

TOWN OF SOUTH BETHANY
BOARD OF ADJUSTMENT PUBLIC HEARING MINUTES
Friday, March 5, 2021 1:00 p.m.

**This meeting/hearing was conducted electronically pursuant to
Governor Carney's State of Emergency Declaration effective March 13, 2020.**

PRESENT: Chairman Steve Bunoski, Charlene Sturbitts, Martha Fields, Al Rae, James Oliver
ABSENT: None
TOWN STAFF: Joe Hinks, Code Enforcement Officer; Janet Powell, Administrative Specialist; and Matt Amerling, Town Clerk
APPLICANT: **BOA #1 – 400 North Ocean Drive, Lot 7**
ATTENDANCE: Greg Hastings and Michael Boland

Chairman Bunoski called the Meeting to order at 12:58 pm. All parties were sworn in who requested testimony during the hearing.

PURSUANT TO 22 DEL.C. SECTION 327 (a) AND ARTICLE XI, SECTION 145-37(A)(1)(C), EIGHT (8) FT side yard setback requirements of the Code of South Bethany. The Board of Adjustment will hold a virtual Public Hearing to consider the homeowner's request for an elevator on the right side yard setback on the existing home.

The Boland's respectfully request a variance for a modification to add an elevator to their home due to aging issues. Their home has an inverted floor plan with the kitchen on the third floor, accessed by stairs. In May 2019, Mrs. Boland underwent hip replacement surgery. The Boland's provided a letter from their physician, Christopher Cannova, stating "an elevator will greatly improve her quality of life and reduce stress on the new joint as it relates to everyday usage and more extreme activities such as groceries to the third-floor kitchen." The Boland's have requested a variance for a small elevator on the south west corner of their home.

Chairman Bunoski stated he spoke with Mr. Boland about a month or so ago because when this application was first submitted, there was an idea of having a possible Americans with Disabilities Act (ADA) exception, known in the Town as a special exemption, and Chairman Bunoski wanted to make sure Mr. Boland knew such an exception was available, to which Mr. Boland refused the ADA exception. Mr. Boland stated yes, and he wants something more permanent.

Town Clerk Janet Powell received two correspondences. Bill and Anne Favret, 402 N. Ocean Drive, have no issues with the Boland's plan for an elevator. Theresa York, 4 N. 5th Street, is opposed to granting a side variance stating the home is very large and obstructs ocean views. An elevator could have been added inside during the construction, or possibly on the back.

Code Enforcement Constable Joe Hinks stated the proposed project has Mr. Boland wanting to install an elevator – due to physical limitations – which will encroach into the side yard setback. Mr. Hinks stated while he is not unsympathetic, the Town Code binds Mr. Hinks to strict prohibition of any structure in a setback. Chairman Bunoski asked the length of the side yard setback. Mr. Hinks stated eight (8) feet. Chairman Bunoski asked how much the elevator would encroach into the eight (8) feet. Mr. Hinks stated

five (5) feet into the side yard setback. Martha Fields asked if there are any right-of-way (ROW) issues around the fencing, etc. Mr. Hinks stated he's not aware of any interference with the ROW, but if there were, it would reflect on the site survey. Chairman Bunoski asked the front yard setback. Mr. Hinks stated twenty (20) feet. Chairman Bunoski asked if the elevator were relocated to the front, would it invade the twenty (20) feet. Mr. Hinks stated yes. Chairman Bunoski asked if it were on the other side, would it encroach there as well. Mr. Hinks stated yes. Chairman Bunoski asked if it were relocated to the rear, such as through the back deck, would it encroach the rear yard setback. Mr. Hinks stated no. Charlene Sturbitts stated the proposed storage area on the north (left) side of the property doesn't look like it encroaches the setback. Mr. Hinks stated yes, that's correct. Al Rae asked if this is an existing house or new construction. Mr. Hinks stated the house is existing, but the elevator is a new addition. Chairman Bunoski asked what year the house was built. Mr. Boland stated 2005, but he was not the owner at that time.

Mr. Boland stated he did look into putting the elevator inside the existing structure, specifically in the proposed storage area, but he was told this house was built with steel pilings, which is a good thing in its ability to withstand storms, but it also prohibits putting in an elevator of this nature, which is why he's requesting this variance. Mr. Boland thanked the Board and stated his wife had her hip replaced, he is due to get his hip replaced in 2021, as well as him having severe arthritis in his back, and his ninety-six (96)-year-old father-in-law, who visits them, needs the use of a walker, which is why they'd like to get this elevator. Mr. Greg Hastings stated there will have to be a place to locate the elevator mechanics and it will potentially go in the proposed enclosed storage area. Martha Fields asked about why the elevator cannot go into the proposed storage area, specifically detailing about the steel. Mr. Hastings stated he knows this house and its design well as he designed the house fifteen (15) years ago for another couple, and any house with such decking requires a certain amount of structural elements and integrity. Mr. Hastings stated this house was the first to have steel piling, and there are a lot of little intricate details of cross members which are not exposed in the house but are hidden in the floor system and some walls; there are vertical columns from floor to floor. Mr. Hastings stated when Mr. Boland contacted him about placing an elevator within the home, Mr. Hastings "got heartburn" because he knew of what the layout consists, and when you try to squeeze more into such a limited space, it disrupts everything, and Mr. Boland would be better off tearing the whole house down and building again rather than trying to squeeze the elevator into the interior floor system because everything is so tightly knitted and woven into that design. Al Rae asked why the elevator can't be placed in the rear side back deck. Mr. Hastings stated on the lower level, there are utilities, infrastructure, a laundry room, and bedroom space; but if you want a common space, in the center core of this house is a foyer. Mr. Hastings stated unless a person is comfortable walking through a bedroom to get to the elevator, you would have to integrate a hall or common space. Al Rae stated on this proposed plan, on the first floor, the elevator as it's being requested, would open into bedroom #5. Chairman Bunoski asked what the difference would be between the proposed elevator opening into bedroom #5 on this plan, and it opening up into bedroom #3 if it were off the deck. Mr. Hastings stated the proposed way is the "lesser of two evils." Chairman Bunoski stated the Board is here to muster out the "lesser of two evils," but is there some impediment between going through bedroom #5 and #4 or going through the back of the house, which prevents this from occurring? Mr. Hastings stated every inch of the Ocean Drive houses are premium real estate and any realtor would say no one wants to impede on the prime real estate with a six (6)-foot elevator.

James Oliver stated he has two (2) homes built in South Bethany and typically, with the architects, in their plan they have an elevator shaft, so where in this plan would the elevator shaft be placed? Mr. Hastings stated either on the north side or front side or internal core of the house. Chairman Bunoski asked Mr. Hastings if he proposed an elevator shaft at the time. Mr. Hastings stated he doesn't recall as it was fifteen (15) years ago, but it wasn't as demanding back then to have an elevator as it is today. Martha Fields

stated she would like to underscore Mr. Hastings' mention of every inch of the view of the ocean is important, but there is a letter from one of the nearby residents who stated her ocean view would be obstructed by the elevator. Chairman Bunoski stated there were two (2) letters received by the public regarding this project, they were entered in as exhibits, and everyone has received copies of the letters. Ms. Powell stated the letter not in favor of the elevator was from Theresa York of 4 North 5th Street. Mr. Boland stated his property is one block over on North Ocean Drive and doesn't affect 5th Street. Chairman Bunoski stated Ms. York's property is within the two-hundred (200) feet which is the required space for notifying residents of any BOA subjects. Ms. Powell read the email letter from Ms. York: "I am opposed to granting a variance to 400 N. Ocean Drive. The house is very large already and interferes with ocean views. Surely with that size. House an elevator could have been added to the inside during construction. Could still fit in the back." Chairman Bunoski stated he is interpreting the letter to mean Ms. York is not saying her ocean view would be affected, but she's saying ocean views in general would be affected. Mr. Boland stated you cannot see the ocean from the street. Chairman Bunoski asked Charlene Sturbitts if she lives across the street on Ocean Drive. Charlene Sturbitts stated yes. Chairman Bunoski asked if she had some partial ocean views living across the street. Charlene Sturbitts stated yes, the view is between two houses, and if the person across the street from her would've built an elevator in the same location the applicant is proposing, it would erase her view of the ocean. Chairman Bunoski stated that is the point Ms. York was trying to make is it would erase the ocean view from others.

Mr. Hinks stated he has a neutral position on this case; however, with regard to construction in Town, if this house were brand new, the Town would not take into consideration anyone's view being blocked, provided that it was to Code. Mr. Hinks stated many people object strongly to the fact the size of the houses in South Bethany are larger than they were in the past, but that doesn't have a bearing on whether we block someone's view. Mr. Hinks stated when it comes to the beach, with regard to building, the Town does not guarantee any views. Al Rae stated the Town has setbacks established so a view is there. Mr. Hinks stated the Town allows a number of things depending on the positioning within a person's setbacks, and the Town doesn't restrict for views. Mr. Hinks stated there are sometimes HVAC units which are necessary and obstruct a person's ocean view. Charlene Sturbitts stated they aren't talking about new construction, but rather this is a variance from setbacks which are required to be met by new construction. Mr. Hinks stated he is addressing the right to block a view or not to block a view, and the reason he rejected this permit was not because of blocking any views, but rather is only a structural issue of the applicant wanting to build outside the setback line. Martha Fields stated to Mr. Hastings if he could relocate the elevator into the house, so it would go inside the TV room, up into bedroom #5, and up into the office area on the top floor. Martha Fields asked what the structural limits would be to such a change. Mr. Hastings stated the applicant would lose a bedroom and floor space in those other rooms. Martha Fields stated for all intents and purposes, those rooms are already interrupted by the elevator door, so there will be limitations in terms of how one can arrange furniture and how the space can be used. Mr. Boland stated the house is constructed almost entirely of steel so from a structural point-of-view, placing the elevator internally in the house is pretty much impossible to do. Mr. Boland stated he has researched trying to put it in internally, and the challenge of taking steel girders and basically chopping them in half to put the elevator shaft in is an impossible thing, which is why the placement is external rather than internal. Charlene Sturbitts asked Mr. Hastings if he could address the structural barriers and the impossibility of putting the elevator in a different location because of the steel barriers. Mr. Hastings stated one of the issues immediately caught is cost and the cost has a direct bearing on the structure and how the structure is laid out. Mr. Hastings stated when you're integrating a thirty (30) square-foot box into an existing design, things are going to have to be chopped up and relocated, and loads are going to have to be redistributed elsewhere. Mr. Hastings further stated consequently, when you're redistributing those loads, you're going to have to open those walls up, remove things and realign the structure to make

everything work; and the original house wasn't designed for the elevator, so all the structural integrity is going to be assigned some place within this existing home. Mr. Hastings stated it's a challenge to explain to the Board and point out on the drawings where there are beams, but he would have to have a design proposed to integrate the elevator inside, flush out all the possibilities and determine what kind of structural elements they might be looking at before Mr. Hastings could give the Board an exact answer to Ms. Sturbitts' question. Chairman Bunoski asked if it's possible to put the elevator inside. Mr. Hastings stated it's not impossible. Al Rae asked if Mr. Hastings if they considered placing the elevator on the west (front) side of the house. Mr. Hastings stated they did consider it, but because of the setback, and maybe something having to do with the Delaware Department of Natural Resources and Environmental Control (DNREC), the applicant would still be here before the Board, even if it were in the front or on the sides. Mr. Hastings stated there was also the aesthetic aspect, which would make it more feasible to put on the south side rather than the west. Al Rae asked if there was a DNREC issue. Mr. Hastings stated he's not sure. Mr. Boland stated when he met with Mr. Hinks months ago, the issue was purely setbacks and when Mr. Boland talked about putting the elevator on the west (front) side, there was still a setback issue prohibiting him from putting it there. Chairman Bunoski stated there is more room to work with on the front so if he uses five (5) feet and there is a twenty (20)-foot front yard setback, you still have fifteen (15) feet, as opposed to the side yard where there is an eight (8)-foot setback and you only have three (3) feet left; so there is a difference in ratio. Chairman Bunoski asked regarding the aesthetics, if Mr. Hastings is pointing out someone would not want an elevator on the front of their house because of the way it would look. Mr. Hastings stated yes.

Charlene Sturbitts asked if there is any room in the front of the house or is it only the twenty (20)-foot setback. Mr. Hinks stated, according to the plot plan, the house is twenty (20) feet from the front property line. James Oliver asked Mr. Hinks if this is approved, this will add approximately two-hundred-three (203) square-feet to the house; and, in addition to the setback, will this extend over the living area ratio. Mr. Hinks stated it will add the square-footage but will not extend over the living area ratio as these houses have such deep lots, you can never reach the ratio. Mr. Hinks stated this is a one-hundred-thirty (130)-foot-deep lot, so it won't overrun the living area ratio. Martha Fields asked Mr. Boland if he would – setting aside structural issues – be averse to relocating the elevator to inside the house. Mr. Boland stated he's not too knowledgeable about the logistics and yes, if could be done with "a couple million dollars." Martha Fields stated she understands but it doesn't look like it would be a terrible imposition, in terms of the living space, to place the elevator inside. Mr. Boland stated it has nothing to do with living space, but rather it has to do with the structure. Mr. Boland stated when you have steel running throughout your house, holding it up, and you go to cut the steel to put a shaft in, the building falls down; so it's not just the envelope of the shaft and he would have to put in columns in the bedrooms just to support the steel. Mr. Hastings stated it's not simple to put a thirty (30)-square-foot elevator in a bedroom without losing said bedroom, and with the door opening into the bedroom, it's no different than working around a closet door, so you could still have a queen-sized bedroom, and sell it as such. Mr. Hastings stated if you implement placing the elevator core into that bedroom, you will literally lose the number of bedrooms in that home, and you will then depreciate the value of the home. Martha Fields stated those of us who have elevators inside their homes had to make those "trade-offs" when they designed and built their homes; and there are things she would've liked to have had in her house, but she couldn't with squeezing the elevator in.

Charlene Sturbitts stated she is troubled by the proposed elevator and its location because there are other solutions which do not involve such a significant encroachment into the side yard setback. James Oliver stated he has elevators in both his properties and there were a lot of things he had to give up in order to remain within the envelope of his property setbacks, so he's also troubled by this application. James Oliver

stated he wants Mr. Boland to get his elevator but adding another two-hundred (200) square-feet to his house envelope on the outside is troubling and he would love for him to place it on the inside. Chairman Bunoski stated he understands Mr. Hinks' earlier statement about an air-conditioning unit blocking, but this is an entire elevator shaft so there is a significant difference. Al Rae stated he agrees with his fellow Board members' comments and when he looks at the definition of an exceptional practical difficulty, this application doesn't fit in that category. Al Rae stated he doesn't like this as a variance request, but he would approve it as a special exception request. Chairman Bunoski stated even as a special exception, he is not positive because there are other places it could go. Charlene Sturbitts agreed with Chairman Bunoski. Martha Fields stated she has an elevator and there were a lot of "trade-offs" they didn't want to give up, but the elevator was paramount in their decision. Martha Fields stated she appreciates the situation, but she doesn't think this is the right reason. Chairman Bunoski stated the applicant didn't have the house built this way, but it's been thrust upon him. Martha Fields stated she understands that, but you still have to trade off whether you're adding the elevator on or building it within your house; and she's known a couple who've gotten very creative in how they use their space with the elevator added.

Chairman Bunoski stated if Mr. Boland had a lawyer present, the lawyer would even say he doesn't see where Mr. Boland has an exceptional practical difficulty here and you could put this in other places. Chairman Bunoski stated the applicant could put this on the ocean front, and he understands it would "kill an ocean view," but since the Town doesn't care about views, the Board can't be mindful of a view being besmirched by the ocean front because it's not something the Board needs to factor in. Chairman Bunoski stated he doesn't see any exceptional practical difficulty which has been raised here, let alone to have that burden, so, for that reason, he would deny this variance, voting no. Charlene Sturbitts voted no as she doesn't see an exceptional practical difficulty here as there are other alternatives and the practical difficulty applies to the property and not the person's difficulty; and she doesn't think the burden has been met. James Oliver stated he agrees with everything Ms. Sturbitts said, so he votes no. Martha Fields stated she also agrees with Ms. Sturbitts, in that there are other options, so she votes no. Al Rae stated he agrees with Ms. Sturbitts in that there are other alternatives, so he votes no. Chairman Bunoski stated the variance is denied and there will be a written order which will come out sometime in the next thirty (30) days. Chairman Bunoski stated from the date of said order, the applicant will have thirty (30) days to appeal this decision to the State Superior Court, which would be located in Georgetown.

Charlene Sturbitts motioned to approve the Turulski Board of Adjustment minutes; Steve Bunoski seconded the motion. Motion carried 5-0.

The hearing was adjourned at 1:55 p.m.

Exhibit 1	Variance application package including letter, plat survey and photos
Exhibit 2	Correspondence from Bill and Anne Favret, 402 N Ocean Drive – approving
Exhibit 3	Correspondence from Theresa York, 4 N 5 th Street – opposing