

BEFORE THE BOARD OF ADJUSTMENT OF THE TOWN OF FENWICK ISLAND

IN RE: :
 :
APPLICATION OF : **DECISION**
 :
THOMAS AND SANDRA MONAHAN :

The Board of Adjustment of the Town of Fenwick Island, Delaware, convened at 10:00 o'clock in the morning, prevailing time, on Thursday, July 18, 2019, at the Town Hall, 800 Coastal Highway, Fenwick Island, Sussex County, Delaware, to hear the application of Thomas and Sandra Monahan (hereinafter the "Applicants"), for a variance from the 5 foot side yard setback requirement (see Section 160-8.A.(3) of the Code of the Town of Fenwick Island) for their property located at 2 East Houston Street (Sussex County Tax Map and Parcel No. 1-34 23.12 198.00, Lot 16). Present for the Board of Adjustment were Chairman, Tim Collins, and members Linda Bunting, Craig Lambertson, Marlene Quinn and James Yori. Present as well were the Town Solicitor, Mary R. Schrider-Fox, and Pat Schuchman, Building Official. The Applicants appeared at the hearing. Mr. Monahan led the presentation on behalf of the Applicants. In addition, Kaitlind Meeks and P.J. Laviola from Delaware Elevator were present in support of the Applicants, as well as Daniel Bryant from East Coast Building Projects. Only P.J. Laviola testified before the Board.

FINDINGS OF FACT

The Applicants are the owners of residential property located at 2 East Houston Street, within the corporate limits of the Town of Fenwick Island, Sussex County, Delaware. The property is also identified as Sussex County Tax Map and Parcel No. 1-34 23.12 198.00, Lot 16 (hereinafter the "Property").

The Property is located on the east side of Coastal Highway (State Route 1). The Property is 38 feet wide, as opposed to 50 feet wide like many other lots in the Town, and is improved with a residential dwelling that was built in 2008 as a spec house by Zonko Builders. The front of the dwelling is the north side of the dwelling and faces Houston Street. The dwelling is constructed on a pile foundation with the entry on the ground floor. The stairway, from the ground floor to the top floor of the dwelling, has 28 steps and 3 landings. The current side yard setback on the east side of the house is 6.6 feet, more than the 5 feet by the Town's zoning ordinances.

The original plan for the dwelling on the Property did not include an elevator, nor did it allow room for an elevator to be installed in the future. When the Applicants purchased the Property in 2012, they were not in need of an elevator and did not contemplate needing an elevator.

The Applicants both currently have medical conditions that make climbing and descending stairs physically painful. Mrs. Monahan has arthritis in her knees and has also had

knee replacement surgery for one knee. Mr. Mohahan has severe arterial blockages in both legs that lead to painful cramps when his legs are over-exerted. Notes from both of the Applicants' doctors, verifying their medical conditions, are a part of the hearing record. As a result of their medical conditions and to minimize the pain, the Applicants must carefully plan their daily trips up and down the stairs.

Because of the Applicants' above-described medical conditions, they wish to install an elevator on the east side of their dwelling. The chosen location on the east side of the dwelling has been recommended as the best possible location by their elevator contractor, Delaware Elevator, as well as two other elevator companies that inspected the Applicants' dwelling. The chosen location is recommended because said location allows for a secure entry with the Applicants entering the elevator via the garage. The elevator will enter a hallway on the ground and first floors of the dwelling and will enter the dining area on the second (top) floor. The chosen location also places the elevator next to the climate-controlled equipment room, requiring minimal routing of wires and lines.

At the chosen location, the elevator will encroach 3.7 feet into the required 5 foot side yard setback. The elevator will sit back from the street, so as not to be generally noticeable. The elevator will not block the view of the ocean, nor any other scenic views, currently enjoyed by neighboring properties. Because no trees are located in the area where the elevator will be installed, removal of existing trees is not necessary in order to accommodate the elevator. However, once the elevator is installed, the area around the elevator will be landscaped to enhance the view between the Property and its neighbor to the east. The elevator will be ADA-compliant, with siding and roofing that matches the Applicants' dwelling. Windows will be installed on the north side of the elevator shaft facing the street so that it will look like a natural part of the dwelling.

Other locations for installation of an elevator were considered by the Applicants and their contractors, but rejected for various reasons.

If the elevator were to be installed at a different location on the east side of the dwelling, heat pumps would have to be relocated and the elevator would enter through bedrooms on both the first and second floors.

If the elevator were to be installed on the north side of the dwelling, it would block the entrance to the carport, enter a bedroom on the first floor, and greatly reduce existing deck space on the first and second floors. This location on the front of the dwelling would also be the most unsightly of all possible locations.

If the elevator were to be installed on the west side of the dwelling, a setback variance would still be necessary for that location. The elevator would enter the dwelling through a bedroom on the first floor and a bedroom or the kitchen on the second floor, possibly reducing already very limited storage space in the kitchen. Existing trees on the west side of the dwelling would also have to be removed. An elevator in this location would also present a security concern.

If the elevator were to be installed on the south side of the dwelling, it would enter the dwelling through bedrooms on both the first and second floors or, possibly, would result in the removal of an existing bathroom.

The Applicants considered whether a smaller elevator chair could be installed on the stairway, itself, within the dwelling. Such an elevator chair would be very slow and would interfere with the front entrance to the house. Because of the limited amount of space, such an elevator chair would also limit one's ability to transport groceries, luggage or laundry. Such an elevator chair would also create a tripping hazard.

The parcels of land surrounding the Property are also used for residential purposes.

The neighbors immediately to the east of the Property, who are most affected by the Applicants' proposed elevator, have submitted an email to the Board in support of the Applicants' variance request. Other neighbors on Houston Street, including Brenda Shelton who received a variance from the Board in 2018 in order to install an elevator due to physical disability, have also submitted emails in support of the Applicants' variance request. All emails received are part of the hearing record.

The Board received no comments from the public during the hearing, either in favor of or opposed to the application.

CONCLUSIONS

Pursuant to Section 160-13 of the Zoning Code of the Town of Fenwick Island, Delaware, the Board of Adjustment shall have the powers defined and conferred, and the limitations imposed, by Title 22 of the Delaware Code, Sections 321 through 327, inclusive. Said Sections 321 through 327 are included herein by reference.

Title 22 of the Delaware Code, Section 327(a)(3), provides that the Board of Adjustment may:

authorize, in specific cases, such variance from any zoning ordinance, code or regulation that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of any zoning ordinances, code or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of the property so that the spirit of the ordinance, code or regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code, regulation or map.

Under Delaware case law, the Delaware Supreme Court has defined the two types of variances, "use" variances and "area" variances. The Board of Adjustment v. Kwik-Check

Realty, Inc., Del. Supr. 389 A.2d at 1289, 1291 (1978). That court indicated that “a use variance is a variance that changes the character of the zoned district by allowing the land to be used for a purpose otherwise proscribed by the zoning regulations.” Id. However, an area variance “does not involve a prohibited use, and ‘concerns only the practical difficulty in using the particular for permitted use.’” Id. at 1291. The variance requested in this instance is an area variance to which the “exceptional practical difficulty” standard applies.

The Board concludes that the Applicants face an exceptional practical difficulty in making normal use of the Property because of the Applicants’ existing medical issues. The proposed elevator is a reasonable modification of the existing dwelling on the Property and is necessary so that the Applicants may have reasonable and comfortable enjoyment of the Property.

The Board concludes that a denial of the variance requested would present a greater risk to the Applicants than to neighboring property owners, the most affected of which supports the Applicants’ request. Other neighbors are also supportive of the Applicants’ request.

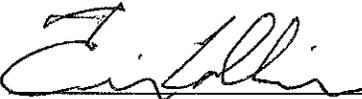
The Board concludes that the Applicants’ chosen location for the elevator on the east side of the dwelling is the best option for the Applicants’ dwelling. The chosen location does not require a redesign of the dwelling and will result in the least amount of disruption to bedroom and other dedicated spaces within the dwelling, while making use of common area space within the dwelling. The variance requested is a minimal dimensional change that is necessary in order for the Applicants’ proposed, reasonable solution to their physical problems to move forward.

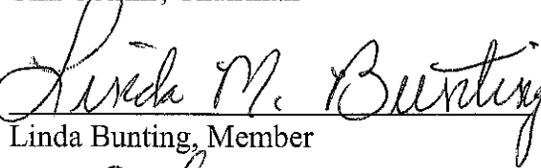
DECISION

The Board voted unanimously to grant the requested variance. More specifically, Applicants’ request to install an elevator that will encroach into the side yard setback a total of 3.7 feet on the east side of the existing dwelling on Applicants’ Property, is hereby granted.

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SIGNATURES TO FOLLOW ON NEXT PAGE]

BOARD OF ADJUSTMENT OF THE
TOWN OF FENWICK ISLAND

By: 
Tim Collins, Chairman

By: 
Linda Bunting, Member

By: 
Craig Lambertson, Member

By: 
Marlene Quinn, Member

By: 
~~James Yori, Member~~

Date Filed with Town: 8-16-2019

Date Mailed/Emailed to Applicants: 8-16-2019