

**TOWN OF SOUTH BETHANY  
BOARD OF ADJUSTMENT  
PUBLIC HEARING AND MINUTES  
REQUEST FOR SPECIAL EXCEPTION  
FRIDAY, FEBRUARY 16, 2018 2PM**

BOARD: Chairman Steve Bunoski  
Martha Fields  
Charlene Sturbitts  
ABSENT: Al Rae and Peter Bogetti

TOWN STAFF: Joe Hinks, Code Enforcement Constable  
Janet Powell, Town Clerk/Recording Secretary  
Town Solicitor, Barrett Edwards

APPLICANT: J. Allen and Brenda Hossick  
Alice Hossick  
Attorney, Blake Carey

Chairman Bunoski called the Hearing to order at 2p.m. All parties were sworn in who requested testimony during the hearing.

**Old Business: Approval of Minutes**

The Board of Adjustment approved December 1, 2018 Minutes for Hossick and Hardy; and the January 12, 2018 Minutes for Besosa approved - once the subject to the correction regarding "tore down to torn down". Martha Fields motioned the approval and Charlene Sturbitts seconded.

PURSUANT TO 22 DEL.C. SECTION 327 (a) AND ARTICLE XI, SECTION 145-37 B (1) (c) 10 ft. side yard setback requirements of the Code of South Bethany and CHAPTER 145 ARTICLE VII §145-28(B) USES PERMITTED AS SPECIAL EXCEPTIONS. The Board of Adjustment held a Public Hearing to consider the request of the owners, J. Allen and Brenda Hossick, at 8 South 3<sup>rd</sup> Street, South Bethany, for a SPECIAL EXCEPTION to authorize the installation of a "temporary structure to accommodate the requirements of physically handicapped persons" when approved as a special exception. The Hossicks are requesting a special exception approval to install an elevator at the property that will encroach 4.5 feet into the property's required setback area.

The first matter considered by the Board of Adjustments was whether a rehearing should be granted for the requested special exception. In an ORDER dated January 17, 2018, the Board denied a variance requested by the Hossicks in an application filed on October 12, 2107 and hearing dated December 1, 2017. Section 145-62. D of the Zoning Code prohibits the Board from hearing a "new application with a substantially similar objective" that is filed within two years of a prior application unless there has been a "material change" in the "facts and circumstances". Attorney Mr. Carey argued that the materials being provided to the Board were different from the prior application and that the Hossicks were now requesting a special exception whereas before a variance had been requested. After discussion, the Board unanimously agreed to grant a rehearing because a special exception was being requested whereas a variance had been previously requested.

Town Clerk, Janet Powell testified that 30 days prior to the hearing, notice of the public hearing was published and posted in those locations required by §145-57. B of the Zoning Code. The special exception application was entered into the record as Applicant Exhibit A, the materials provided to the Board were entered as Applicant Exhibit B. The public hearing notices were entered into the record as Town Exhibit A. Ms. Powell presented two emails; one from Tom Gessler at 2 S 3<sup>rd</sup> Street and one from Connie Richardson at 9 S 3<sup>rd</sup> Street. Both homeowners had no objection to the variance requested. correspondence received from the public regarding the special exception application were entered into the record as Town Exhibit B.

Attorney Carey began with opening remarks. He indicated Ms. Hossick was a cancer survivor and she had experienced cardiovascular complications as a result. He stated that not having an elevator render the property useless for Ms. Hossick. Mr. Carey reviewed with the Board the documents and photographs in Applicant Exhibit B and explained why it would be a hardship on Ms. Hossick to have the elevator installed at any other location on the property. A survey of the property included in Applicant Exhibit B demonstrated that the elevator would encroach 4.5 feet into the required 10-foot setback.

Ms. Hossick testified before the Board that she was a cancer survivor who had undergone multiple surgeries and she believed she was a physically handicapped person. She testified that having the elevator would alleviate pain, help her carry items upstairs, and prevent other medical problems to her body. Mr. Carey acknowledged that the Hossicks understood that under §145-28. D of the Zoning Code, the elevator would be a temporary structure that would need to be removed at such as Ms. Hossick no longer lived at the property. Daughter Alice Hossick testified that her mother could need the elevator for an extended period. No one appeared at the Hearing to testify in opposition to the application.

Upon discussion, the Board unanimously approved the special exception by finding that Ms. Hossick was a physically handicapped individual, and the elevator being requested was the minimum necessary to meet her needs. In reaching this conclusion, it was noted by the Board that sufficient evidence had been presented regarding Ms. Hossick's status as a physically handicapped person. The Board indicated that the elevator was the minimum necessary to accommodate her disability given the existing setup and configuration of the house.

Based on the application, the testimony presented at the public hearing, and the exhibits incorporated into the record, and for additional reasons specifically outlined herein, the South Bethany Board of Adjustment hereby granted special exception approval to the Hossicks to install an elevator at the property in the location identified in the application that will encroach 4.5 feet into the property's required setback area.

The hearing was adjourned at 2:50 p.m.

#### Attachments

Applicant Exhibit A – Original application and documents from the Hossicks

Applicant Exhibit B – New application, documents, photos and elevator survey from the Hossicks

Town Exhibit A – Town of South Bethany Hearing Notices

Town Exhibit B – Correspondences from Mr. Tom Gessler, 2 S 3<sup>rd</sup> St and Connie Richardson, 9 S 3<sup>rd</sup> St