

TOWN OF SOUTH BETHANY
BOARD OF ADJUSTMENT PUBLIC HEARING MINUTES
Friday, June 24, 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: **Patrick & Michele Allen**, 311 W. 8th Street, Lot 121
ATTENDANCE: Patrick Allen; Karen Beazell, 121 Canal Drive; Brad Davies, Finishing Touch Contracting

Chairman Bunoski called the Meeting to order at 1:00 p.m. All parties were sworn in who requested testimony during the hearing.

PURSUANT TO 22 DEL.C. SECTION 327 (a) AND ARTICLE XI, SECTIONS 145-38(A)(1), TWENTY-FIVE (25) FT front yard setback requirements, 145-38(A)(2), TWENTY-FIVE (25) FT rear yard setback requirements & 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 variance of encroachment one foot, three inches (1'3") into the front yard setback, four inches (4") into the rear yard setback, and ten inches (10") into the left side yard setback.

Town Clerk Matt Amerling stated the public hearing notice for this meeting was posted on the property (311 W. 8th Street) on May 20, 2022; the notice was published in the *Coastal Point* newspaper on May 20, 2022; it was posted at Town Hall and on four (4) other locations within Town on May 20, 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 May 20, 2022.

Town Code Enforcement Constable Joseph Hinks stated the applicants were seeking to elevate the house and it was discovered that certain setback encroachments existed on the property, which necessitated the variance application. Mr. Hinks stated the property owners were requesting a variance of encroachment one foot, three inches (1'3") into the front yard setback, four inches (4") into the rear yard setback, and ten inches (10") into the left side yard setback.

Mr. Patrick Allen, of 311 W. 8th Street, stated, with one exception, the variances being requested would just maintain the same conditions that currently exist on the Property. The one exception was that they were looking to increase the encroachment into the side yard setback from 6 inches to 10 inches in order to widen the staircase. As indicated in the application materials provided by the applicant, this enlargement would allow for safer ingress and egress using this staircase. Mr. Allen testified that they would experience substantial hardship if these variances were denied because they would not be able to elevate the structure, which would potentially expose the structure to significant flooding damage if a flooding event were to occur; and it would not be economically feasible to demolish the house and start over. The BOA application and accompanying exhibits were entered into the record as Exhibit A.

The Board finds that special conditions or exceptional situations exist given the fact that the conditions were not the fault of the applicant, the conditions impede the ability of the applicant to elevate the structure to protect against flood damage, and finds that an exceptional practical difficulty exists because the variances are necessary to allow the elevation of the structure. The expanded staircase would create a safer means of ingress and egress on that side of the Property. 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 granting the variance will have minimal

negative impact on the neighboring properties, and the benefit to the applicant from receiving the variance will be greater than the probable effect on the neighboring properties if the variance is granted. The Board finds that substantial justice will be accomplished by granting the variance.

Chairman Bunoski motioned to grant a variance of one foot, three inches (1'3") from the front yard setback and four inches (4") from the rear yard setback, and six inches (6") from the west side yard setback to allow for the elevation of the structure situated on the property. Mr. Rae seconded the motion. Motion carried 5-0. The Board agreed the applicant has met the standards necessary to demonstrate that an exceptional practical difficulty exists.

Chairman Bunoski motioned to approve a variance of an additional four (4) inches for a total variance of ten inches (10") from the side yard setback to allow for the expansion of a staircase into the west side yard setback. Ms. Fields seconded the motion. Motion carried 3-2 (with Chairman Bunoski and Mr. Rae voting no).

Chairman Bunoski stated he and Mr. Hinks were approached at the beginning of the hearing by the contractor for Mr. Nathan Thompson, of 108 Brandywine Drive, who's BOA case was heard on March 25, 2022. At said meeting, the Board approved the granting of a variance of four feet from the front yard setback to install a deck and stairs that would be four feet by twelve feet and for a variance of one foot, eight inches (1'8") from the rear yard setback to install a rear deck that would be four feet (4') by twelve feet (12'). The understanding of the Board at the time was that the dwelling situated on the Property was constructed adjacent to the front yard building line, so granting a four-foot variance would allow a four-foot deck to be constructed. The contractor, Mr. Brad Davies, of Finished Touch Contracting, stated upon completion of the deck, however, a survey revealed that the dwelling situated on the Property was not built adjacent to the front property line but was actually built nine (9) inches into the front yard setback. Consequently, although the newly constructed deck was four feet wide, it nevertheless unexpectedly encroached four feet and nine inches into the front yard setback. Mr. Barrett Edwards, of Hudson, Jones, Jaywork & Fisher, stated under State Code Title 29, Chapter 100, Freedom of Information Act (FOIA), § 10004. Open meetings, (e)(3)(A), "an agenda ... is subject to change. Changes to an agenda may include any of the following: a. Additional items, including an executive session, which arise at the time of the public body's meeting." Mr. Edwards stated due to this section of FOIA Code, the Board may vote on whether to hear the contractor and make a vote. Chairman Bunoski motioned to amend today's (June 24, 2022) agenda to hear the case for Thompson. Ms. Fields seconded the motion. Motion carried 5-0.

The Board members indicated that the Board's original intent was to allow a four-foot deck at the front of the house, which is what was constructed, and the constructed deck was in compliance with the intent of the variance originally granted by the Board. Chairman Bunoski motioned to amend the original variance decision to clarify that the variance that was granted for the front yard was a variance of four feet, nine inches (4'9") to allow for the construction of a four-foot deck. Ms. Fields seconded the motion. Motion carried 5-0.

The hearing was adjourned at 2:07 p.m.

Exhibit A Variance application package including public hearing notice