

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: VARIANCE APPLICATION OF)
B.P. PROPERTIES FOR 92 CLINTON) CA. No. 22-007.00-112
STREET, DELAWARE CITY,)
DELAWARE)

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

Introduction

The City of Delaware City Board of Adjustment (“BOA”) held a hearing on November 21, 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 Member
Joseph Dionne Board Member

Background

B.P. Properties, is the owner/equitable owner of that certain real property located at 92 Clinton Street (the “Applicant”). The Applicant submitted an application to the City (the “Application”) for two variances. The variances sought were:

- 1. Front setback from 15 feet to minus 5 1/2 feet to allow for a handicap ramp
- 2. Rear setback from 20 feet to 0 feet in order to construct a 6 foot high wood shadowbox fence and a partially covered deck

Based upon testimony, it was established at the Hearing that the property was properly posted and certified mailings were sent out to potentially affected neighboring property owners. Notice of the Hearing was posted in the City 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.

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 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 desiring to speak, the BOA grants the variances requested, as modified below. 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),¹ the Board finds that the Applicant has met its burden for the grant of the variances.

The nature of the zone where the property lies and the character and uses of the immediate vicinity will not be altered because the new restaurant is replacing the Delaware City Pub and there will be no significant change of the existing area – either from the variances requested for the handicapped ramp, for the shadowbox fence, and/or the proposed deck. The grant of the variances will not seriously affect neighboring properties. The Board finds that the addition of the fencing will act as a visual barrier for the residential neighbors, and the handicapped ramp will not impact the neighbors or nearby businesses.

The applicant has also established exceptional practical difficulty. As currently comprised, the back portion of the property to be fenced is a location for loitering – and it would be difficult for the owners to upkeep and maintain this area in its current form. Thus, absent a variance for the fence and deck configuration, the owner would not be able to make normal (and needed) property improvements. For these and other reasons articulated by the Board members at the time of the hearing, the Applicant established exceptional practical difficulty for this variance.

Exceptional practical difficulty is also established for the brick handicap ramp because the ramp is required for ADA compliance – and the property cannot likely be used as a restaurant or pub without it. The Board finds that the ramp is a needed and necessary improvement. The Board, however, requested that the applicant modify the configuration. While the variance requested was minus 5.5 feet, the Board approved a variance to minus 6 feet but also required that the ramp should be constructed with an interior handrail against the building. Addition of the interior handrail is a condition of the variance granted.²

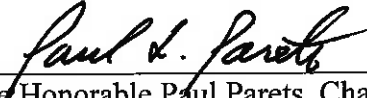
As such, the handicapped ramp variance request is modified as follows:

1. Front setback from 15 feet to minus 6 feet to allow for a handicap ramp, conditioned upon the applicant constructing an interior handrail.

¹ At the hearing a Motion was made by Mr. Parets, seconded by Mr. Brady, and discussion followed. The Motion carried unanimously that the variance be GRANTED, and each board member articulated the reasons for their vote on the record.

² The applicant did not object to this condition at the time of the hearing.

By this decision, the Board therefor GRANTS the variances sought – as modified herein.



The Honorable Paul Parets, Chair
On Behalf of the Board

6 December 2013

Date