



**CITY OF DELAWARE CITY**

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Delaware City, Delaware 19706

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**BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY**

IN RE: VARIANCE APPLICATION OF	)	
ROBERT DAVIS	)	
300 WASHINGTON STREET	)	CA. No. 2020- 01
DELAWARE CITY, DELAWARE	)	
PARCEL NO. 2200800031	)	

**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**

Robert Davis (the "Applicant") is the owner of that certain real property located at 300 Washington Street, Delaware City, Delaware (the "Property"). Prior to the Hearing, the Applicant presented his application for four variances to the

City Manager (the “Application”). The variance application seeks four variances as follows:

Fence Height - Variance from 4 feet to 6 feet  
Fence Design - Variance for Privacy fence  
Front Setback - Variance from 20 feet to 14 feet  
Front Setback - Variance from 20 feet to 0 feet

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.

Prior to the variance hearing, Mr. Davis’s fence plan was approved by the Planning Commission on June 8, 2020 and by the Historic Preservation Commission on June 9, 2020.

### **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. Davis 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 two set back variances and the two fence variances so he could erect a fence which will provide both security and privacy. Mr. Davis testified that his wife is a nurse and currently works with patients suffering from mental health disorders. As such, there is concern for her safety. Mr. Davis further stated that they have large dogs for protection and that the fence would serve both as protection for the family and protection to the public by keeping the dogs contained in the yard. Mr. Davis stated that he has an large yard however, if he were denied a variance, erecting the fence would require the fence be placed in the middle of the yard. Mr. Davis indicated that the structure would not affect his neighbors and that he would place the finished side to the exterior.

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

### **Decision**

After reviewing the record, hearing testimony, and receiving comments from all persons attending the hearing, the Board APPROVED 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).<sup>1</sup> 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 as the area the variance encompasses is unusable space. The Board found that the need for security of person and dogs on the Applicant's property met the burden of establishing exceptional practical difficulty. The Board further noted the structure would not impact any neighbors of the Applicant and that no opposition to the variance had been received.

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<sup>1</sup> At the hearing, a Motion was made, seconded, and discussion followed. The Motion carried by a vote of 4-0 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.

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.