

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: VARIANCE APPLICATION OF)
SILVER HERON I, L.P. FOR 85-93) CA. NO. 2013-02
CLINTON STREET, (THE CENTRAL HOTEL))
DELAWARE CITY, DELAWARE)
PARCEL NO. 2200700133)

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

Introduction

The City of Delaware City Board of Adjustment (“BOA”) held a hearing on July 16, 2013 at 7:00 p.m. (the “Hearing”) in The City of Delaware City (the “City”) regarding the above-referenced case. The following members of the BOA were present at the Hearing representing a properly constituted quorum (*see* Del. City Code § 46-117):

Present: Paul Parets Chair
James Brady Board Member¹
Joseph Dionne Board Member/Scripter

Background

Silver Heron I, LP, is the owner/equitable owner of that certain real property located at 85-93 Clinton Street (a.k.a. The Central Hotel), Delaware City, Delaware (the “Applicant”). On May 7, 2013 and June 13, 2013, Applicant appeared before the Historic Preservation Commission and received approval for the construction of an addition and a deck. On June 18, 2013, Applicant appeared before the Planning Commission and received a recommendation for approval of two variances. Subsequently, Applicant submitted an application to the City for the variances (the “Application”). The variances sought were:

Rear Setback Variance from 20’ to 0’

Variance for Deck and Stairs on City right-of-way

Based upon testimony, it was established at the Hearing that the property was properly posted on June 27, 2013 and certified mailings were sent out to potentially affected neighboring property owners, more than seven (7) days prior to the date of the Hearing (the “Notice”). Based upon the exhibits entered into the hearing record, and the testimony provided at the hearing, the Board finds that all notice prerequisites in the Code to hear the variance were satisfied in advance of the hearing. Del. City Code § 46-111.

¹ Mr. Brady recused himself from the proceeding.

Standard of Review

The standard applied to area variances considers “whether a literal interpretation of the zoning regulations results in exceptional practical difficulties of ownership.” *Kwik-Check Realty, Inc. v. Bd. of Adjustment of New Castle County*, 389 A.2d 1289, 1291 (Del. 1978). The Board must weigh: 1) the nature of the zone where the property lies; 2) the character and uses of the immediate vicinity; 3) whether removal of the restriction on the applicant’s property would seriously affect the neighboring property and its uses; and 4) whether failure to remove the restriction “would create unnecessary hardship or exceptional practical difficulty for the owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the ordinance.” *Id.*; see also Del. City Code §§ 46-62, 46-131(d), and 46-131(e).

Decision

After reviewing the record, hearing testimony, and receiving comments from all persons attending the hearing, the BOA GRANTS the Application. For the reasons stated on the record by the Board members at the time of their vote (all such reasons are incorporated herein and made part of this written decision by reference),² the Board finds that the Applicant has met its burden for the grant of the variances requested. The nature of the zone where the property lies and the character and uses of the immediate vicinity will not be altered due to the continued oversight of the Historic Preservation Commission and Applicant’s adherence to its recommendations. The grant of the variances will not seriously affect neighboring properties and uses. Indeed, no member of the public contested the Application at the Hearing. The Applicant has also established exceptional practical difficulty for the grant of the variances based upon the reasons stated in the record by the members of the Board at the time of their vote which include, but are not limited to, the unique nature of the property and an existing cistern.³ The Board therefor GRANTS the variances sought.

A copy of this written decision shall be mailed to the applicant, and all persons requesting a copy of the written decision in writing, on the date it is filed.


The Honorable Paul Parets, Chair
On Behalf of the Board 7/25/13

² At the hearing a Motion was made by Mr. Parets, seconded by Mr. Dionne, and discussion followed. The Motion carried unanimously 2-0 (Mr. Brady recused himself) that the variance be GRANTED, and each board member articulated the reasons for their vote on the record.

³ While the Board expresses reservations as to how the deck will be used in the future, it defers enforcement of ordinances and any other applicable laws to the City.

Date of Initial Decision: July 16, 2013

Date of Written Decision/Date Filed: July 24, 2013

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 thirty (30) days of this filing in the Office of the Board of Adjustment at Town Hal, 407 Clinton Street, Delaware City, DE.