

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

IN RE: VARIANCE APPLICATION OF )  
PORT PENN HOLDINGS LLC )  
406 WASHINGTON STREET, )  
DELAWARE CITY, DELAWARE )  
PARCEL NO. 2200800039 )

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

**Introduction**

The City of Delaware City Board of Adjustment (the “Board”) held a hearing on January 21, 2016 (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  
James Brady Board Member  
Andrea Nolan Board Member

**Background**

Port Penn Holdings, LLC (the “Applicant”) is the owner of that certain real property located at 406 Washington Street, Delaware City, Delaware (the “Property”). Prior to the Hearing, the Applicant presented its application for five variances to the City Manager (the “Application”). The variances sought by the Applicant are necessary to subdivide the Property into three lots – Lot 1 (containing a pre-existing residential unit) and Lots 2 and 3 (the new parcels). Specifically, the Applicant seeks the following variances for Lots 1, 2 and 3:

<p><b>Lot #1 (existing house) 92.0’ x 100’</b>  <b>Variations Needed:</b>  1. Front Setback from 20’ to 12’</p>	<p><b>Lot #2 (new parcel) 54.0’ x 100’</b>  <b>Variations Needed:</b>  1. Frontage from 60’ to 54’  2. Area from 6,000 to 5,400  <b>Lot #3 (new parcel) 54.0’ x 100’</b>  <b>Variations Needed:</b>  1. Frontage from 60’ to 54’  2. Area from 6,000 to 5,400</p>
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Based upon testimony, 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. This is the Board's written decision on the Application.

### **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.

### **Decision**

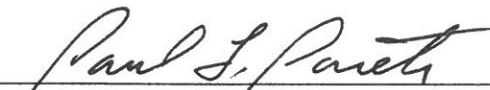
After reviewing the record, hearing testimony, and receiving comments from all persons attending the hearing, the Board GRANTS the Application and the five variances requested. For the reasons stated on the record by the Board members at the time of their vote (all such reasons are incorporated herein and made part of this written decision by reference),<sup>1</sup> the Board finds that the Applicant met its burden for the grant of each of the five variances requested.

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<sup>1</sup> At the hearing, a Motion was made, seconded, and discussion followed. The Motion carried unanimously that the 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.

As for all of the variances, the nature of the zone where the property lies and the character and uses of the immediate vicinity will not be altered because the project allows residential uses similar to surrounding homes. No objections by neighboring property owners were raised. The grant of the variance will not seriously affect neighboring properties and uses. The Applicant has established exceptional practical difficulty, in addition to the reasons stated on the record, by demonstrating: (1) the variance for lot one is only necessary to make the lot and the house a conforming property and it would be an exceptional practical difficulty if the property remained non-conforming; (2) the frontage variances are warranted here because the frontage of the lots near this property vary, and only a slight adjustment of the frontage is required to create the new lots; (3) exceptional practical difficult would result if only one new large lot were permitted; and (3) the area variance for the lot area is minimal and exceptional practical difficulty is established because without it, only one very large oversized lot could be created.

A copy of this written decision shall be mailed to the Applicants, and all persons requesting a copy of the written decision in writing, on the date it is filed.

  
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The Honorable Paul Parets, Chair  
On Behalf of the Board

Date of Decision: 1/21/2016

Date of Written Decision/Date Filed: 2/18/2016

**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.