

**TOWN OF SOUTH BETHANY  
BOARD OF ADJUSTMENT  
PUBLIC HEARING AND MINUTES  
FRIDAY, NOVEMBER 1, 2019 2:00PM**

PRESENT: Chairman Steve Bunoski, Al Rae, Charlene Sturbitts, Martha Fields, Peter Bogatti  
TOWN STAFF: Joe Hinks, Code Enforcement Constable  
Janet Powell, Town Clerk/Recording Secretary  
APPLICANT: BOA 4-2019 Elsie M. Koch, co-trustees Sharon Tucker and Janice Gay  
117 Brandywine Drive  
ATTENDENCE: Sharon Tucker and Janice Gay, Shannon Carmean Burton, Esquire

**CALL TO ORDER**

Chairman Bunoski called the Hearing to order at 2:00pm. All parties were sworn in who requested testimony during the hearing.

**PURSUANT TO 22 DEL.C. SECTION 327 (a) AND ARTICLE XI, SECTION §145-38 A (1), (2) (3), Sharon Tucker and Janice Gay, co-trustees of the Elsie M. Koch Trust Agreement are requesting:**

- (a) 2.8' variance from the rear yard setback requirement of 25' for the easterly side of the rear deck;
- (b) 3.2' variance from the rear yard setback requirement of 25' for the westerly side of the rear deck;
- (c) 4.3' variance from the side yard setback requirement of 8' for existing stairs to the rear deck;
- (d) 10.2' variance from the rear yard setback requirement of 25' for existing stairs to the rear deck;
- (e) .5' variance from the side yard setback requirement of 8' for an existing dwelling;
- (f) 4.2' variance from the side yard setback requirement of 8' for an existing deck;
- (g) 1.4' variance from the front yard setback requirement of 25' for the easterly side of the front of the dwelling;
- (h) 1.2' variance from the front yard setback requirement of 25' for the westerly side of the front of the dwelling;
- (i) 1.5' variance from the side yard setback requirement of 8', with a permitted encroachment of 18", for an existing chimney; and a
- (j) 6" variance from the allowable 18" encroachment into the side yard setback requirement for an existing chimney.

Attorney Shannon Carmean Burton, representing the Kohn Trust, explained that Ms. Elsie Koch is deceased, and the family is selling the home. Attorney Ray Tomasetti, representing the buyer needs the property's survey approved for recording purposes.

Code Enforcer, Joe Hinks typically receives requests to make substantial improvements to a home and if the home is not in compliance the homeowner files a variance. In this case, Mr. Hinks received a request for the survey to be approved for recording purposes stating the home at 117 Brandywine Drive is compliant to the town code. Upon review, the home is not in compliance, and there is no record in the files to show that the home was ever in compliance. Therefore, Mr. Hinks cannot approve and the homeowners filed an appeal.

Chairman Steve Bunoski questioned the BOA's jurisdiction to review this case and vote. The BOA discussed adding in the Town South Bethany's town code to give the town code enforcer the authority to "approve a home as existing" to allow the sale of a property, therefore avoiding the filing of a variance. A variance filing will only occur if the new homeowner wants to make substantial improvement.

Mr. Tomasetti stated other towns address the matter stating “approved as existing” which allows the sale of a home but if the new homeowner wants to make any substantial improvement, the homeowner would apply for a variance to meet the town code.

It was agreed that Mr. Hinks, on behalf of the Town of South Bethany, would create a letter confirming the town’s practices regarding zoning and compliancy. Attached is the November 5, 2019 Mr. Hinks’ letter.

Further testimony was taken on this issue on 3/5/2020. As the sale of the instant property has been completed without a need of a Decision by the BOA, this matter is presently Dismissed, without Prejudice.

The hearing was adjourned at 3:20 p.m.

Attachments:

- |           |                                       |
|-----------|---------------------------------------|
| Exhibit 1 | Application, drawling and survey      |
| Exhibit 2 | Documents from the homeowner          |
| Exhibit 3 | Photos of home                        |
| Exhibit 4 | Three correspondence from homeowners  |
| Exhibit 5 | Mr. Joe Hinks November 5, 2019 letter |