

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

IN RE: VARIANCE APPLICATION )  
OF GEORGE & GAIL SMITH, )  
201 JEFFERSON STREET, ) PARCEL NO. 22-007.00-014  
DELAWARE CITY, DELAWARE )  
)

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

**Introduction**

The City of Delaware City Board of Adjustment (the “Board”) held a hearing on July 17, 2018 (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**

George and Gail Smith (the “Applicants”) are the owners of that certain real property located at 201 Jefferson Street, Delaware City, Delaware (the “Property”). Prior to the Hearing, the Applicants presented their application for one variance to the City Manager (the “Application”). The variance application seeks one variance as follows:

Side Setback – Variance from 7’ to 2’ for a detached 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 Cty.*, 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. and Mrs. Smith presented in favor of the Application. As more fully spelled out on the record, which is incorporated herein by reference, they presented evidence that they needed the side setback variance so that they could build a bigger, prefabricated, single-car “12’ x 20’ classic garden garage” that would also serve as additional storage space. They testified that the nature of the surrounding properties is residential, and that the proposed garage is constructed with wood to match the color of the house on the Property. They further testified that the garage would replace a smaller, pre-existing garage that was located two feet from the neighboring property line and which they had already removed. The Smiths noted that the new garage would keep the same two-foot distance from the property line and would therefore not be any closer to the neighboring property than the previous garage was. They testified that that without the variance for the garage, they would have less success placing it in a different location on the Property, and they would have to utilize an off-site storage facility. In addition, the Smiths testified that they already purchased the garage for approximately \$6,000, and that it is ready for delivery and installation – they indicated that they were under the impression from the City that, following submission to the Planning Commission and the Historic Preservation Commission (“HPC”), nothing further was required of them in order to build the proposed garage. The Smiths contended that their exceptional practical difficulty related to these and other issues. A plan and



pictures of the proposed garage were presented by the Smiths and made a part of the record.

Neighboring property owner Silver Nickle LLC, represented by Harry and Elva Nickle, posed questions and sought clarification regarding the placement of the proposed garage. As more fully stated on the record, Mr. Nickle questioned whether the garage would have an overhang and whether the overhang would encroach onto the neighboring property line. The Smiths explained that the two-foot distance to the property line would be measured from the garage's overhang. This information, as well as other information about the garage presented more fully on the record, satisfied Silver Nickle LLC, and it does not oppose a grant of the variance. Mr. Nickle presented further testimony that, in his experience with the HPC, the garage was better placed where it was proposed rather than, for example, in the front of the Smiths' yard.

### **Decision**

After reviewing the record, hearing the testimony, and receiving comments from all persons attending the Hearing, 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 a part of this written decision by reference).<sup>1</sup> The Board finds that the Applicants have met their burden for the grant of the variance.

The Board finds that the nature of the zone in which 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. And, as the applicant presented, the requested side set back variance from seven feet to two feet does not alter the previous garage's two-foot side yard set back. Thus, the grant of the variance will not seriously affect neighboring properties and uses. The Applicants have established exceptional practical difficulty, in addition to the reasons stated


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

on the record, by demonstrating that if the variance is not granted, they will not likely be able to place the garage elsewhere on their property, and they suffer the loss of needed storage space and the \$6,000 that they have already paid for the garage. The Board finds that this expense was incurred as a result of a miscommunication with the City and that, due to this, the self-created hardship doctrine is not applicable under the facts of this case.

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

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.

  
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The Honorable Paul Parets, Chair  
On Behalf of the Board

Date of Decision: July 17, 2018

Date of Written Decision/Date Filed: 7/27/2018 *MP*

**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.