

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: AREA VARIANCES)
APPLICATION OF RICHARD & LINDA CATHCART)
301 ADAMS STREET,)
DELAWARE CITY, DELAWARE)
PARCEL NO. 2200800030)

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

Introduction

The City of Delaware City Board of Adjustment (the “Board”) held a hearing on May 22, 2017 (the “Hearing”) in The City of Delaware City (the “City”) regarding the above-captioned application (the “Application”). 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

Richard & Linda Cathcart (the “Applicant”), are the owners of that certain real property located at 301 Adams Street, Delaware City, Delaware (the “Property”). The Applicant’s Application seeks the following variances at the Property:

- Frontage Variance from 60 sq. ft. to 45.5 sq. ft. on Lots 1 & 2
- Area Variance from 6,000 sq. ft. to 4,500 sq. ft. on Lots 1 & 2

Based upon the evidence 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 requests were satisfied in advance of the Hearing. *See* Del. City Code § 46-111. This is the Board’s written decision on the Application.

Standard of Review

The Board may grant area variances when:

The standard applied to area variances 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, 46-131(d), and 46-131(e).

Testimony Presented

Richard Cathcart made a presentation in favor of the Application. As more fully spelled out on the record, regarding exceptional practical difficulty, he presented evidence that the renovations to the house on the existing lot cost more than expected. He desired to create a new lot for potential sale because of the additional monies that were expended on the house renovations. He further testified that the lot widths of other properties in the nearby blocks had similar frontages and lot widths. He testified that he had no current plans for the subdivided lot.

In addition, Mr. Cathcart testified that the nature of the surrounding properties is residential and other lots had been similarly subdivided in the past. An exhibit, Mr. Cathcart provided a plot plan of nearby lots showing, in nearby blocks, that other properties have (in some instances) similar or lesser lot widths.

Robert Janiszewski, Jr., a neighboring property owner, testified that he opposed the variance. He desired to know what the eventual house on the lot would look like, and whether it will have a driveway. During deliberations and through discussion, it was determined that the lot, as configured, would not likely support a driveway. Mr. Janiszewski also testified that he expected some lowering of the property values and further testified that the houses directly across the street on the same block had more frontage. He also testified that a house on the lot would require on street parking and parking is a problem in that area.

The Board was advised that a self-created hardship is not a per se reason to deny the variance and that they board had to consider, in its discretion, whether the applicant would meet the requirements of the exceptional practical difficulty test. The Board also discussed whether the Town Council could reject the subdivision if the variances were approved. The Board was advised that if a subdivision meets all requirements of the Code, it will likely need to be approved.

On rebuttal, Mr. Cathcart reiterated that the exceptional practical difficulty relates to renovation costs of the existing house and that a house on the subdivided lot would not be injurious to the surrounding neighborhood.

Decision

After reviewing the record, hearing testimony, and receiving sufficient answers to questions posed, 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).¹ The Board finds that the Applicant has met its burden for the area variances.

The Board finds that the Applicant faces exceptional practical difficulties if not permitted to subdivide the Property due to, among other things, the additional costs that have been incurred in renovating the existing structure. The Board further finds that there will be minimal impact on neighboring properties. The Board also did not believe that parking would be a serious problem if a house were built on the smaller lot. And, the Board accepted the applicant's testimony that, based upon the plot plan in the record, some nearby properties have similar frontages. Thus, the area variances sought are not detrimental or injurious to the neighborhood as the subdivision fits with the character of uses in the vicinity. Moreover, the variances do not seriously affect neighboring properties.

For these reasons, and for the reasons stated on the record at the hearing, the variances are GRANTED.

¹ At the hearing, a Motion was made, seconded, and discussion followed. The Motion carried unanimously that the requested 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.

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.

A handwritten signature in black ink, appearing to read "Paul Parets", is written over a horizontal line.

The Honorable Paul Parets, Chair

Date of Decision: May 22, 2017

Date of Written Decision/Date Filed: June 12, 2017

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.