

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: VARIANCE APPLICATION OF)
WHITTAKER BROTHERS FOR CORNER OF)
FRONT & ADAMS STREETS,) CA. NO. 2013-03
DELAWARE CITY, DELAWARE)
PARCEL NO. 2200700025)

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 and July 16, 2013 (collectively, 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

The Whittaker Brothers, Inc. is the owner/equitable owner of that certain real property located 0 Front Street (a vacant subdivided lot at the corner of Front & Adams Streets), Delaware City, Delaware (the “Applicant”). The Applicant presented its application for a variance to the City Planning Commission and Historic Preservation Commission on April 1, 2013 and May 7, 2013, respectively (the “Application”). The Applicant sought the following variances on the three contiguous lots:

Lot #1	Lot #2	Lot #3
-Area from 6,000 to 3,250 sq. ft. -Lot frontage from 60’ to 32.5’ -Front setback from 20’ to 5’ -Side setback – both sides 15’ to 7’ – minimum side from 5’ to 2’ -Lot coverage from 30% to 40% -Minimum sq. ft. per family from 6,000 to 3,250 sq. ft.	-Area from 6,000 to 3,500 sq. ft. -Lot frontage from 60’ to 35’ -Front setback from 20’ to 5’ -Side setback – both sides 15’ to 10’ -Lot coverage from 30% to 37% -Minimum sq. ft. per family from 6,000 to 3,500 sq. ft.	-Area from 6,000 to 3,250 sq. ft. -Front setback from 20’ to 5’ (Front St.); 2 nd Front setback from 20’ to 2’ (Adams St.) -Lot coverage from 30% to 40% -Minimum sq. ft. per family from 6,000 to 3,250 sq. ft.

Based upon testimony, it was established at the Hearing that the property was posted on May 31, 2013, and certified mailings were sent out to potentially affected contiguous property owners. On June 7, 2013, the agenda was amended to include new Board member orientation and training. The revised agenda stated that it supplemented the prior agenda and referenced the noticed agenda items. Despite the clarification in the revised notice, one individual alleged that he was told that the above-referenced matter was not going forward at the Board’s June 12, 2013 Hearing. At the June 12, 2013 Hearing, the Board made preliminary decision regarding the Application, but did not issue its final decision. On June 27, 2013, to assure that all interested

persons were provided an opportunity to be heard, the City issued another notice on the Application and resent the certified mailings. At the July 12, 2013 Hearing, the Board reopened the record on the Application and vacated its preliminary decision. This is the Board's final decision on the Application after considering the new evidence presented on July 12, 2013. 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

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 because the project is residential construction similar to surrounding homes. The grant of the variance will not seriously affect neighboring properties and uses. The major concern raised by the public was drainage and flooding that the new construction could cause. The Board finds that the representations by the public and the Applicant as to flooding were merely speculative. The Applicant confirmed that New Castle County would have to approve a drainage/grading plan

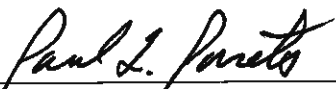
¹ One individual opposing the Application alleged that the property was not properly posted pursuant to Del. City Code, § 46-111. The Applicant responded under oath that the City posted the property on a telephone pole near the property because the property is a vacant lot. The City also posted notice of the BOA Hearing at Town Hall, the Post Office, Sunset Market, Valero Gas Station, the Library, and the City's website. The party that raised the notice issue confirmed on the record that he personally received notice via certified mail.

² 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.

before construction could begin. The potential for flooding due to the new construction was weighed, and the Board concludes that the Applicant has met the standards for the grant of the variances requested.

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 unique nature of the property as identified by the Historic Preservation Commission. 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

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 Hall, 407 Clinton Street, Delaware City, DE.