

**CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT**

NOTICE OF DECISION

APPLICANT: NITTCCO, LLC c/o Stephen Tait
121 Colonel Clayton Drive
Middletown, DE 19709

NCC TAX PARCEL NO. 22-007.00-148
PUBLIC HEARING DATE: December 1, 2010
DATE OF FILING DECISION: December 13, 2010

REQUESTED: Applicant requested a use variance under §46.121(d) of the Delaware City Code to permit residential use (row house dwellings) of a C-1 zoned property at 141 Clinton Street.

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.

At a Board of Adjustment hearing conducted on November 10, 2010, the applicant had previously secured dimensional variances to permit the subdivision of the subject property into two separate tax parcels. *See*, Board of Adjustment decision dated November 15, 2010. At the prior hearing, the Board granted the applicant's request to amend his application to so as to convert his request for a special exception to permit a storefront conversion pursuant to Zoning Code §46-21 to a request for a use variance to permit residential row house use of this C-1 zoned property located at 141 Clinton Street. The Board granted this request at the November 10, 2010 hearing but required that the matter be heard at a later date to permit public re-noticing of the hearing as a use variance application.

The applicant originally filed this application under the name "Stephen Tait" but requested the Board to amend his application to identify the applicant as "NITTCCO, LLC", the vested title holder of the property in question. Upon motion duly seconded, the Board voted to grant the amendment. Thereafter, Board member Daniel R. Losco acknowledged that he had represented the new applicant, NITTCCO, LLC, in an unrelated matter approximately five years earlier and therefore recused himself from further participation in the hearing.

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 of Stephen Tait 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, represented by Mr. Tait, proceeded with testimony and documentary evidence including photographs of the subject property revealing what outwardly appears as two semi-detached residential structures with no outward indication of its commercial zoning or any history of commercial use at the property. The applicant testified that within this block of Clinton Street, there are 20 residences on one side of the street and 15 residences on the other. Only 4 properties in this block are commercially used according to Mr. Tait and all have corner locations. Mr. Tait pointed out that the subject property is located in the middle of the block making it less desirable for commercial use. He further argued that a use variance permitting 2 semi-detached dwellings would also be in keeping with the predominantly residential uses in the neighborhood, in spite of its commercial zoning.

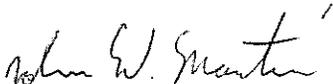
Mr. Tait introduced a letter from Ed Kalinowski, a licensed Realtor based in Delaware City. Mr. Kalinowski's letter indicated that he had surveyed the area and found that there are 65 properties in the C-1 zone and that 40 of the 65 properties were not currently being used for commercial purposes, (though many may be permitted non-conforming uses). Mr. Kalinowski's letter further stated that there is no demand in Delaware City for small commercial properties such as the subject property. Mr. Tait pointed out that the two semi-detached properties had only 400 sq. ft. of first floor interior space. Mr. Kalinowski opined that the property will remain vacant if no variance is granted for lack of available commercial tenants. Mr. Tait added that the second and third floors of the property would also not be conducive to commercial retail uses. Mr. Tait further testified that in his personal experience, it is extremely difficult to locate commercial tenants in this area. He pointed to his experience at 56 Clinton St. which he owns. He testified that he's never been able to place more than a short term commercial rented in this area. There is insufficient foot traffic and too few complimentary commercial uses to generate demand for commercial establishments in this area.

The applicant appeared before the Historic Preservation Commission (HPC) and the Planning Commission (PC) and has received positive recommendations for residential use. Proper notice of this continued Board of Adjustment hearing was sent via certified mail to adjacent property owners and the hearing was otherwise publicly re-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.

The Board votes to grant the use variance requested. Though troubled by the applicant's purchase of the property knowing of its C-1 zoning, the Board found unnecessary hardship existing due to the mid-block location of the property, the paucity of other properties in the area used for commercial purposes, the minimal first floor space that could be devoted to permitted commercial uses, and the fact that the property is now and has historically been constructed and designed for residential use. The variance is consistent with prior use of the property and is compatible with surrounding property uses in the historic zone. 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 were granted. The granting of the use variance will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the Zoning Code.

Vote: 2-0 (Grant: Martin and Stewart; Losco recusal)

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.