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CITY OF DELAWARE CITY

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BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: VARIANCE APPLICATION OF)
DAVID TURLEY)
201 CLINTON STREET,) CA. No. 2020- 02
DELAWARE CITY, DELAWARE)
PARCEL NO. 2200700151)

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

Introduction

The City of Delaware City Board of Adjustment (the "Board") held a hearing on June 23, 2020 (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
	Dale Slotter	Board Member
	Andrea Nolan	Board Member
	Andrew Titus	Board Member

Background

David Turley (the "Applicant") is the owner of that certain real property located at 201 Clinton Street, Delaware City, Delaware (the "Property"). Prior to the Hearing, the Applicant presented his application for three variances to the City Manager (the "Application"). The variance application seeks three variances as follows:

Side Setback – Variance from 7' to 0 for a carriage garage
Rear Setback – Variance from 7' to 0 for a carriage garage
Lot Coverage – Variance from 30% to 50% for a carriage garage

It was established at the Hearing that the Property was properly posted and certified mailings were sent out to 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 notice prerequisites in the Code to hear the variance were satisfied in advance of the Hearing. Del. City Code § 46-111.

Standard of Review

The standard applied to area variances such as this 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.

Testimony Presented

Mr. Turley presented in favor of the application. As more fully spelled out on the record, which is incorporated herein by reference, he presented evidence that he needed the lot coverage variance and the back and side yard variances so he could replace a temporary shed structure, which is currently unusable, with a permanent carriage garage large enough to function as a garage. Mr. Turley testified that there is an easement for an alley along the backside of the property and without the variances, he would be unable to get a car in the structure and the

temporary structures would need to stay. He contended that his exceptional practical difficulty related to this and other issues. Testimony was also presented that the proposed structure would be 14 feet by 29 feet wide thereby running almost the entire width of the 30 foot wide property. Mr. Turley indicated that the structure would approve the appearance of the lot from both Second Street and the alleyway as it is a corner lot. Turley noted that the building would be 8 feet from any neighbor. Exhibits were presented – all of which were made part of the record.

There were no additional comments and no one spoke in opposition of the variance.

Decision

After reviewing the record, hearing testimony, and receiving comments from all persons attending the Hearing, the Board APPROVED the Application by a vote of 3-1 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 his burden for the grant of the variance.


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. Additionally, granting the variance will result in an approved appearance to the commercial area since the project abuts the C2 Commercial Zone. The Board noted that the current temporary structure would suffer continued degradation if not replaced in some form and that exceptional practical difficulty was established.² The Board further noted the structure would not impact any neighbors of the Applicant and that no opposition to the variance had been received.

¹ At the Hearing, a Motion was made, seconded, and discussion followed. The Motion carried by a vote of 3-1 that the 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.

² One Board member, Dale Slotter, voted against the variance request finding no showing of exception practical difficulty.

For these reasons, and for the reasons stated on the record at the Hearing, the variance requested 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: 23 June 2020

Date of Written Decision/Date Filed: 2 July 2020

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.