

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: Special Exemption
for a Day Care Center in the C-1
District and related variances

Trina Harrison's
Harrison's Little Learners
132 Clinton Street
DELAWARE CITY, DELAWARE

CA. No. 2021-__

PARCEL NO.

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

Introduction

The City of Delaware City Board of Adjustment (the "Board") held a hearing on May 12, 2021 (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
	Andrea Nolan	Board Member
	Dale Slotter	Board Member

Background

Ms. Harrison (the "Applicant") is seeking to rent the property at 132 Clinton Street, Delaware City, Delaware (the "Property") for use as a Day Care Center. In doing so, the Applicant will use a portion of the property at 0 William Street for an outdoor play area for the daycare.

Prior to the Hearing, the Applicant presented to the City Manager its application for Special Exemption for a Day Care Center, and related variances for the Properties (the "Application").

In regard to 132 Clinton Street, the Application seeks the following:

- 1) A Special Exemption for a Day Care Center in the C-1 Zoning District (Article V: Section 46-16(i).
- 2) Outdoor Play Space variance from the required 3000 square feet to 0 square feet with conditions.
- 3) Minimum Lot Size variance from the required 30,000 square feet for a Day Care Center of 30 kids for a lot size of 2,900 square feet.

As to 0 William Street, the Application seeks the following:

- 1) A setback variance for a fence from the required 20 feet to 0 feet.
- 2) A height variance for a fence from 4 feet to permit 6 feet.
- 3) A variance to allow a privacy style fence on the front façade abutting a public street instead of an open rail or picket fence less than 80% solid.

It was established at the Hearing that the Property was properly posted, and certified mailings were properly sent out to all potentially affected contiguous property owners. Based upon the exhibits entered into the Hearing record, and the testimony provided at the Hearing, the Board finds that all Code-required notice prerequisites to hear the Application were satisfied in advance of the Hearing. Del. City Code § 46-111.

Standard of Review

There are two properties related to this Application. A Special Exemption is needed for 132 Clinton Street, which must meet the following requirements, or a variance must be obtained:

- 1) 100 square feet of outdoor play space for each child.
There is no outdoor play space on this property and

therefore a variance is required for the Special exemption to be approved.

- 2) A fence is required around the outdoor play space.
There is no outdoor play space; no variance required.
- 3) Minimum lot area of 30,000 square feet is required.
There is only 2900 square feet, therefore a variance is required for the Special Exemption to be approved.

As to 0 William Street, the 3 fence variances set forth above are required to utilize 0 William as the Outdoor Play Area for the Day Care.

In order to grant the Special Exemption, the Board must approve the cited area variances, and in doing so, must consider, “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). Specifically, 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.

Testimony Presented

As more fully spelled out on the record, which is incorporated herein by reference, Trina Harrison presented in favor of the Application. Ms. Harrison presented evidence that a Day Care Center was needed in the proposed area. Further, while the building at 132 Clinton Street was well suited for a Day Care Center, it had no space for an Outdoor Play Area. Accordingly, she entered into an agreement with the owner of 0 William Street to use that property for Outdoor Play area.

Decision

After reviewing the record, hearing testimony, and receiving comments from all persons who wished to be heard, 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), and as set forth herein.¹ The Board finds that the Applicant has met its burden for the grant Special Exemption and all required variances were approved by the Board.

As set forth more completely on the Record, the Board finds that the nature of the zone where the Property lies, and the use of 132 Clinton Street for a Day Care Center and 0 William Street for Outdoor Play Area fits within the character and uses of the immediate vicinity. The Board also finds that the requested variance would not seriously affect neighboring property and its uses. Finally, the Board concludes that the Applicant has met its burden of establishing the required exceptional practical difficulty. The 132 Clinton Street is suitable for a Day Care Center, and the use of 0 William Street is not optimal, but is a reasonable alternative for Outdoor Play area. As to 132 Clinton Street, 0 Outdoor Play Space is permissible due to the ability to use 0 William Street for Outdoor Play Area. Further, as to 132 Clinton Street, the Lot Size of 132 Clinton Street is consistent with lots in the area and the code mandated lot is not practical. The three fence variances required for 0 William Street are approved. The setback variance is permissible due to the location of the Outdoor Play Area. The height and opacity of the fence are appropriate for a Day Care Center.


For these reasons, and for the reasons stated on the record at the hearing, the Application for a Special Exemption and all variances requested related to 132 Clinton Street and 0 William Street are APPROVED.

Please note, this approval is expressly conditioned on the following:

¹ At the hearing, a Motion was made, seconded, and discussion followed. The Motion carried unanimously that the Application for a variance be approved, and each board member articulated the reasons for his or her vote on the record. The articulated reasons are incorporated herein by reference.

- 1) If the ability to use 0 William Street for the Outdoor Play area ceases, this approval is void, unless the applicant presents an alternative Outdoor Play Area that is approved by the Board of Adjustment.
- 2) The Day Care Center shall conform with all State of Delaware Rules and Regulations related to Day Cares.

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
On Behalf of the Board

Date of Decision: 12 May, 2021

Date of Written Decision/Date Filed: _____

Note: 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.