

TOWN OF SOUTH BETHANY
BOARD OF ADJUSTMENT VIRTUAL HEARING MINUTES
Wednesday, April 7, 2021, 1 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, Al Rae, Jimmy Oliver
TOWN STAFF: Joe Hinks, Code Enforcement Officer; Town Solicitor Stephani Ballard Wagner; Town Manager Maureen Hartman; and Matt Amerling, Town Clerk
ABSENT: Martha Fields
APPLICANT: **Thomas & Kathleen Wood, Homeowners, 414 Periwinkle Road, Lot 86**
ATTENDANCE: Thomas & Kathleen Wood (Virtual)

Chairman Bunoski called the Meeting/Hearing to order at 1 p.m.

Pursuant to 22 DEL. C SECTION 327 (A) and Article XI, Section 145-38E (3) Maximum footprint: 1700 square feet, including steps, decks more than six inches above ground level and porches. However, for every lot size over 5,000 square feet, the maximum footprint shall be increased by 20 square feet. The Board of Adjustment will hold a virtual hearing to consider the applicant's request for a small increase in the footprint for purpose of a rear emergency exit.

Mr. Thomas Wood stated the Board is aware of his disabilities and what he perceives to be his rights under the Americans with Disabilities Act (ADA). Mr. Wood has also provided the BOA with a letter from his orthopedic doctor, and Mr. Wood believes what he is requesting is a reasonable accommodation for the purposes of safety. Ms. Ballard Wagner stated this Board is not making ADA judgements, but from what she understands, the way the layout is now on Mr. Wood's property, it doesn't accommodate his disability. Chairman Bunoski stated Mr. Wood's disabilities seem to have to do with lifting and bending, and asked Mr. Wood how much weight he can lift. Mr. Wood stated he just had back surgery and was just cleared to lift up to five (5) pounds. Ms. Wood stated the main issue is Mr. Wood is unable to use an emergency ladder to get out of the second floor of their home. Ms. Wood stated the primary issue is not having an exit, and not being able to use a ladder in case of a fire or other emergency. Ms. Sturbitts asked why the application was not based on the ADA if the focus is on a disability. Mr. Wood stated he did not seek the ADA variance because of the burden it imposes upon him and Ms. Wood to have to take it down. Ms. Ballard Wagner stated there is that special exception; however, disability is something a Council or Board can take into consideration with respect to any request. Ms. Ballard Wagner stated she's trying to establish the exceptional practical difficulty that is Mr. Wood's burden, and asked if because Mr. Wood has this disability, these changes need to be made to his home. Mr. Wood stated yes, and he believes his request does not include an unreasonable financial or administrative burden to the Town. Ms. Ballard Wagner stated the Board can take Mr. Wood's disability into consideration, but this is not an ADA hearing or decision.

Mr. Wood's requesting a second entrance/exit into her screened porch on her second floor and providing a second exit from her home as has many health issues and wants an exit near his bedroom. Mr. and Mrs. Wood are requesting an 8x10 deck, which would provide space in case any emergency services where a gurney can access, enter the home and have quicker evacuation. Mr. Wood stated this 8x10 deck will not have any impact with respect to the environment, or flooding, as this lot is permeable and does not hold any standing water. Ms. Ballard Wagner stated she doesn't think the Board is not claiming any environmental issues, and it appears Mr. Wood is requesting a six percent (6%) increase over his existing

footprint. Ms. Sturbitts asked the applicant how they arrived at the 8x10 size. Mr. Wood stated part of it was the aesthetic appearance, fitting something appropriate in size to the house, and Mr. Wood needs space for safety concerns. Mr. Al Rae stated he would like to know what the local fire and rescue department says about an adequate size for a deck for emergency retrieval situations. Ms. Ballard Wagner stated she doesn't have that technical information, but the Board's job is to decide if the variance is minimal, and that no harm to the applicant is greater than the effect on the neighboring properties. Ms. Ballard Wagner stated the ADA doesn't necessarily address decks. Chairman Bunoski stated he thinks Mr. Rae is requesting what the fire department requires in terms of space for being able to fit a gurney and more than one person. Ms. Wood stated the reason they didn't apply with an ADA special exception variance was because this is a safety issue, and it is important to her and Mr. Wood that whoever bought the house after them would also be able to safely exit if there were any fires or emergency situations. Mr. Wood stated he's spoken to the fire department and they'd like to have an area big enough to work in properly, safely, effectively to get somebody out of the house. Mr. Wood stated having to work around such a tight space and having to deal with getting someone out on some kind of wheeled device and not carry a person down is a big part of the reason for this request. Mr. Wood stated this deck in no way, shape or form is going to have a negative impact on this community.

Code Enforcement Constable Joe Hinks stated what the BOA sees everywhere else in Town with regards to setbacks does not equally apply because nowhere else from Town can a person shift their dwelling as close as two (2) feet to their physical property line. Mr. Rae asked Mr. Hinks if he knew the fire department's size requirements for admittance during an emergency situation. Mr. Hinks stated no, he does not. Chairman Bunoski made sure Mr. and Mrs. Woods, as well as Mr. Hinks, knew they were under oath. Mr. Woods stated he does and the Board can consider everything he's said today as being under oath. Mr. Rae stated he thinks the Town should get more information from the fire department as to the preferred measurements of space needed for this kind of situation. Chairman Bunoski stated he thinks the Town should get another, impartial attorney to attend BOA hearings since Ms. Ballard Wagner often represents the Town, and this should be done before the next BOA meeting. The BOA members felt the additional information they've been presented with does support the fact there's an exceptional, practical difficulty with respect to the structure which is necessary to accommodate the applicant's situation. The BOA unanimously voted 4-0 to approve the variance request of the 8x10 deck.

The hearing was adjourned at 2:18 p.m.

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| Exhibit 1 | Original Variance application package including letter, survey and drawings, as well as correspondence from Jocelyn Cenna, 408 Black Gum Drive, from Sept. 4, 2020, BOA public hearing |
| Exhibit 2 | March 22, 2021, letter from Mr. Wood; and March 17, 2021, letter from Mr. Wood's orthopedic doctor |