

**TOWN OF SOUTH BETHANY**  
**BOARD OF ADJUSTMENT PUBLIC HEARING MINUTES**  
**Friday, May 20, 2022, 1:00 p.m.**  
**This meeting/hearing was also conducted electronically.**

PRESENT: Chairman Steve Bunoski; Martha Fields; Charlene Sturbitts; Al Rae; Jimmy Oliver; Barrett Edwards  
TOWN STAFF: Joe Hinks, Code Enforcement Officer; and Matt Amerling, Town Clerk  
APPLICANT: **Jonathan & Leslie Wald**, 143 New Castle Drive, Lot 59  
ATTENDENCE: Jonathan Wald; Elizabeth Fediay, 162 New Castle Drive; Michael DiMuzio, 141 New Castle Drive

Chairman Bunoski called the Meeting to order at 1:00 p.m. The hearing was slightly delayed due to an unexpected tardiness of Barrett Edwards, of Hudson, Jones, Jaywork & Fisher. All parties were sworn in who requested testimony during the hearing.

Chairman Bunoski stated since the second half of the meeting concerns a special consideration of whether Ms. Paulette Chapman's application applies to Town Code 145-62(D), Mr. Bunoski would like the Board to discuss whether said Code does apply to her application regarding a 12-inch variance from the front yard setback of her property at 161 New Castle Drive. Mr. Edwards stated that section of Code states, "After the Board renders its decision, no new application with a substantially similar objective, filed by the original applicant or his successor in interest, shall be acted upon by the Board until two years have elapsed since the initial decision unless the Board finds that the facts and circumstances existing at the time of the initial decision by the Board have undergone a material change."

Through oral testimony and written submissions, Ms. Chapman testified that this application had a different objective than the first application because it involved the front yard setback and the width of the deck and Americans with Disabilities Act (ADA) compliance, whereas the first application involved a forty-two-inch (42") variance from the rear yard setback and the egress from the deck. She felt the matter should be heard on the merits based on the discretion afforded to the Board. After discussing the matter, a motion was made by BOA Member Martha Fields to hold a rehearing, seconded by Chairman Bunoski. By a vote of 3 to 2 (BOA Members Al Rae and Charlene Sturbitts voting no as they both agreed application #7-22 has the same objective as previous application #2-22), the Board voted to grant a rehearing. While similar facts were involved in both requests, the Board determined that the ultimate objective of both applications was not the same. Additionally, the ADA component created a difference that needed to be considered.

The Board moved on to item #6-22, regarding 143 New Castle Drive.

PURSUANT TO 22 DEL.C. SECTION 327 (a) AND ARTICLE XI, SECTION 145-38(A)(1), TWENTY-FIVE (25) FT front yard setback requirements of the Code of South Bethany. The Board of Adjustment will hold a Public Hearing to consider the homeowner's request to replace a front deck and steps encroaching four feet (4') into the front yard setback on the existing home.

Town Clerk Matt Amerling stated the public hearing notice for this meeting was posted on the property (143 New Castle Drive) on April 8, 2022; the notice was published in the *Coastal Point* newspaper on April 8, 2022; it was posted at Town Hall and on four (4) other locations within Town on April 8, 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 April 8, 2022.

Town Code Enforcement Constable Joseph Hinks stated construction improvements were commenced at the Property as the owner, Mr. Wald, did not obtain a permit. Mr. Hinks stated a stop work order was issued, but a building permit could not be issued because the work encroached into the setback and necessitated a variance. Mr. Hinks testified that the original deck encroached a little over eight inches into the setback and the revised deck would encroach about nine inches into the setback; however, the Applicants relocated the original stairs to the front of the deck, which creates a four-foot (4') encroachment. Photos of the Property were entered into the record as Exhibit C. After some discussion, Mr. Hinks was able to clarify that a variance of twelve-and-a-half inches (12 ½") would be needed for the deck to remain in the new location as long as the stairs were moved to the side of the deck.

Mr. Jonathan Wald, the applicant, stated, right after purchasing the property, he fell through the deck while walking across it. He had a contractor come help him install a new deck, and he decided to relocate the stairs to the front of the deck because it would make ingress and egress easier; however, he did not know a permit or a variance was needed. Mr. Wald stated keeping the stairs on the side of the house would make it easier to enter the house, which is why he relocated the stairs. Mr. Michael DiMuzio, resident of 141 New Castle Drive, was sworn in and testified that he had no objection to the application. Ms. Elizabeth Fediay, resident of 162 New Castle Drive, was sworn in and testified that she did not object to the variance because it would not negatively impact anyone. The Board heard no testimony indicating that the granting of the variance would cause substantial detriment to the public good or otherwise substantially impair the intent of the Zoning Code.

The Board finds that special conditions or exceptional situations exist because the house was built right up to the front setback line, and the owners need a means to enter and exit the dwelling, which creates a difficulty. The Board decided by reducing the requested variance and the size of the deck from five feet (5') to four feet (4'), the minimum variance was being granted. By removing the existing stairway within the side yard setback, the side yard encroachment was eliminated. The Board heard no testimony indicating that the granting of the variance would cause substantial detriment to the public good or otherwise substantially impair the intent of the Zoning Code. The Board finds that an exceptional practical difficulty exists because the minimum variance is being granted for the decks and the benefit to the applicant from receiving the variances will be greater than the probable effect on the neighboring properties if the variances are granted.

Chairman Bunoski motioned to grant a variance of four feet (4') as requested by the applicant. Ms. Sturbitts seconded the motion. Motion denied 5-0. The Board did not find an exceptional practical difficulty existed on the Property to warrant the granting of the variances as requested. The Board decided since the hardship had been created, in part, by the Applicant, the Board did not want to retroactively grant a variance that had been unlawfully created.

Chairman Bunoski motioned to approve a variance of twelve-and-a-half inches (12 ½") into the front yard setback as the Board concluded that the Applicant met the standards necessary to demonstrate that an exceptional practical difficulty existed to warrant granting the variance of 12.5 inches to allow the deck to remain with the steps being relocated to the original location on the side of the deck. The Board found that special conditions or exceptional situations existed because an entrance into the front of the Property was necessary. The variance would allow the deck to be constructed in a location similar to the deck's original footprint, with only a slightly larger encroachment into the setback, which would provide the necessary ingress and egress. Ms. Fields seconded the motion. Motion carried 5-0. The hearing was adjourned at 2:47 p.m. The Board took a ten (10)-minute break.

Exhibit A           Town public hearing notice from the April 8, 2022, *Coastal Point* newspaper  
Exhibit B           Variance application package including letter, plat survey and photos

Exhibit C

Three (3) photos provided by Town Code Enforcement Officer Joe Hinks of the structure under review