

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: AREA VARIANCE)
308 BAYARD STREET,) CA. No. 2019-02
DELAWARE CITY, DELAWARE)
TAX PARCEL NO. 2200900141)

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 308 Bayard Street, Delaware City, Delaware (the “Property”). The Applicant’s Application seeks the following variances at the Property:

- Lot Coverage Variance 30% to 38%

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 presented evidence regarding exceptional practical difficulty. Mr. Whittaker stated that it is his intention to build a 1750 square foot house on the lot, with a two car garage and a covered porch. His target market is for a 55+ resident, and he wants a single floor. He further testified that he has exceptional practical difficulty in meeting the lot coverage requirement because he would need to build a two-story house or severely shrink the footprint to meet the lot coverage requirement for a ranch house. (He indicated that a ranch house would lose 400-500 square feet in order to meet the lot coverage requirements). Mr. Whittaker noted that the design was in keeping with the residential area in the R-1 district. He showed pictures of similar ranch houses in the area, and noted that the proposal was consistent with surrounding zoning and with other properties in the area. He also noted that a similar variance was granted for another property on Madison Street. It was further noted that the Planning Commission voted in favor of the variance request.

No one spoke against the variance request, although a resident living at 310 Bayard asked if the granting of the variance would necessitate a reassessment of her property. It was stated and clarified that the grant of the variance for an adjoining property would not in and of itself cause an adjoining property to be reassessed.

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.

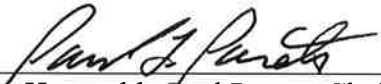
The Board finds that the Applicant faces exceptional practical difficulties if it is not permitted to develop the Property as proposed due to, among other things: (1) the money spent thus far by the applicant; (2) because the ranch house of this size with a two car garage could not be built absent the grant of a variance; and (3) there is previous precedent for such a variance. The Board further finds that the area variance sought is not detrimental or injurious to the

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.

neighborhood, 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.

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.