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

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| IN RE: AREA VARIANCES | ) |
| APPLICATION OF WHITTAKER BROS. INC AND | ) |
| THEODORE REPELLA | ) |
| 210 BAYARD STREET, | ) |
| DELAWARE CITY, DELAWARE | ) |
| PARCEL NO. 22-009.00-135 | ) |

# NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

## Introduction

The City of Delaware City Board of Adjustment (the "Board") held a hearing on August 28, 2018 (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):

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| Present: | Paul Parets | Chair |
| | James Brady | Board Member |
| | Andrea Nolan | Board Member |

## Background

Theodore Repella is the owner, and Whittaker Bros. Inc. is the equitable owner (collectively the "Applicant"), of that certain real property located at 201 Bayard Street, Delaware City, Delaware (the "Property"). The Applicant's Application seeks the following variances at the Property in regard to the creation of a three lot subdivision:

- One lot 200' x 100' into two additional lots 50' x 100'
- Frontage Variance from 60' to 50' on Lots 2 & 3
- Area Variance from 6,000 sq. ft. to 5,000 sq. ft. on Lots 2 & 3

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 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

Kevin Whittaker made a presentation in favor of the Application. As more fully spelled out on the record, Whittaker presented evidence regarding exceptional practical difficulty. He noted that the Property had enough room for three conforming sub-dividable lots. However, due to the placement of the existing house and the driveway, the variances are requested to have two slightly smaller lots to allow for a potential garage expansion on the existing house and so that driveways would not be disturbed. The house and the driveway would be disturbed if the lots were conforming. He also indicated that the centering of the house on the existing lot created an exceptional practical difficulty in regard to the proposed subdivision.

In addition, Mr. Whittaker testified that the nature of the surrounding properties is residential. The character of the area is R-1 with residential with some nearby semi-detached buildings and a few historic homes. He presented a number of photos of nearby houses. He also noted that there would be no impact on surrounding houses because the project would be next to Henry Street, a paper street. Mr. Wittaker also referenced his letters submitted in advance, which were included as hearing exhibits.

Ms. Lori Dionsi, 212 Canal Street, opposed the variance request. She was concerned that the smaller lots would diminish property values. She noted that financial hardship is not a sufficient reason to grant a variance. She questioned the lots sizes in the area, especially the properties across Henry Street. She also asked the Applicant for a proffer of the price point for the houses, because she did not want foreclosures and did not want houses sitting empty.

The Applicant proffered that the intended asking price would be $280,000 - $300,000, and the objective is to drive prices up. Mr. Whittaker also proffered that he believed the new houses in the area will increase property values.

## 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 variances.

The Board finds that the Applicant faces exceptional practical difficulties if not permitted to subdivide the Property due to, among other things: (1) the location of the existing house as centered on the lot; (2) the location and limitations posed by the existing driveway; and (3) because the variances requested are relatively minimal and are in keeping with the surrounding properties. The Board further finds that there will be minimal impact on neighboring properties. The Board also did not believe that nearby properties would be devalued. 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.

[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.

For these reasons, and for the reasons stated on the record at the hearing, all of the variances requested are 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.

Paul L. Parets

The Honorable Paul Parets, Chair

Date of Decision: 8/28/2018

Date of Written Decision/Date Filed: 9/10/2018

**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.