

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: SPECIAL EXCEPTION AND)
VARIANCE APPLICATION OF)
STEPHEN K. TAIT AND ROBIN E. TAIT FOR)
87-89 WASHINGTON STREET,) Parcel No. 22-007.00-068
DELAWARE CITY, DELAWARE)
PARCEL NO. 2200700068)

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

Introduction

The City of Delaware City Board of Adjustment (the “Board”) held a hearing on December 9, 2014 (the “Hearing”) in The City of Delaware City (the “City”) regarding the above-referenced case. The following members of the Board 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

Stephen K. Tait and Robin E. Tait are the owners of that certain real property located at 87-89 Washington Street, Delaware City, Delaware (the “Applicants”). The Applicants presented their application for a special exception and variance to the City Manager on October 21, 2014 (the “Application”). First, the Applicants applied for a special exception to allow a one-family, semi-detached dwelling in the R-1 Zone. The Applicants also sought the following variances:

87 Washington	89 Washington
-Area from 6,000 sq. ft. to 1,645.83 sq. ft. -Lot frontage from 60’ to 19.67’ -Front setback from 20’ to -5’ -Side setback from 7’5” to 3’8”	-Area from 6,000 sq. ft. to 4,997.38 sq. ft. -Front setback from 20’ to 5’

Based upon testimony, it was established at the Hearing that the property was posted on November 20, 2014, and certified mailings were sent out to potentially affected contiguous property owners. At the December 9, 2014 Hearing, the Board made a decision and voted on the Application. 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. This is the Board’s written decision on the Application.

Standard of Review

To grant a special exception, the Board must find “1.) that a proposed use on a specific lot or parcel is reasonably necessary for the convenience and/or welfare of the public and 2.) that the proposed use on the lot or parcel involved is not detrimental or injurious to the neighborhood or the City[.]” Del. City Code § 46-121(c). The City Code also expressly allows the Board to grant a special exception to permit a one-family, semi-detached dwelling in the R-1 zone. See Del. City Code § 46-121(c)(12).

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 Board 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 Applicants met their burden for the grant of the special exception and the variances requested.

As for the special exception, the Board found that the proposed use of a one family, semi-detached dwelling is reasonably necessary for the convenience and/or welfare of the public. Moreover, the Board found that the proposed use is not detrimental or injurious to the neighborhood or the City. The Board therefore grants the special exception requested 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, that the one family, semi-detached dwelling has been on the property since at least 1998 and that the Applicants will not be able to sell either 87 or 89 Washington Street without the special exception and subdivision.

As for 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 project allows residential uses similar to surrounding homes. The grant of the variance will not seriously affect neighboring properties and uses.

¹ At the hearing, a Motion was made, seconded, and discussion followed. The Motion carried unanimously that the special exception and the variances be GRANTED, and each board member articulated the reasons for their vote on the record.

The Applicants have 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, that the one family, semi-detached dwelling has been on the property since at least 1998 and that the Applicant will not be able to sell either 87 or 89 Washington Street without the special exception and subdivision. The Board therefore grants the variances and special exception sought.

A copy of this written decision shall be mailed to the Applicants, 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

Date of Decision: 12/22/14

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.