

BOARD OF ADJUSTMENT - CITY OF DELAWARE CITY

IN RE: VARIANCE APPLICATION OF)
WHITTAKER BROS. FOR 308 JEFFERSON ST)
DELAWARE CITY, DELAWARE)

Parcel No. 22-006.00-033

**NOTICE OF DECISION
OF THE BOARD OF ADJUSTMENT**

Introduction

The City of Delaware City Board of Adjustment (the "Board") held a hearing on April 27th, 2015 (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

Background

Kevin Whittaker & Whittaker Bros. is the owner of that certain real property located at 308 Jefferson Street, Delaware City, Delaware (the "Applicants"). The Applicants presented their application for a variance to the City Manager. The Applicant applied for a variance to allow lot coverage of 37% for a one-family dwelling in the **R-1** Zone.

<p>308 Jefferson Street</p> <ul style="list-style-type: none"> - A lot coverage from 30% to 37 % for a one story, single family dwelling. 	
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Based upon testimony, it was established at the Hearing that the property was appropriately posted, and certified mailings were sent out to potentially affected contiguous property owners. At the April 27th, 2015 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 variance, 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 variance to permit a coverage of 37% from 30% for a one-family 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 Applicant met the burden for the grant of the variance requested.

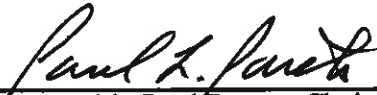
As for the variance, the Board found that the proposed lot coverage from 30% to 37% for a one family dwelling is reasonably necessary for the convenience and/or welfare of the public. Moreover, the Board found that the proposed use is not detrimental or injurious to the neighborhood or the City. The Board therefore grants the variance requested based upon the reasons stated in the record by the members of the Board at the time of their vote.

As for the coverage, 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, and is consistent with setbacks for surrounding properties.

¹ At the hearing, a Motion was made, seconded, 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.

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. The Board therefore grants the variances 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: April 27, 2015 _____

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.