

**TOWN OF SOUTH BETHANY**  
**BOARD OF ADJUSTMENT PUBLIC HEARING MINUTES**

**Friday, October 4, 2024, 1:00 p.m.**

**This meeting/hearing was conducted both in-person and electronically.**

PRESENT: Steve Bunoski, Jim Oliver, Charlene Sturbitts, Al Rae, Patty Jaicks, and Barrett Edwards  
TOWN STAFF: Joe Hinks, Code Enforcement Officer; and Brittany Hollis, Administrative Assistant  
APPLICANT: **Stephen & Tracy DiVirgilio**, 122 Henlopen Drive  
ATTENDANCE: Sergio Carbone and Logan Dry

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, Section 145-38(A)(1)(2)(3), of the Zoning Code establishes a required 25-foot minimum front and rear yard setback and an 8-foot side yard setback for the Property. The Applicants are requesting variances to allow an existing second-story deck to remain on the Property in its existing location. The encroachments into the setbacks would be as follows: between 0.0 and 1.2 feet into the required 25-foot rear yard setback and 0.0 to 1.1 feet into the 8-foot eastern side yard setback.

Administrative Assistant Brittany Hollis stated the public hearing notice for this meeting was posted on the property (122 Henlopen Drive) August 30, 2024; the notice was published in the *Coastal Point* newspaper on August 30, 2024; it was posted at Town Hall and on four (3) other locations within Town on August 30, 2024; and was sent via mail to the property owner and owners of property within a radius of two-hundred (200) feet of the property on August 30, 2024.

Building Official Joseph Hinks was sworn in and gave an overview of the application. Testifying that the purpose of the variance was to allow for the existing condition of the second-story deck to remain, while permitting renovations to the Property to add a third story. The variance is needed due to a likely surveying error, an action not intentionally done by the Applicants.

Glenn Mandalas, Esq., represented the Applicants at the hearing. Testifying that the home was built in 2021, and only had livable space on the second floor of the Property. With wanting to construct a code-compliant third floor, the Applicants learned that the existing deck encroached into the rear and side yard setbacks. Mr. Mandalas reported that the east side yard encroached from 0.0 feet up to about 1.1 feet into the setback. While the rear yard encroachment spans 0.0 feet to about 1.2 feet into the setback. It was also noted that the deck support piling likely also encroaches into the side yard and/or rear yard setbacks and also needs a variance.

Mr. Mandalas reported that the variance would be consistent with the residential zone in which the Property is situated. Meaning, the requested variances would be in character with surrounding properties. The encroachments in questions have existed for decades and removal would have a negative impact on the Applicants. Failure to grant the variance would leave the Applicants unable to renovate the Property.

Logan Dry with KCA Design Associates was sworn in and testified that the intent was not to make any improvements to the deck because the deck is in good condition. Explaining it would be expensive and difficult to remediate the encroachments. Doing so, would require relocating the support piling, resulting in a cost of upwards of at least \$10,000.

Sergio Carbone, homeowner of 120 Henlopen Drive, testified that he did not have an issue with the variance. Even with the side yard setback variance being situated along his property line.

No one provided testimony in opposition to the application.

Steve Bunoski, chairman, motioned to approve the request for variances of 0.0 to 1.2 feet from the 25-foot rear yard setback and variances from 0.0 to 1.1 feet from the 8-foot eastern side yard setback, with the condition that if the deck and support piling are ever replaced, the deck and support piling would need to be reconstructed in compliance with the Zoning Code to eliminate the encroachments. This motion was seconded by Board member, Patty Jaicks.

By a vote of 5 yeas and 0 nays, the motion was **GRANTED**. The Applicants' request for variances of 0.0 to 1.2 feet from the 25-foot rear yard setback and variances from 0.0 to 1.1 feet from the 8-foot eastern side yard setback to permit the existing second-story deck to remain in its present location. The variances granted herein shall expire at such time as the Applicants improve the deck in a manner that would require the replacement of the deck and support piling.

The hearing was adjourned at 1:33 p.m.