

*"A Historic Past"*



*"A Bright Future"*

THE CITY OF DELAWARE CITY  
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## **BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY**

IN RE: VARIANCE APPLICATION OF  
Real Ten Investments, LLC  
136 Washington Street  
Delaware City, Delaware

CA No. 2021 - \_\_\_\_\_

Parcel No. 2200700032

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

#### **Introduction**

The City of Delaware City Board of Adjustment (the “Board”) held a hearing on November 9, 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**

Real Ten Investments, LLC (the “Applicant”) is the owner of certain real property located at 136 Washington Street, Delaware City, Delaware (the “Property”). Prior to the Hearing, the Applicant presented to the City Manager its application for a variance relating to the Property (the “Application”). The Application seeks a variance for a side set-back from 5 feet to 0 feet.

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**

In reviewing the Application, which relates to an area variance, the Board 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, Brandon Ropp presented in favor of the Application. Mr. Ropp presented evidence that the Property consisted of one single-family home. The Applicant intends to subdivide the Property into two properties, dividing the current structure on the Property into two townhomes, each on its own parcel.

A variance is required to permit the lot to be subdivided, so as to allow the current structure to become two attached townhomes. Mr. Ropp testified that the side variances were necessary to allow for the current structure to remain on the Property.

### **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.<sup>1</sup> The Board finds that the Applicant has met its burden for the grant of the variance.

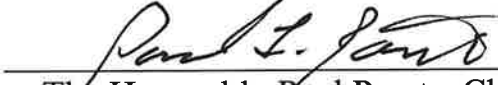
As set forth more completely on the Record, the Board finds that the nature of the zone where the Property lies, and the character and uses of the immediate vicinity, will not be altered because the Application seeks a residential use similar to surrounding homes, and will not be altering the current residential structure significantly. The Board also finds that the requested variance would not seriously affect neighboring property and its uses, as the use on the subdivided property will not change. Finally, the Board concludes that the Applicant has met its burden of establishing the required exceptional practical difficulty. The Property includes a preexisting structure that will remain. The two side variances (one for each parcel following subdivision) are required to allow the conversion of the single-family home to an attached townhome. This use is consistent with the immediate area. A denial of the variance would cause the Applicant to raze the current structure, as it is impossible to comply with the setbacks given the nature of the single structure, establishing the required exceptional practical difficulty for the variance.

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<sup>1</sup> 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.

For these reasons, and for the reasons stated on the record at the hearing, the Application for a variance related to 136 Washington Street is APPROVED.

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: \_\_\_\_\_

Date of Written Decision/Date Filed: 27 Jan, 2022

**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.