

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: AREA VARIANCE)
150 CLINTON STREET,) CA. No. 2019-01
DELAWARE CITY, DELAWARE)
PARCEL NO. 2200700090)

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

Introduction

The City of Delaware City Board of Adjustment (the “Board”) held a hearing on February 4, 2019 (the “Hearing”) in The City of Delaware City (the “City”) regarding the above-captioned application (the “Application”). 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

Background

Delaware City Station LLC (the “Applicant”) is the owner of that certain real property located at 150 Clinton Street, Delaware City, Delaware (the “Property”). The Applicant’s Application seeks the following variances at the Property:

- Parking variance – Thirty-two (32) spots to seven (7) spots for a church

Based upon the evidence 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 requests were satisfied in advance of the Hearing. *See* 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, 46-131(d), and 46-131(e).

Testimony Presented

The Applicant seeks to sell the Property (formerly used as the Delaware City Fire House) to a church for worship and similar services. Members of the church were present to answer questions.¹ The church (who acted via a power of attorney for the Applicant) was represented at the hearing by Vance Funk, IV, Esq.

The testimony presented is that the church has been in operation for approximately nine (9) years and currently meets at the Girl Scout building in Newark off of Old Baltimore Pike. The church has a congregation of approximately sixty (60) members plus children.

It was stated by the attorney for the church that the exceptional practical difficulty is the size of the lot. There is no area on the parcel that would allow for thirty-two (32) parking spaces. It was noted that at least two other places of worship in town do not meet the parking requirements, although they may be grandfathered. It was further noted that what is being proposed is not out of character with the surrounding area. If the variance is not granted, the church cannot move forward with the sale transaction with the Applicant.

The Pastor (John Paintsil) was called to testify and supported the statements of the attorney. He noted that the church wants to support the community. The Chair asked if the church knew there were only seven (7) spaces when they entered into the contract, and the Pastor indicated that he did not know that the parking was insufficient until after they received the survey.

The Chair asked about membership. The Pastor indicated that membership is about one-hundred (100), and they usually have about sixty (60) people attend services on a given Sunday. At this point, the Church is only looking for a place of worship, and does not anticipate having bingo nights, soup kitchens, and the like. In addition to services, they will have baby christening and weddings.

Mr. Brady asked the church if there were objections from the Fire Marshall to the parking proposal. The Board attorney clarified that the parking requirements are City requirements. The applicant was also asked by the City Manager if other parking would be available via the nearby catholic church. It was stated that the catholic church does not allow parking in its lot for liability purposes.

Nate Baxter testified in opposition. He lives across from the seven (7) spaces. He testified that he has a concern about parking in general and what this use will add to the intersection on a Sunday with one-hundred (100) new people. Many residents do not have a

¹ The record contains a power of attorney which allows the church to speak on the Applicant's behalf.

driveway and will be impacted if the proposed variance is granted. He testified that the church parking will detrimentally impact the area, especially in the summertime when there are tourists.

John Buchheit III testified that he is on the parking commission and there is a parking crisis in Delaware City. The bike trail brings numerous people for recreation and athletics for which the City is trying to find parking. He lives in that block, and with St. Paul's on the weekend, Henry Street is full of cars and he oftentimes cannot obtain a parking space. There is also a traffic problem when the funeral home has a service. He hopes that the Board chooses wisely.

The Board Chair asked if the area in front of the former fire hall had been slotted for parking. The Acting City Manager indicated that it had not been so designated, and he does not understand why, especially if the bays were not being used for a garage type use.

The Chair questioned the Acting City Manager about the front of the building on the maps in the file. That area yielded an additional eleven (11) spaces. A copy of the referenced drawing is attached hereto as Exhibit A.² The Chair noted that the drawing indicates a total of eighteen (18) spaces.

Cindy Phipps testified in opposition to the variance request. She indicated that Dennis (presumably her husband) has one lung and she has six screws in her back. As it stands now, she has to fight for parking. When the funeral home has a service, she has to decide if she can go out for the day. She indicated that she does not know where people are going to go if the church comes in. She has lived here forty (40) years, and she would like to park in front of her house. She does not know where the church patrons will be able to park because there is no parking.

Tim Konkus spoke on behalf of Main Street Delaware City. He explained that there has been a parking commission put together to deal with the explosion of parking issues with tourists in the City. Those recommendations have not yet been put in place. There is a severe shortage of parking in the City. By changing the required number from thirty-two (32) to seven (7) spaces, it will not alleviate the parking issues in the City.

On rebuttal, Mr. Funk stated that they understand the parking issue concerns. He noted that when the front of the building is restriped, it will further create more spaces. WSFS has also allowed Sunday parking – which would be eight (8) or nine (9) additional spaces. He noted that the firehouse had similar events in the past with people in similar circumstances.

The Pastor noted that the church is going into the community to serve. He indicated that the church wanted to be a good neighbor. He stated that they have sixty (60) members, but they often ride together. There will not be much traffic congestion because people ride together.

² Although two maps are in the record, the Applicant clarified at the hearing that the map attached as Exhibit A is the map upon which the Board should rely.

A discussion was thereafter held about potentially double parking on the left side of the building. Those additional spaces, with the total spaces in front, total twenty-five (25) spaces available plus the WSFS spaces. Upon clarification on questions from Board member Brady, it was noted that the double parking area is on the City's property. It was further noted by the Acting City Manager that parking cannot go on the City property without proper leases and releases. He also noted that while the Fire Marshall may have approved a plan, the City has jurisdiction over the parking areas on City property and the double parking proposal has not been fully vetted.

The Chair asked what the exceptional practical difficulty is – and the applicant's attorney responded that, in addition to the practical difficulty noted earlier, the transaction would fail. Plus, there is not enough room on the property for all of the required parking spaces. The Pastor indicated that they have incurred expenses including surveys and building inspection cost.

The Pastor noted that while they have sixty (60) members, they will not have sixty (60) cars because people attend church as a family. It was noted that this does not address the issues of parking for funerals or weddings. The Pastor indicated that the congregation has had two weddings and two funerals in the past nine (9) years. The Pastor indicated that he anticipates about fifteen (15) vehicles on an average Sunday. He further reiterated that the church does not want to be a burden to the neighborhood.

Mr. Clemens Owusu-Donkor testified in favor of the application. He indicated that if double parking is allowed, he will have members of the congregation to manage the double parking. He also noted that if parking becomes an issue, they could have multiple services to manage the impact on the community.

In closing, John Buchheit III stated that the WSFS parking is four (4) spaces, not eight (8) because the parking behind is not the bank's parking. Mr. Funk thanked him (on the Applicant's behalf) for the clarification.

Nate Baxter noted that if a valet service is used for double parking in the side lot, cars will be down Second Street and until they get parked, there will be a backup on a Sunday. He also noted that a pothole on Second Street is a real issue, especially with pedestrians which adds to the chaos in the area.

Following the close of evidence, the Chair discussed the Planning Commission minutes and drew the Board's attention to the discussion by the Planning Commission on this variance. The Chair stated that the testimony before the Planning Commission is consistent with the testimony presented at the hearing before the Board. He noted that the Planning Commission recommended approval of the variances. The Board attorney noted that the Board is not bound by the decision of the Planning Commission.


The Honorable Paul Parets, Chair

Date of Decision: 4 February, 2019

Date of Written Decision/Date Filed: February 21, 2019

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.

The Chair inquired if the Board could postpone a decision to obtain more information from the Fire Marshal and what exactly WSFS has offered regarding the parking. The Board attorney responded that the Board could postpone the decision and allow for the application to be reopened to address additional questions or make the decision at this meeting. The Board attorney noted that the burden is on the applicant for the variance.

Decision

After reviewing the record, hearing testimony, and receiving sufficient answers to questions posed, 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).³ The Board finds that the Applicant has met its burden for the variances.

The Board finds as follows: (1) the inability of the Property to accommodate the required parking presents exceptional practical difficulty; (2) the impact on the surrounding area will be minimal and granting the parking variance will not have a serious impact on the area; (3) the crowds for the church will be small and there will not be parking havoc with the additional spaces in the front in addition of the building with the seven (7) spaces; (4) there is financial burden on the applicant if the variance is not granted which presents an additional exceptional practical difficulty; (5) the impact of this church will not have any more impact than the Catholic or other churches in the area; (6) the applicant will go out of its way to alleviate traffic problems in the neighborhood; (7) the church use would be precluded absent the grant of the variance which presents exceptional practical difficulty; and (8) the Planning Commission's recommendation supports the decision. The Board further finds that the variance sought is not detrimental or injurious to the neighborhood, and the proposal fits with the character in the vicinity. Moreover, even in spite of some conflicting testimony, the variances do not seriously affect neighboring properties.

For these reasons, and for the reasons stated on the record at the hearing the request for a parking variance is hereby GRANTED for the church use.

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.

³ At the hearing, a Motion was made, seconded, and discussion followed. The Motion carried unanimously that the requested variances be GRANTED, and each board member articulated the reasons for his or her vote on the record. The articulated reasons are incorporated herein by reference.