

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: AREA VARIANCE)
206 BAYARD STREET,) CA. No. 2019-03
DELAWARE CITY, DELAWARE)
PARCEL NO. 2200900264)

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

Whittaker Bros. Inc. (the “Applicant”) is the owner of that certain real property located at 206 Bayard Street, Delaware City, Delaware (the “Property”). The Applicant’s Application seeks the following variances at the Property:

- Front Setback Variance 20’ to 10’

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

Kevin Whittaker made a presentation in favor of the Application. As more fully spelled out on the record, Whittaker noted that this Property was the subject of a prior grant of variances last year. Thereafter, a record plan was recorded. At that time, one variance was missed because, even though Henry Street is a paper street, it was not accounted for as a street. At that time, it should have been treated as a twenty-foot setback for a corner lot but was not. The variance requested is for a variance to ten feet from that requirement. He further noted that this is only one setback on the recorded plan, and it is requested to maximize the interior design. There is no zoning change associated with the variance, and there is no impact on the other properties, and plenty of open space exists with the paper street adjoining.

Regarding exceptional practical difficulty, if the variance were not granted, he would need to shift the other lot lines or the proposed house, which would cause the need for other variances. He also noted that many houses in the historic district have corner lots with zero setbacks, and it was in error to not to ask for the variance the first time around. It was also noted that the Planning Commission favorably reviewed the request.

Decision

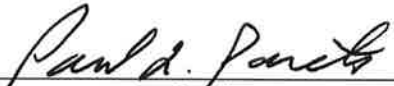
After reviewing the record, hearing testimony, and receiving sufficient answers to questions posed, the Board GRANTS the Application for the reasons stated on the record by the Board members at the time of their vote (all such reasons are incorporated herein and made part of this written decision by reference).¹ The Board finds that the Applicant has met its burden for the variances.

The Board finds that the Applicant faces exceptional practical difficulties if it is not permitted to develop the Property as proposed due to, among other things: (1) the money spent thus far; (2) moving the proposed house on the proposed lot (which would necessitate the grant of additional variances) would not be practical or desirable, especially in light of the paper street; (3) this is a clarification/correction of the previous approval; and (4) the Planning Commission approved of the application. The Board further finds that the area variance sought is not detrimental or injurious to the neighborhood, enhances the site design, and the proposal fits with the character of uses in the vicinity. Moreover, 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 variance is hereby GRANTED.

¹ 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.

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

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.