

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

IN RE: VARIANCE APPLICATION OF )  
JASON HUTT FOR )  
415 CLINTON STREET, ) PARCEL NO. 22-008.00-059  
DELAWARE CITY, DELAWARE )

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

**Introduction**

The City of Delaware City Board of Adjustment (“BOA”) held a hearing on November 21, 2013 at 7:00 P.M. (the “Hearing”) in The City of Delaware City (the “City”) regarding the above-referenced case. The following members of the BOA were present at the Hearing representing a properly constituted quorum (see Del. City Code § 46-117):

Present:	Paul Parets	Chair
	James Brady	Board Member
	Joseph Dionne	Board Member

**Background**

Jason Hutt<sup>1</sup> is the owner/equitable owner of that certain real property located at 415 Clinton Street (the “Applicant”). The Applicant submitted an application to the City (the “Application”) for variances. The variances sought were:

1. Rear setback from 25 feet to 3 feet
2. Side setback from 7 feet to 3 feet

Based upon testimony, it was established at the Hearing that the property was properly posted and certified mailings were sent out to potentially affected neighboring property owners. Notice of the Hearing was posted in the City seven (7) days prior to the date of the Hearing (the “Notice”). 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 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

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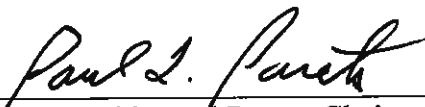
<sup>1</sup> Kevin Whittaker assisted the owner with the Application and made the BOA presentation.

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).

### Decision

After reviewing the record, hearing testimony, and receiving comments from all persons attending the hearing desiring to speak, the BOA 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),<sup>2</sup> the Board finds that the Applicant has met its burden for the grant of the variances requested. The nature of the zone where the property lies and the character and uses of the immediate vicinity will not be altered because there is no change – except for a lot line. The variance is required so that the existing garage need not be removed for the new lot line (e.g. the existing garage will not comply with the rear setback with the new lot line unless the variances are granted).<sup>3</sup> The grant of the variance will not seriously affect neighboring properties and uses. And, the applicant has established exceptional practical difficulty for the grant of the variances based upon the reasons stated in the record by the members of the Board at the time of their vote which include, but are not limited to, the fact that a long existing garage could become in violation of the setbacks due to the subdivision. The Board therefor GRANTS the variances requested.

By this decision, the Board therefor GRANTS the variances sought – as modified herein.



The Honorable Paul Parets, Chair  
On Behalf of the Board

6 December 2013

Date

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<sup>2</sup> At the hearing a Motion was made by Mr. Brady, seconded by Mr. Parets, and discussion followed. The Motion carried unanimously that the variance be GRANTED, and each board member articulated the reasons for their vote on the record.

<sup>3</sup> The Applicant stated that the garage may be grandfathered but the owners felt that a variance would be best.