

TOWN OF SOUTH BETHANY
BOARD OF ADJUSTMENT PUBLIC HEARING MINUTES
Friday, February 25, 2022, 12:00 p.m.
This meeting/hearing was also conducted electronically.

PRESENT: Chairman Steve Bunoski; Charlene Sturbitts; Martha Fields; Jimmy Oliver; Barrett Edwards
TOWN STAFF: Joe Hinks, Code Enforcement Officer; and Matt Amerling, Town Clerk
APPLICANT: **David & Cathy Bomberger**, 112 Petherton Drive, Lot 9
ATTENDENCE: David & Cathy Bomberger; Sue Callaway, 240 Bayshore Drive; Matt Yancisin, 119 Brandywine Drive
ABSENT: BOA Member Al Rae

Chairman Bunoski called the Meeting to order at 12:00 pm, citing Mr. Al Rae as the only Board member absent. All parties were sworn in who requested testimony during the hearing. BOA Secretary Martha Fields motioned to approve the Kappes case 4-21 meeting minutes as well as the Bucher case 5-21 meeting minutes from December 15, 2021. Chairman Bunoski seconded the motion. Motion carried 4-0.

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 a stairway encroaching thirty-two inches (32") into the right side yard setback on the existing home.

Town Clerk Matt Amerling stated the public hearing notice for this meeting was posted on the property (112 Petherton Drive) on January 20, 2022; the notice was published in the *Coastal Point* newspaper on January 21, 2022; it was posted at Town Hall and on four (4) other locations within Town on January 19, 2022; 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 January 19, 2022.

Town Code Enforcement Constable Joseph Hinks stated the homeowners, Mr. and Mrs. Bomberger, reached out to him, in reviewing their plot survey, adding a rear egress to their house. Mr. Hinks stated the Bombergers have a house that is built out, as far as they could go, within the setback line, so they're literally at the twenty-five (25) foot setback for front and back, and they would like to be able to have an egress at the rear of the house. Mr. Hinks stated, unfortunately, no matter which side they would choose to place a stairway, it would be in a setback, which is why they're requesting the variance. Mr. Barrett Edwards, of Hudson, Jones, Jaywork & Fisher, asked if there was any place the stairs would be able to be placed without a variance. Mr. Hinks stated no matter where the stairs go on this property, the stairs will encroach into a setback and the applicant will need a variance as the house is built to the full confines of the setback lines. Chairman Bunoski asked if there was any room in the rear yard to place the stairs. Mr. Hinks stated there is room but the stairway would still go into the rear setback so the applicant would still need a variance regardless of whether the stairway went into the side yard or rear yard. Ms. Fields asked if it was possible to place the stairway into the existing rear deck, even though it would take up some deck space. Mr. Hinks stated yes, there is room which would not require a variance, but the issue then would be getting into reengineering how the floor system of the deck is laid out. Mr. Bunoski stated he appreciates the letter from the Fire Marshal stating this is more about ingress and egress in case of a fire, but the same goal could be made by putting a spiral staircase into the deck. Mr. Hinks stated he thinks the goal here is to have a set of stairs which will provide ingress and egress for the occupants in case of emergency as well as any emergency services; and if you talk to an emergency responder, they would never choose to have to go up or come down on a spiral staircase because of bringing the tanks, gear, especially having to carry up and down a stretcher. Chairman Bunoski stated he

understands Mr. Hinks but by having a stairway in the side yard setback, this close to the neighbors, there is now another fire hazard because the fire can spread to the side stairway, which is closer to the neighbors' house.

Mr. David Bomberger, of 112 Petherton Drive, stated he and his wife are here to request a variance into the side yard setback for a set of stairs; and from a construction viewpoint, after speaking with contractors, it would be easier to place the stairway on the side rather than off the back, also not taking away from their deck space. Mrs. Cathy Bomberger, of 112 Petherton Drive, stated they do not want to put the stairs in the first-floor deck, because then it compromises the upper level as they have a deck up there, which would then be a whole new engineering design. Mrs. Bomberger stated they'd have to change the whole back part of the house, and that would get very expensive, because their front door enters, and that's where we go in and there's a set of steps which go right up. Mrs. Bomberger stated if there would be a fire upstairs or in their kitchen, and then they'd be in their bedrooms or in the front (of the house), it would be really hard for them to go down the only entrance/exit. Mrs. Bomberger stated there are four bedrooms upstairs and if there were a fire in the front of the house, it would be hard for whoever's upstairs to come down and go out the front door. Chairman Bunoski asked how long the Bombergers have owned the house. Mrs. Bomberger stated about fifteen (15) or sixteen (16) years. Chairman Bunoski asked if they purchased the home under these conditions. Mrs. Bomberger stated no, there was a home there which was torn down and the Bombergers rebuilt. Chairman Bunoski asked when they did the rebuild. Mr. Bomberger stated 2007. Chairman Bunoski asked Mr. Hinks how wide a set of stairs is required to be under Town Code. Mr. Hinks stated three feet (3'). Chairman Bunoski stated so the stairway would have to encroach thirty-six (36) inches and not thirty-two (32) inches, which is what the request would be for. Chairman Bunoski stated with the side setback being eight (8) feet, that's over one-third (1/3) of the side yard setback, which is a lot.

BOA Member Jim Oliver stated he was perplexed at the engineering that would need to occur if the steps were just moved to the back and went straight down into the rear setback; because going from eight (8) feet to five (5) feet in the side setback is a lot. Mr. Oliver asked if the steps have a nine-and-a-half (9.5) foot drop, how long would that be, for those steps? Mr. Hinks stated the desired tread would be about one (1) foot, so you're looking at nine-and-a-half, ten (10) feet tall and you're not going to see a twelve (12)-foot run because then you're going to have to get into a landing – and Mr. Hinks doesn't know how the topography there is exactly, so it's tough to answer this question – but the County will allow you to go up to eight-point-twenty-five (8.25) and the IRC code is seven and five-eighths (7 5/8). Mr. Hinks asked if the applicant wants seven (7)-inch risers or eight-and-a-quarter (8.25) risers, it's divisible by the number of risers. Mr. Hinks stated, for arguments sake, if you're looking at a twelve (12)-inch tread, which is a good tread, then you're looking at maybe eleven (11) feet.

Chairman Bunoski asked Mr. Bomberger if he's concerned about fire and escaping said fire, shouldn't the stairs be going to the upper deck on the third (top level)? Mr. Bomberger stated you can get from this third floor to the second floor and then out the back. Chairman Bunoski stated if there are any concerns about this fire that might happen, it makes sense you'd want to put a staircase from the third floor down to the second floor, then to the second floor down? Chairman Bunoski stated it appears to him there is a rationale more than a reason for the request. Mr. Bomberger stated their major concern was getting down from the main second floor. Ms. Fields stated she's not sure why the applicant wouldn't put the stairs off the rear because even if it goes into the setback, there is still the lagoon there as a buffer, which would adhere more the spirit of the Town Code. Mr. Bomberger stated by going into the rear, they would really be getting into more engineering issues than they'd want, and it would be unfeasible for them. Mr. Hinks stated he thinks in discussing the proposed stairs, in the applicant's mind, the least encroaching was what they selected. Mr. Bomberger stated what Mr. Hinks said is correct, and Mr. Bomberger spoke with their neighbor who abuts the affected side, and he has no issue with the Bombergers placing the stairway in that side yard. Chairman Bunoski stated he appreciates that but if

the neighbor's property sells, the new neighbor may care, and it becomes a problem. Chairman Bunoski asked if there was anyone present at the meeting who would like to speak on this matter. No one replied. Mr. Edwards stated the Town received one letter from a neighbor, Mr. Ian Beiser, in support of the variance, which reads, "I received your certified letter regarding the Public Hearing regarding 112 Petherton Drive. I understand the owners have requested to install a stairway that would encroach on the 8-foot side yard setback. I live at 113 Petherton Drive and am directly across the street from this property. I am unable to attend the hearing. I approve of the installation of the side stairway. I do not have any objections to the request that is being made by the Bombergers."

BOA Member Charlene Sturbitts stated she's really bothered by the encroachment into the side setback and how close it is, and she doesn't think the applicant has really met the statutory standard for the Board to grant a variance. Ms. Sturbitts stated she doesn't think that the lot is such that the applicant has to do it this way, and there isn't an exceptional practical difficulty that requires them to do it on the side. Ms. Fields stated she agrees with Ms. Sturbitts, and Ms. Fields knows these hearings don't have precedential value; however, Ms. Fields' mind keeps going to consistency and the Board had recently rejected a similar request. Chairman Bunoski stated he's noticing that people build these houses to the first degree and then come to the Board looking for extra relief, or when they could have done it in the first place during construction. Chairman Bunoski stated he doesn't find an exceptional practical difficulty, and he sees the excuse to bring the fire department and to say that's the reason they want to have a staircase, but when the house has been owned by the applicants for fifteen (15) years, that was never a concern. Chairman Bunoski stated he sees why they want it, but he thinks there's other ways of accomplishing the same thing.

Chairman Bunoski stated he believes the burden of an exceptional practical difficulty has not been met, so he would motion to deny the variance for 112 Petherton Drive to install a stairway encroaching thirty-two inches (32") into the right side yard setback on the existing home. BOA Member Martha Fields seconded the motion. Motion carried 4-0 to deny the variance request. The hearing was adjourned at 12:48 p.m.

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| Exhibit A | Certified letters to neighbors & Town public hearing notice from the Jan. 21, 2022, <i>Coastal Point</i> newspaper |
| Exhibit B | Variance application package including letter, plat survey and photos |
| Exhibit C | Correspondence from the Fire Marshal & residents in favor of variance |