

TOWN OF SOUTH BETHANY
BOARD OF ADJUSTMENT PUBLIC HEARING MINUTES
Wednesday, December 15, 2021, 1:00 p.m.

This meeting/hearing was also 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: **Mark & Amy Bucher, 201 Carlisle Road, Lot 9, South Bethany, DE**

ATTENDANCE: Mark & Amy Bucher; Scott Edmonston, Sea Studio Architecture, architect for 201 Carlisle Road; Katie Genre, of Sea Studio Architecture; Edward Cackoski, 206 Carlisle Road; and Sarah Long, 205 Carlisle Road

Chairman Steve Bunoski called the Meeting to order at 1:18 pm. All parties were sworn in who requested testimony during the hearing.

PURSUANT TO SECTION 145-38(D)(2) of the Zoning Code, the required minimum side yard setback for a lot 70 feet wide is ten (10) feet; however, pursuant to a note at the beginning of Article XI ("Setback Requirements"), when a lot exceeds the standard lot width, "the stated side yard setbacks shall be increased by that percentage that the lot width exceeds the stated standard lot width provided that one side setback may be as small as the original required setback."

Town Clerk Matt Amerling stated the public hearing notice for this meeting was posted on the property (120 Elizabeth Way) on November 9, 2021; the notice was published in the *Coastal Point* newspaper on November 12, 2021; it was posted at Town Hall and on four (4) other locations within Town on November 9, 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 November 8, 2021.

Town Code Enforcement Constable Joe Hinks stated this is an extremely unusual lot, which is why there's been so much conversation about it between Mr. Hinks and Sea Studio. Mr. Hinks stated it's unusual because the road frontage is one-hundred-eleven-point-forty-three (111.43) feet. Mr. Hinks stated typically the way calculations are done for setbacks, is if a lot exceeds the stated standard lot width, the Town has to employ the editor's note, which involves an equation to get what is called an aggregate setback. Mr. Hinks stated, in this case, the stated standard lot width is seventy (70) feet; However, the frontage of this lot is one-hundred-eleven-point-forty-three (111.43) feet, and all during the presentation of prior to working with Sea Studio, there were multiple inquiries about the lot size and the unusual shape. Mr. Hinks stated by employing the editor's note and plugging in the number of 111.43 feet, we get an aggregate side yard side yard setback of thirty-one-point-eighty-three-seven (31.837) feet, or roughly thirty-two (32) feet. Mr. Hinks stated under the Zoning Code note regarding adjusted aggregate side yard setbacks for lots of this size, the aggregate side yard setback would be thirty-one-point-eight (31.8) feet, with at least ten (10) feet on one side; however, the applicant is requesting a variance from the required aggregate side yard setback to allow an aggregate side yard setback of twenty-one-point-four (21.4) feet, which would be a variance of six-point-five-two (6.52) feet.

Scott Edmonston, AIA, architect for the Applicants, stated the Property was an irregularly shaped lot unlike most other lots in South Bethany. Due to the shape of the Property and the aggregate side yard setback requirement, the buildable area on the Property would be approximately 27.4% of the Property, whereas

the buildable area for regularly shaped lots would typically be 37.7%. Mr. Hinks testified that without a variance being granted, it would be difficult for the Applicants to construct a building on the Property that would fit in with the rest of the area. Mr. Hinks stated the Property was uniquely shaped and the only lot in Town like it. Mr. Hinks testified that the dwelling proposed for the Property was reasonably sized, a modest design, and a good fit on a property that is otherwise a “designing nightmare.” Mr. Edmonston testified that the Property was an irregularly shaped lot unlike most other lots in South Bethany. Due to the shape of the Property and the aggregate side yard setback requirement, the buildable area on the Property would be approximately 27.4% of the Property, whereas the buildable area for regularly shaped lots would typically be 37.7%. He testified that without a variance being granted, it would be difficult for the Applicants to construct a building on the Property that would fit in with the rest of the area. Using construction plans labeled as Z04, Mr. Edmonston shaded those areas where the variance would not be required, which areas coincided with the building’s footprint, including the elevated deck to be situated along York Road. Mr. Edward Cackoski, of 206 Carlisle Road, stated his insight is that he finds it very appealing that the houses are designed today to fit the lot, and he thinks it will “bring up the appeal of the neighborhood,” so he is in favor of granting the variance.

The Board concluded that the Applicant met the standards necessary to demonstrate that an exceptional practical difficulty exists to warrant granting a variance of varying distances up to a maximum variance of 6.52 feet from the aggregate side yard setback for the Property, with a minimum setback of 10 feet on the north side yard and a minimum setback of 11.4 feet on the south side yard. More specifically, a variance from the aggregate side yard setback requirement is granted for those areas of the proposed building, including the deck, as specifically depicted in Exhibit A, that encroach into the required aggregate side yard setback of 27.92 feet. The required aggregate side yard setback of 27.92 feet shall be split equally between the two side yards to create two equal side yard setbacks of 13.96 feet. The Board finds that special conditions or exceptional situations exist given the unique shape of the Property and the unique aggregate setback requirement adopted by South Bethany that disproportionately limits the buildable area of the Property when compared to other lots in South Bethany.

Board Member Charlene Sturbitts motioned to approve the applicant’s request for a variance from the aggregate side yard setback requirement for the construction of a single-family dwelling on the Property, the variance being of varying distances as more particularly described herein and depicted in Schematic Z04, with a minimum ten (10)-foot setback on the north side of the property, and a minimum of eleven-point-four (11.4)-foot setback on the south side of the property. Board Member Martha Fields seconded the motion. The variance was approved 5-0. 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 approve the Stratton case 3-21 meeting minutes as well as the Luhde case 4-21 meeting minutes from June 9, 2021. Board Member James Oliver seconded the motion. Motion carried 5-0.

Chairman Bunoski stated, under new business, there was an approval letter from the Sullivan hearing on September 4, 2020, regarding 128 Bayshore Drive, where Mr. Bunoski stated the applicant had one (1) year of the variance approval being valid. Mr. Bunoski stated the one year limit expired in late October of this year (2021), so the applicant asked for an extension. Mr. Bunoski stated the one year limit is not in the Town Code but was a limit he added so cases don’t sit in perpetuity. Chairman Bunoski motioned to give the applicant a six (6)-month extension, starting from December 15, 2021 (making the expiration date June 15, 2022). Mr. Oliver seconded the motion. Motion carried 5-0.

Chairman Bunoski motioned to nominate Martha Fields as BOA Secretary, if she would want the position. Ms. Fields stated she would accept. Mr. Oliver seconded the motion. Motion carried 5-0. Mr. Oliver motioned to nominate Steve Bunoski as BOA Chairman, if he would want the position. Mr. Bunoski stated he would accept. Board Member Al Rae seconded the motion. Motion carried 5-0.

Chairman Bunoski motioned to adjourn the meeting at 2:50 p.m. Mr. Oliver seconded the motion. Motion carried 5-0.

- Exhibit A Town public hearing notice from the Nov. 12, 2021, *Coastal Point* newspaper
- Exhibit B Variance application package including letter, plat survey and photos
- Exhibit C Correspondence from residents
- Exhibit D Sheet Z04 of Sea Studio's site plan, with shaded areas where the variance is not required