.

The applicant testified that the first floor of the structure could be utilized for commercial purposes though the majority (but not all) of properties on this side of the block on Clinton Street are currently used for residential purposes with most such residential uses pre-dating the Zoning Code. However, the applicant stated that he did not believe he could secure bank financing for a renovation project to develop this property for exclusively commercial or office use in compliance with the Code. He emphasized that he simply wanted to restore the original use of this structure as two attached residential dwellings and that future owners may be willing to use it for commercial purposes in compliance with C-1 zoning. The applicant indicated that he had not attempted to market the property for commercial rental as of the present date.

The applicant appeared before the Historic Preservation Commission (HPC) and the Planning Commission (PC) and has received positive recommendations for all relief requested.

Proper notice of the Board of Adjustment hearing was sent via certified mail to adjacent property owners and the hearing was otherwise publicly noticed in accordance with law. No members of the public appeared to support or oppose the variance request and no letters of consent or protest were received.

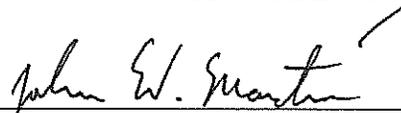
During the public hearing, the Board noted that since the applicant did not intend to convert any storefront existing on the property and, in fact, no storefront presently exists, that a special exception under §46-21 of the Code was not available to permit a residential use not otherwise permitted under C-1 zoning. The applicant was given the option of proceeding with the present application or withdrawing his special exception request and requesting that the Board convert his application to a use variance so as to permit two (2) row house type residential dwellings on the property. Alternatively, the applicant was given the opportunity to withdraw his special exception request and apply to Council for a rezoning of the property to permit the residential use desired. Finally, the applicant was advised that a proposed ordinance was currently pending before Council that might permit upper floor residential use of the property in combination with a first floor commercial use so that he might wait to see if that option was available to him as well. The applicant requested that his special exception application under §46-21 of the Code be converted to a use variance request. Upon motion duly seconded, the

Board voted to permit the amendment of the present application so as to convert the special exception request under §46-21 to a use variance request to permit two single family row house type dwellings on the property, subject to subdivision of the lot; provided, however, public hearing on the use variance request was continued to a later date to permit new public notice to be issued describing the amended application and use variance request, and to permit sufficient time for the applicant to prepare for a use variance hearing.

The Board otherwise votes to grant the dimensional variances requested. The variances are consistent with prior use of the property and are compatible with surrounding property uses in the historic zone. Moreover, the harm to the applicant and the community as a whole if the dimensional variances were denied would be greater than the probable effect on neighboring properties if the variances were granted. The granting of the dimensional variances will not cause substantial detriment to the public good, nor will they substantially impair the intent and purpose of the Zoning Code. The grant of the dimensional variances is conditioned upon final approval of the applicant's currently pending subdivision application by Mayor and Council.

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

BOARD OF ADJUSTMENT OF
THE CITY OF DELAWARE CITY



John Martin, Chairperson

NOTE: This Board of Adjustment 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 at Town Hall, 407 Clinton Street, Delaware City, DE.