

BOARD OF ADJUSTMENT – CITY OF DELAWARE CITY

IN RE: VARIANCE APPLICATION OF)
CARLOS LEON)
312 ADAMS STREET,)
DELAWARE CITY, DELAWARE)
PARCEL NO. 2200800144)

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

Introduction

The City of Delaware City Board of Adjustment (the “Board”) held a hearing on October 17, 2017 (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

Carlos Leon (the “Applicant”) is the owner of that certain real property located at 312 Adams Street, Delaware City, Delaware (the “Property”). Prior to the Hearing, the Applicant presented its application for one variance to the City Manager (the “Application”). The variance application seeks one variance as follows:

Side Setback – Variance from 5’ to 0 for a driveway.

It was established at the Hearing that the Property was properly posted and certified mailings where 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, the Property had been cited for violation of the side-yard setback. Previously, the contractor installing a driveway at the Property had received a permit for the driveway installation, which required the five foot side-yard setback as a condition of the permit. However, the driveway was installed right to the property line – and the owner was cited for the violation.¹ Before the variance hearing, the Code violation had been remedied and the side-yard setback requirement was met. Due to this, the self-created hardship doctrine is not applicable under the facts of this case.

¹ The record reflects that the Planning Commission recommended against the grant of the variance at its meeting on September 11, 2017.

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. Leon 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 side-yard variance so he could park additional cars in the driveway. While cars could be parked in the driveway, more than four cars could not. Testimony was also presented that Mr. Leon has a handicapped relative and that moving that relative in and out of the house from the street can, at times, be difficult. Mr. Leon noted that other driveways in the immediate area have no side-yard setbacks for installed driveways, and that he wanted what others had. He also contended that his exceptional practical difficulty related to these and other issues. Pictures and exhibits were presented by Mr. Leon – all of which were made part of the record. Mr. Leon also indicated that if he would receive a variance of two or three feet, he would be satisfied.

Ms. Johnna Yetter, an owner of property adjacent to the proposed side setback variance, opposed the grant of the variance. As more fully stated on the record, which is incorporated herein by reference, she claimed that she would be harmed by the variance. If the requested variance were granted, cars could be parked right to the property line and they would need to use her property to exit the car. Moreover, the cars would be opening and closing right next to her bedroom window – and she often works shiftwork. Ms. Yetter also noted that Mr. Leon already has the ability to park up to four cars in his driveway, he could extend his driveway away from her property. For these and other reasons stated on the record, Ms. Yetter did not believe that Mr. Leon met his burden of establishing the prerequisite exceptional practical difficulty.

Decision

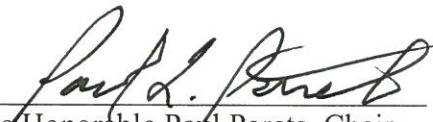
After reviewing the record, hearing testimony, and receiving comments from all persons attending the hearing, the Board DENIES the Application for the reasons stated on the record by the Board members at the time of their vote (all such reasons are incorporated herein and made

part of this written decision by reference).² The Board finds that the Applicant has not 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 because the project allows residential uses similar to surrounding homes. However, the Board holds that the Applicant has not met his burden of establishing the required exceptional practical difficult. There is a driveway existing where four cars can be parked on the Property. Exceptional practical difficult is not established merely because the owner wants the ability for more parking. While the grant of a variance might in some ways reduce street parking, there is nothing based upon the physical condition of the property that establishes the required exceptional practical difficulty for the variance. The Board further notes that exceptional practical difficulty is not established, where, as here, the driveway could be extended on the other side to accommodate the additional parking desired by the Applicant.

For these reasons, and for the reasons stated on the record at the hearing, the variance requested is DENIED.

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: October 17, 2017

Date of Written Decision/Date Filed: 8 Nov, 2017

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.

² At the hearing, a Motion was made, seconded, and discussion followed. The Motion carried unanimously that the variance be DENIED, and each board member articulated the reasons for his or her vote on the record. The articulated reasons are incorporated herein by reference.