

TOWN OF SOUTH BETHANY
BOARD OF ADJUSTMENT PUBLIC HEARING MINUTES
Wednesday, June 9, 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, Jimmy Oliver; Barrett Edwards, Esq.

TOWN STAFF: Joe Hinks, Code Enforcement Officer and Matt Amerling, Town Clerk

APPLICANT: **Stacy Stratton, 6 Kewanee Street, Lot 27, South Bethany, DE**

ATTENDENCE: Stacy Stratton; Marco Morales, builder for 6 Kewanee; Andy & Ginny Vernick, 4 Kewanee St.; Sarah Nealley, 5 Logan St.

Chairman Steve Bunoski called the Meeting to order at 1:25 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(B)(1)(C), TEN (10) 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 a stairway encroaching into the left-side yard setback of the existing home.

Town Clerk Matt Amerling stated the public hearing notice for this meeting was posted on the property (6 Kewanee Street) on May 5, 2021; the notice was published in the *Coastal Point* newspaper on May 7, 2021; it was posted at Town Hall and on four (4) other locations within Town on May 5, 2021; and was sent via certified mail to the property owner and owners of property within a radius of two-hundred (200) feet of the property on May 5, 2021. Ms. Martha Fields recused herself from this hearing as she lives on the street on which the property in question is located and she knows the applicants.

The house was built in 1981 within the setbacks and in compliance with the code. Due to current town code, the left side the house is over the setback by 4 inches. The right side of the home is in the setback; but the stairwell and walkway are currently in excess of 1 foot, 7 inches over the setback.

Town Code Enforcement Constable Joe Hinks stated this application finds the applicant requesting to place a stairway attached to the house on the left side; however, the stairway is going past the side yard restriction line by two feet, eight inches (2'8"), and that is what the Board is considering today. Mr. Hinks stated the original site plan had a spiral staircase – located at the bottom corner of the new one-story addition – set to enter a rooftop deck. Mr. Hinks stated the site plan with the spiral staircase did not violate the setback and was approved; however, this proposal of the staircase on the outer left side of the structure would violate the side yard setback so Mr. Hinks could not approve per the Code this submitted site plan.

Ms. Stacy Stratton stated she bought this property about a year ago, and she spent time with Mr. Hinks who was super helpful, helping her understand setbacks, building code, changes with FEMA and sea level activities. Ms. Stratton stated with the help of Mr. Hinks and her architect, who is not in attendance, today, she had a site plan approved around December 2020 to build an addition to her house. Ms. Stratton stated she has referenced on her slide show an original deck which had an original set of stairs, which were "wiped out" by the new addition. Ms. Stratton stated she realized she needed upstairs access to the existing deck so this is the situation she's looking at now and is showing the original drawing with the

location of the spiral staircase as approved by the Town. Ms. Stratton showed a side elevation of the approved plan, which has one window on each side of a French door, and, based on the length of the structure, she had a spiral staircase. Ms. Stratton stated she had an issue which she ran into in February 2021 when the builder indicated she did not have room based on laying the foundation. Ms. Stratton further stated there was a slight change right before the building plans were approved, that we had to go up one (1) foot because of a water gate, to which Mr. Hinks pointed out, so she changed the plans, which were approved. Ms. Stratton stated when she started to build this structure, she couldn't add the two (2) windows, but they continued to build the structure without the windows on either side of the French doors. Ms. Stratton stated the challenge which is present today is there is now a roof overhang, and she believes when she had this structure built, and lost the space for the two (2) windows, it pushed everything over to the left. Ms. Stratton stated she now has the challenge of trying to put a sixty (60)-inch wide circular staircase in an area where there will be a challenge of accessing the back door. Ms. Stratton stated the roof overhang and the reduced width of the structure is now unfortunately impeding on the placement of the spiral staircase. Ms. Stratton stated she has the "double problem" of even taking out the stairs, which was her original intent, she can't get through the existing back door. Ms. Stratton stated the stair overhang is a problem for a five (5)-foot-wide circular stair. Chairman Bunoski asked if there was any entrance to the deck from inside the house. Ms. Stratton stated no. Ms. Stratton stated if they move the spiral stairway out, she still can't fit it in, so she's faced with the challenge of the architectural drawings not considering the roof overhang. Ms. Stratton stated she hopes with requesting this variance, it will not be an issue for surrounding neighbors, and she's hopeful this request for a variance of two (2) feet into the setback so she may have access to the existing deck, will not be an issue for anyone. Ms. Stratton stated she doesn't believe this stairway will be intrusive, there is a ten (10)-foot setback, and she's asking for the variance of two-point-four (2.4) feet to be able to access the existing deck. Mr. Barrett Edwards, of Hudson, Jones, Jaywork & Fisher, asked Ms. Stratton if her request for variance was two-point-four (2.4) feet into the side yard setback. Ms. Stratton stated yes, and she believes there was a letter submitted from the architect. Mr. Edwards stated he has a letter from Mark Redden stating you would need two (2) feet, eight (8) inches of encroachment. Chairman Bunoski asked if the encroachment is two (2) feet or two (2) feet, eight (8) inches. Mr. Edwards stated it is two (2) feet, eight (8) inches based on the letter from the architect as part of the record.

BOA Member Charlene Sturbitts asked if the problem is the result of the elevation requirement, and how did the plan not take into account the roof overhang. Ms. Stratton stated that's a good question, and the builder followed the plan, and the Town approves the plan. Mr. Hinks stated in looking at the plan as well as the slide Ms. Stratton has presented, he does not see on the plans stairs exiting to the left of the deck, which is where the spiral staircase was originally drawn. Mr. Hinks stated it appears from the plans, the stairs would come straight off from the deck, and Ms. Stratton made a statement earlier about perhaps there had been a design change. Mr. Hinks stated he's not aware of it and he's not opposing it, but he's just not aware of it. Mr. Hinks stated he's questioning where those stairs came from. Ms. Stratton stated she had an issue and it may have been the flood gate which had to be put in for the extra foot, but the builder could not execute this. Mr. Hinks stated the stair steps to the left of the circle Ms. Stratton has shown on her slide, are still confusing. Ms. Stratton stated those steps are temporary access steps, but if you take those two steps away and with the five (5) foot stairway paper circle, you're still going to have a worse problem going upstairs to the roof overhang. Ms. Stratton stated there would also still be an issue of the stairs coming off the deck, so she's not sure what to do other than ask for a variance. BOA Member James Oliver asked why the applicant can't move the circular stairway to the right a little bit more. Ms. Stratton stated you could do that. Mr. Oliver stated if you move the circular stairway to the right, you go straight up, and you have a landing that goes to the left. Ms. Stratton stated she does not understand how people are going to get beyond the roof overhang, and how they're not going to run into the roof overhang as they access the deck. Mr. Oliver stated when he looks at the applicant's submitted plan, it does not

have an overhang or an issue with the overhang, or the steps which were built. Ms. Sturbitts stated it would be very helpful if Mr. Redden were on this call. Chairman Bunoski asked Mr. Oliver if he meant by moving the stairs to the right, if that was from the viewpoint of facing the house. Mr. Oliver stated yes. Chairman Bunoski stated the applicant could have the builder build a landing outward so the circular stairs would almost end up on the other deck. Ms. Stratton stated she would have a non-functional existing patio. Ms. Stratton stated she is asking for a variance to use both the existing deck and existing patio. Chairman Bunoski stated there are neighbors who will be impacted by this request, who don't want this variance. Ms. Stratton stated she hasn't heard from the neighbors. Mr. Edwards stated the Town Code states in Chapter 145-58, subsection A, standards for variances, "a variance from the dimensional terms of this chapter shall be granted only upon a finding by the Board of Adjustment that: (1) Special conditions or exceptional situations exist with regard to the particular lot or structure (because, among other reasons, of its size, shape, location or topography) such that a literal interpretation/application of the dimensional terms of this chapter to that particular lot will result in unnecessary hardship and/or exceptional practical difficulties to the owner thereof; (2) the spirit of this chapter shall be observed and substantial justice done; and (3) the granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of this chapter. Mr. Edwards stated the Delaware Supreme Court has provided a little more guidance with respect to what is considered an exceptional practical difficulty, stating such practical difficulties present where the requested dimensional change is minimal and the harm to the applicant and the variances denied will be greater than the probable effects on neighboring properties if the variance is granted. Mr. Edwards stated it's not necessarily the Board's responsibility to come up with another location for the stairs to potentially go, but it's the Board's responsibility to ask these questions because they need to consider what the harm to the applicant will be if this is not granted. Mr. Edwards stated if the Board asks "why can't it go in this location" and the answer is "because it will eliminate the practical use of my deck," it's something the Board can take into consideration. Ms. Stratton stated her thanks and wanted to repeat that moving the deck out, and moving the staircase out, and increasing the footage to the staircase, renders her existing patio non-functional. Ms. Stratton stated she has a practical difficulty in executing this build as drawn. Ms. Stratton the patio ends only a few feet from the deck edge, so if she moves the deck out, she has a non-functioning patio and she needs the patio for people's wet, sandy feet so they can get into the outside shower. Ms. Stratton stated in the original structure of the house, there is one large piece of cement paver to the right and it is actually the access to the water cut off for winter and summer of this original house; and if she extends the deck, she would lose access to the water.

Mr. Oliver stated he wasn't suggesting moving the spiral staircase to the north or south, but rather moving it to the west and taking out the steps. Ms. Stratton stated even if the stairway is moved over in that direction and the steps are removed, you will still have a structural challenge – getting in and out of the door and moving the stairs six (6) inches to the right – and a person her size would still have trouble getting in and out of the existing original patio back door. BOA Member Al Rae asked Ms. Stratton if she considered having the hinges on the patio back door moved to the other side so the door opens the other direction. Ms. Stratton stated she thinks she would have trouble because she wouldn't be able to enter the house because there is a mud room you come into and there is an existing closet to the immediate left where Mr. Rae is suggesting to enter. Ms. Stratton stated the door on the outside would hit against the stairway, and inside, when entering the house, there is a closet the person would be walking into. Ms. Stratton stated she has a structural issue, this is a unique, old house, she has a practical difficulty; and she's simply asking for a two-point-eight (2.8) feet variance on a collective twenty (20) feet setback area. Chairman Bunoski asked if the proposed stairs on the left side would be attached to the house. Ms. Stratton stated yes. Chairman Bunoski the photo submitted for the proposed location of the requested stairway looks like it would run across one of the house windows. Ms. Stratton stated she and her builder measured the area and the stairs would not be fully attached so they will miss the window. Mr. Rae stated

there is still a roof overhang. Ms. Stratton stated yes, but the circular stairway goes straight up and you get stuck on the overhang, but with this vertical staircase, there will be a landing the person comes onto before stepping onto the deck. Mr. Hinks stated his concern with this is if the architect has taken into consideration whether or not the eighteen (18) inches or one (1) foot or however far the eave of the house is hanging over the line. Mr. Hinks stated he's asking this because somebody missed the math on the spiral staircase and he would hate for everybody to continue down the path of missing the math again. Mr. Hinks stated there's nothing in this proposed drawing telling him she's definitely at two-foot-eight-inches (2'8") because there's nothing with the roof line on the plans and he doesn't know where the eave is. Mr. Oliver stated Mr. Hinks is correct that the site plan doesn't show a landing that goes onto the roof. Mr. Edwards stated what he thinks Mr. Hinks is saying is if the Board were to grant a variance of two (2) feet, eight (8) inches, is there enough room to actually build a stairway, because you don't want to see a situation where if this were approved, then in the as built survey, the Town would find it actually encroached in more and the applicant would have to come in for a second variance. Mr. Hinks stated yes, that's what he's saying. Ms. Stratton stated if the Board looks at the proposed site plan, given there is ten (10) feet of a setback on her side and ten (10) feet on the neighbor's side, she doesn't believe this will be hardship to anyone involved. Mr. Edwards asked if there is anyone in the audience who is in support of this application.

Ms. Sarah Nealley, of 5 Logan Street, stated she is a resident of Logan Street, which is one street over from Kewanee Street, and her house backs up to the house under review today. Ms. Nealley stated Ms. Stratton gave her some information a couple of weeks ago about Ms. Stratton's problems with the building and talked about her plans to try to ask for the variance for the steps on the side of the house. Ms. Nealley stated Ms. Stratton showed her the drawings and Ms. Nealley didn't see any issue with it. Ms. Nealley stated she would hope it would be taken into consideration the fact the applicant is trying to keep the integrity of the original structure.

Mr. Bernd Von Muenchow stated he is the co-owner of the house on the other side of 6 Kewanee Street: 8 Kewanee Street. Mr. Von Muenchow stated he would also like to voice his support of this variance request as it's an old structure and he doesn't think it's too much of an imposition on anyone. Mr. Von Muenchow stated it's the only situation from the proceedings that he can see to solve this practical problem of using this existing structure.

Mr. Oliver asked Ms. Stratton if she said there were previously steps on location. Ms. Stratton stated yes. Mr. Oliver asked Ms. Stratton why she had the steps torn down. Ms. Stratton stated because they were taken down to make room for the addition. Mr. Oliver asked if the original steps were where the addition is now located. Ms. Stratton stated yes. Mr. Edwards asked if there was anyone in attendance who wanted to speak in opposition to the application.

Mr. Andrew Vernick, of 4 Kewanee Street, stated he is in opposition. Mr. Vernick stated he wanted to ask Mr. Von Muenchow who he is co-owner of 8 Kewanee Street with. Mr. Von Muenchow had already left the meeting. Ms. Sturbitts stated the application for the variance request has the address of 8 Kewanee Street on it, per the applicant's signature. Mr. Vernick read his June 4, 2021, letter, stating there will be significant adverse impact, from a noise and activity level as renters/residents come and go on the stairs, as well as they believe there is nothing about the 6 Kewanee Street lot that creates any hardship, any practical difficulties to justify or support the non-compliant stair application, as there is no "issue that could possibly be relevant or supportive to require putting stairs on the side setback as opposed to the rear or other side of 6 Kewanee Street." Mr. Vernick stated to piggyback on what Mr. Hinks stated, there is an eighteen (18)-inch or so roof overhang so, in essence, these steps are now going to have to come out about thirty-six (36) inches further; and the drawing provided has the steps flush against the home, which

we know isn't how it will look as the stairs would have to be set off from against the house. Mr. Vernick stated there is not adequate evidence or information that allows the Board to evaluate specifically now how far out the steps would have to go out, and the plans do not include the "jut-out" of the roof overhang on it. Mr. Vernick stated there were already a set of stairs set for a side where they were permitted by Code, but the applicant made a decision with an architect to change the plans to take those steps down and reconfigure the back of their house, and that's their right. Mr. Vernick stated what they don't have a right to do is make that personal change, which is going to directly impact he and his wife, knowing what the applicant constructed now is not going to be something that is – because of the overhang – easy to construct. Mr. Vernick stated he respectfully requests the application be denied. Ms. Ginny Vernick, of 4 Kewanee Street, stated she agrees with her husband's statement, and stressed that she and her husband's property is directly next to the property up for review, making them the most adversely affected by this variance. Mr. Edwards stated this variance is for two (2) feet, eight (8) inches, so if the applicant would need more inches for this stairwell, they would have to come back before the Board with a new application.

Ms. Stratton stated she wanted to correct Mr. Vernick's statement that her husband, Mr. Von Muenchow, is the co-owner of 8 Kewanee Street; but she alone purchased the property, so she is the sole owner. Chairman Bunoski asked if Mr. Von Muenchow is Ms. Stratton's husband. Ms. Stratton stated he is the co-owner of 8 Kewanee Street, and yes, he is her husband. Ms. Stratton stated the intent of adding an additional room is that she's obtained a rental license and if she's not able to put the stairway in, she would have a great financial hardship. Ms. Stratton stated she heard Mr. Vernick say he and his wife had an objection to the stairway being on "his side," not for the "greater good of South Bethany," but because they did not want to see people going up and down the stairs because they were the only people who were going to be bothered or affected. Ms. Stratton stated people on Kewanee Street see lots of people going up and down lots of stairs, and some are renters, some are owners, some are within the setback, some are not in the setback. Ms. Stratton stated she understands their privacy issue, but she doesn't think materially there will be an issue because the structure Mr. Vernick is talking about has not been built. Ms. Stratton stated she thinks the Vernicks are arguing against a variance for a future which hasn't happened so she's having a difficult time understanding opposition to a variance with which would be two-point-eight (2.8), potentially four (4), in a total of twenty (20) feet of setbacks. Ms. Stratton stated she thinks with this issue, she did not have any other alternatives, she has a unique structure from 1960, she needs access to the stairs; and she thinks if Mr. Vernick has an issue with noise and people on stairs going up and down on his side, she'd be happy to collaboratively look at the placement of the stairs in their future non-built house. Ms. Stratton stated she believes that this variance request is not a material hardship to them, but if Ms. Stratton had the builder run outside to the "master patio" Mr. Vernick testified under oath he had seen, in fact, it is six (6) feet, five (5) inches. Ms. Stratton stated moving the patio back three (3) or four (4) feet – as some Board members and Mr. Vernick have suggested – she believes would render the "massive patio" of six (6) feet, five (5) inches unusable. Ms. Stratton stated she respectfully asks the Board they collaboratively understand how to resolve the stair issue within the variance, that they are not impeding the Vernicks on a future issue which may or may not happen. Ms. Stratton stated she has great financial hardship because she has a renter's application and license, and she would ask for the Board's support as well as the Vernick's. Mr. Edwards asked if any of the Board had any questions before closing the public hearing. The Board said no. Mr. Edwards closed the public hearing and had the Board proceed to the deliberations.

Mr. Rae stated he is troubled by the uncertainty of a lot of the architectural measurements, and there seems to be a lot of uncertainty regarding the staircase. Mr. Rae stated it seems to him there are also alternatives when it comes to positioning the circular stairway. Mr. Rae stated, as Mr. Oliver said, there's some positioning that would be satisfactory with a platform at the top for access to the deck. Mr. Rae

stated looking at the photos of the door opening, it seems the door is being allowed to open on the other side. Mr. Oliver stated his agreement that switching the door opening direction is really thoughtful, and he agrees he thinks there is a multitude of different things the applicant could do. Mr. Oliver stated he is suspect of what they're asking for because the architect "got it wrong" the first time, and now it seems like "it's two-point-eight (2.8) but it may be four (4)," so Mr. Oliver doesn't feel comfortable with it because he feels the Board doesn't have enough facts as presented. Ms. Sturbitts stated she agrees as she doesn't think the information the Board has is adequate to conclude there is a special condition related to this property which requires the Board to address it through a variance. Ms. Sturbitts stated she doesn't yet see an exceptional practical difficulty that can't be solved in some other way that would not impact the neighbors directly. Ms. Sturbitts stated in terms of the neighbors who did testify in support of this variance, she would note they're not directly impacted at all by the variance; they're on the other side of the house where the staircase would not be located. Chairman Bunoski stated he believes there are other remedies to the stair issue besides a variance. Chairman Bunoski stated the applicant kept referencing a twenty (20)-foot setback but she only owns a ten (10)-foot setback, and she can't count the Vernicks' setback; and the practicality of trying to say it's twenty (20) feet is not valid as it's just the applicant's ten (10) feet. Chairman Bunoski stated and if it comes to four (4) feet, which may not happen, but if it did, that would be nearly half the setback; and Chairman Bunoski does not find an exceptional practical difficulty.

Chairman Bunoski motioned to approve the variance for 6 Kewanee Street. Mr. Oliver seconded the motion. Chairman Bunoski stated because of what he just explained, he votes to deny the variance. Ms. Sturbitts stated she does not believe the information the Board has is adequate to conclude there are special conditions related to this property that would demonstrate exceptional practical difficulty. Ms. Sturbitts stated if the Board granted this variance, they would be negatively impacting the only neighbor who would be directly impacted by the stairs. Ms. Sturbitts voted to deny the variance. Mr. Rae stated he agrees with Ms. Sturbitts and there's a lot of information which is not architecturally accurate, so he votes to deny the variance. Mr. Oliver stated his agreement with his Board members and he urges the applicant to collaborate with her neighbors; but he is voting no to the variance. The variance was denied 4-0-1 abstention by Ms. Fields. Chairman Bunoski stated the applicant has thirty (30) days from the date of the decision letter to appeal to the Supreme Court in Georgetown.

Chairman Bunoski motioned to adjourn the meeting at 3:05 p.m. Mr. Oliver seconded the motion. Motion carried 5-0.

- Exhibit A Variance application package including application, letter, and plat survey
- Exhibit B Applicant's slide presentation
- Exhibit C June 4, 2021, email letter from Andy and Ginny Vernick, in opposition of the application