

**BEFORE THE BOARD OF ADJUSTMENT OF THE TOWN OF FENWICK ISLAND**

**IN RE:** :  
 :  
**APPLICATION OF** :  
 : **DECISION**  
 :  
**ROBERT & BRENDA SHELTON** :

The Board of Adjustment of the Town of Fenwick Island convened at 1:00 o'clock in the afternoon, prevailing time, on Thursday, August 23, 2018, at the Roxana Volunteer Fire Company, 35943 Zion Church Road, Frankford, Sussex County, Delaware, to hear the application of Robert & Brenda Shelton (hereinafter the "Applicant"), for a variance from the 7 foot side yard setback requirement (see Section 160-4.C.(3) of the Code of the Town of Fenwick Island) for their property located at 5 E. Houston Street (Sussex County Tax Map and Parcel No. 1-34 23.12 194.00). Present for the Board of Adjustment were Chairman, Tim Collins, members Richard Benn, Linda Bunting, Craig Lambertson, and Marlene Quinn, and David C. Hutt, Esquire, counsel for the Board of Adjustment. Also present were Teresa Tieman, Town Manager, Patricia Schuchman, Building Official, William Weistling, Building Committee Chair and the Town Solicitor, Mary R. Schrider-Fox, Esquire. Matt Parsons, a representative from Hastings Associates, LLC, and Tammy Shelton, daughter of Brenda Shelton, appeared and testified on behalf of the Applicant at the hearing. One member of the public presented questions to the Board and Applicant's representatives concerning the application, but took no position either in favor of or against the application.

**FINDINGS OF FACT**

The Applicant is the record title owner of residential property located at 5 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 23.12 194.00 (hereinafter the "Property").

The Property is located on the easterly side of Coastal Highway (State Route 1). The Property is improved with a residential dwelling that is elevated on pilings because it is an area with an AO Flood Zone.

The Applicant desires to install an elevator to provide the occupants of the dwelling, specifically Brenda Shelton, access to the main living area of the dwelling from the ground level. At present, the only way to access the main living area of the dwelling is by stairs. Due to various health issues with which Ms. Shelton is afflicted (including, but not necessarily limited to, Rheumatoid Arthritis), it has become difficult for her to use the stairs to access the main living area of the dwelling from the ground level.

At the hearing, the Applicant presented the Board with written confirmation of Ms. Shelton's diagnosis from one of her doctors, Dr. Colleen Matejicka, a rheumatologist. The Applicant's architectural representative testified that the proposed location of the elevator was the only place the elevator could be located because the existing dwelling is on pilings making incorporation of the elevator complicated and extremely difficult.

The Applicant's architectural representative testified that other possible locations for the elevator along the exterior of the home were explored but that the configuration of the pilings for the house made the other options structurally complicated and difficult. Similarly, because of the layout of the home and the pilings the elevator could not be incorporated into the interior of the dwelling.

Tammy Shelton, Ms. Shelton's daughter, also testified and confirmed her mother's condition and that the purpose of the elevator was to allow Ms. Shelton to access her dwelling via wheelchair and take simple and ordinary items like groceries into the home. Without the proposed elevator, Ms. Shelton will not be able to access the dwelling without great difficulty. In addition, the Ms. Shelton confirmed that the layout of the stairs in her mother's home does not accommodate a chair lift. During her testimony she also confirmed that her mother was seeking the smallest elevator that is handicap accessible.

In addition, Tammy Shelton confirmed that they explored other locations for the elevator but none existed without seeking a variance. Because of the configuration of the deck which has a "cut-in" area, the elevator will only require a 3.4 foot variance. In addition, with the proposed location there is a storage area that is climate controlled which is required for the equipment for the elevator.

The need for a variance arises because the elevator will be installed on the northeast side of the dwelling, occupying an area five and a half feet (5.5') by six and a half feet (6.5') that will encroach into the side yard setback a total of 3.4 feet (3.4'). Installing the elevator in the proposed location of the cut-in area on the deck at the northeast corner is necessary because otherwise the dwelling's structural pilings would need to be modified. Installing the elevator on the northeast side of the dwelling will also allow the Applicant to use the existing storage room as the climate controlled area for the elevators' mechanical equipment.

The parcels of land surrounding the Property are also used for residential purposes. The Applicant presented the Board with a letter of support from Richard Curry, the owner of the property immediately east of the Property and adjacent to the location of the proposed elevator.

The Board received two emails in opposition to the proposed variance from the public before the hearing.

One member of the public attending the hearing presented questions to the Board and Applicant's representatives concerning the location of the existing dwelling within the building envelope for the Property, but took no position either in favor of or against 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 Applicant faces an exceptional practical difficulty in making normal use of the Property because of Ms. Shelton's inability to access the dwelling by using the existing stairs due to her health issues.

The Board concludes that the proposed elevator is a reasonable modification of the existing dwelling on the Property and is necessary so that Ms. Shelton may have reasonable and full enjoyment of the Property.

The Board concludes that, because of the existing configuration of the home and the pilings which support the home, the proposed location for the elevator on the northeast side of the existing dwelling is the best and most appropriate location for said elevator. Said location also provides the mechanicals for the elevator with a climate controlled environment as required for the proposed elevator.

The Board concludes that there will be little or no negative impact on the neighboring properties and the community in general, particularly since the immediately adjacent neighbor is in support of the application, the elevator's structure will match the existing dwelling and there will be minimal disturbance of the trees/vegetation on the Property.

In addition to these considerations, Ms. Shelton's health issues are a specific factor that distinguish her request from other requests that the Board might receive in the future and that might be made for convenience purposes only and not for legitimate health-related purposes.

### **DECISION**

The Board voted unanimously to grant the requested variance. More specifically, Applicant's request to install an elevator within a fully enclosed elevator shaft that will be similar in height to the existing dwelling, five and a half feet (5.5') by six and a half feet (6.5'), and that will encroach into the side yard setback a total of 3.4 feet, on the north eastern side of the existing dwelling on Applicant's 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: \_\_\_\_\_  
Richard Benn, Member

By: \_\_\_\_\_  
Linda Bunting, Member

By: \_\_\_\_\_  
Craig Lambertson, Member

By: \_\_\_\_\_  
Marlene Quinn, Member

Dated: