

**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

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

APPLICANT: **Jerry & Jacqueline Kappes**, 120 Elizabeth Way, Lot 83

ATTENDENCE: Jerry & Jacqueline Kappes; James Watson, 118 Elizabeth Way; Edward Cackoski, 206 Carlisle Road; and Sarah Long, 205 Carlisle Road

Chairman Bunoski called the Meeting to order at 1:00 pm. All parties were sworn in who requested testimony during the hearing. Mr. Bunoski stated due to Town Code Enforcement Constable Joe Hinks having to leave the meeting early, the Board would go directly into reviewing and hearing the Kappes and Bucher applications.

PURSUANT TO 22 DEL.C. SECTION 327 (a) AND ARTICLE XI, SECTION 145-38(A)(3), EIGHT (8) FT side yard setback requirements of the Code of South Bethany. The Board of Adjustment will hold a Public Hearing to consider the homeowner's request for an elevator on the left side yard setback on the existing home.

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 Joseph Hinks stated the homeowner, Mr. Kappes, reached out to him about replacing a set of outside stairs to be replaced with an elevator due to physical disability limitations of he and his wife. Mr. Hinks stated because the Code as it's written – with the elevator encroaching into the side yard setback – he cannot issue a permit, which is why it has come before the Board. Chairman Bunoski asked if there was any medical documentation of the property owners' medical conditions.

Mr. Jerry Kappes, of 120 Elizabeth Way, provided the Board with written documentation from health care providers outlining their disabilities, which was entered into the record as Exhibit B. Mr. Kappes stated when they built their house in 1984, they never thought an elevator would be necessary; and while it is an expense they would certainly like to avoid, it has become a necessity due to their deteriorating health. Mr. Kappes stated there were some mornings when his wife could not even get out of bed without his assistance. Chairman Bunoski asked Mr. Hinks how much the elevator goes into the setback. Mr. Hinks stated he believes it's ten (10) inches, very minimal. Mr. Kappes stated his direct neighbor, Mr. James Watson, submitted a letter in favor of the Kappes' request. Chairman Bunoski stated because this is a Special Exception application, if the special exception was granted, the elevator would need to be removed at a future time as outlined in Section § 145-28(B) of the Zoning Code. Mr. Barrett Edwards, of Hudson, Jones, Jaywork & Fisher, asked what about this property makes it unique and difficult to comply with the setback in this situation. Chairman Bunoski stated at least one of the homeowners is physically handicapped and they are requesting the minimal request possible, plus, with their conditions, it would make it difficult to access or leave their home.

BOA Member Al Rae motioned to approve the variance for 120 Elizabeth Way to install an exterior elevator that will encroach ten (10) inches into the setback, with the encroachment tapering down to no encroachment over a length of four (4) feet, as the elevator is needed for the homeowners, with at least one of the applicants being a physically handicapped person. BOA Member James Oliver seconded the motion. Motion carried 5-0 in favor of the variance request stating Exceptional Practical Difficulty. The hearing was adjourned at 1:18 p.m.

- Exhibit A        Variance application package including letter, plat survey and photos
- Exhibit B        Applicant's letters from their doctor
- Exhibit C        Correspondence from residents in favor of variance
- Exhibit D        Town public hearing notice from the Nov. 12, 2021, *Coastal Point* newspaper