

**BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY**

IN RE: VARIANCE APPLICATION OF )  
PAUL D. FITZWATER, III )  
407 HAMILTON STREET, )  
DELAWARE CITY, DELAWARE )  
PARCEL NO. 2200900144 )

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

**Introduction**

The City of Delaware City Board of Adjustment (the “Board”) held a hearing on October 7, 2015 (the “Hearing”) in The City of Delaware City (the “City”) regarding the above-captioned 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          |
|          | Andrea Nolan | Board Member/Scripter |

**Background**

Paul D. Fitzwater, III (the “Applicant”) is the owner of that certain real property located at 407 Hamilton Street, Delaware City, Delaware (the “Property”). Prior to the Hearing, the Applicant presented his application for three variances to the City Manager (the “Application”). The variances sought by the Applicant are necessary to subdivide the Property into two lots – Lot 1 (containing pre-existing residential unit) and Lot 2 (the new parcel). Specifically, the Applicant seeks the following variances for Lots 1 and 2:

| <b>Lot 1</b><br><b>(existing house – 65.0’ x 104’)</b>  | <b>Lot 2</b><br><b>(new parcel – 65.0’ x 105’)</b> |
|---|--|
| Existing Shed – Side Setback from 7’ to 0’<br>Existing Pool – Rear Setback from 7’ to 4’<br>Existing Pool – Setback from House from 10’ to 4.9’ | Existing Garage – Rear Setback from 25’ to 10’     |

Based upon testimony, it was established at the Hearing that the Property was properly posted and certified mailings where sent out to potentially affected contiguous property owners. At the Hearing, the Board made a decision and voted on the Application. Based upon the exhibits entered into the Hearing’s 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

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.

### 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),<sup>1</sup> the Board finds that the Applicant met his burden for the grant of the variances requested.

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. No objections by neighboring property owners were raised. The grant of the variance will not seriously affect neighboring properties and uses. The Applicant has established exceptional practical difficulty if it were required to remove the existing shed, garage and pool because, in addition to the reasons stated on the record: (1) the above-ground pool is buried in approximately 12 inches; (2) there is no other location where the pool can be placed on the new lot without a variance; (3) the garage on Lot 2 would need to be torn down because it is the only structure on the parcel and could thereafter be rebuilt built post-subdivision if torn down; and (4) the shed is already existing and the variance is required primarily due to the redrawn lot line. 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.

 9 Oct, 2015  
The Honorable Paul Parets, Chair  
On Behalf of the Board

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<sup>1</sup> At the hearing, a Motion was made, seconded, and discussion followed. The Motion carried unanimously that the variances be GRANTED, and each board member articulated the reasons for his or her vote on the record.

Date of Decision: October 7, 2015

Date of Written Decision/Date Filed: October 9, 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, Delaware.