

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: VARIANCE APPLICATION OF)
PRESTON CARDEN FOR 704 FIFTH) CA. NO. 2013-01
STREET, DELAWARE CITY, DELAWARE)
PARCEL NO. 22-008.00-008)

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

Introduction

The City of Delaware City Board of Adjustment (“BOA”) held a hearing on June 12, 2013 at 7:01 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/Scripter

Background

Preston Carden is the owner/equitable owner of that certain real property located at 704 Fifth Street, Delaware City, Delaware (the “Applicant”). On May 6, 2013, the Applicant presented an application for a variance to the City Planning Commission (the “Application”). The Application sought the following variance:

Front setback from 15’ to 0’

Based upon testimony, it was established at the Hearing that the property was properly posted on May 31, 2013, and certified mailings were sent out to potentially affected contiguous 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

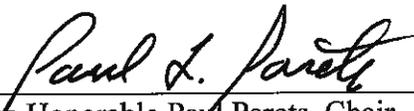
The standard applied to area variances considers “whether a literal interpretation of the zoning regulations results in exceptional practical difficulties of ownership.” *Kwik-Check Realty, Inc. v. Bd. of Adjustment of New Castle County*, 389 A.2d 1289, 1291 (Del. 1978). The Board must weigh 1) the nature 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 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),¹ the Board finds that the Applicant has met its burden for the grant of the variance requested. The nature of the zone where the property lies and the character and uses of the immediate vicinity will not be altered because the project is merely an expansion of the current use. The grant of the variance will not seriously affect neighboring properties and uses. All adjacent properties provided consent to the variance request and no member of the public appeared to oppose the variance. Indeed, the Applicant has 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 inability to meet the commercial tenant’s requests for additional commercial space with the present structure located on the property. 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 7/25/13
On Behalf of the Board

Date of Initial Decision: June 12, 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.

¹ At the hearing, a Motion was made by Mr. Parets, seconded by Mr. Dionne, 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.