

**TOWN OF SOUTH BETHANY  
TOWN COUNCIL PUBLIC HEARING MINUTES  
ORDINANCE 171-13  
MARCH 14, 2014**

**ATTENDANCE**

PRESENT: Mayor Pro-Tem Sue Callaway; Councilpersons Al Rae, Jim Gross, Tony Caputo, George Junkin, and Pat Voveris; and Administrative Assistant Pam Smith

EXCUSED ABSENCE: Mayor Kathy Jankowski

**MEETING CALLED TO ORDER**

Pursuant to Section 145-65 of the Town Code, Mayor Pro-Tem Callaway called the March 14, 2014, Public Hearing Regarding Ordinance 171-13 to order at 7:00 p.m. Mayor Pro-Tem Callaway stated that the purpose of the Public Hearing is to receive public input regarding Ordinance 171-13, to amend the Code of the Town of South Bethany, Chapter 145, Zoning, to revise and update requirements.

Councilman Gross said there was a concerted effort during the last year to update Chapter 42, Building, and Chapter 145, Zoning, to clear up some conflicts, redundancies, and to update the technology. Ordinance 171-13 is a big update of Chapter 145, Zoning. Councilman Gross asked for questions.

Norm Montigny (309 W. 9th St.) – Inquired if there was provision in the ordinance to add an elevator shaft that would protrude into the setback for houses that are built to the setbacks and if not how is the problem going to be solved for the person who needs an elevator. Councilman Gross stated that there is not a provision in the ordinance to infringe on the setback, however a number of elevators have been placed within the setback area when people have gone through the Board of Adjustment (BOA). Councilman Gross stated that going to the Board of Adjustment is a route property owners can take to get an exception, particularly if there is a handicap person involved. Mr. Montigny stated that if that is something the BOA would grant it would be easier for the community to have that built into the Code. Councilman Gross stated that he believes for new homes it should be incorporated within the footprint, and if there is an existing home that the plan would not allow the elevator, the property owner would go to the BOA and a decision would be made accordingly. Councilman Junkin noted that the property owner is not guaranteed that it would be approved. Councilman Gross agreed but said that primarily if the property owner is addressing a handicap issue, he believes it has been granted in the past. Councilman Gross stated that it doesn't mean it will be granted again, but there is a procedure for that. Councilman Gross said the BOA is an independent body and they can decide whether or not that should be granted. Ed Nazarian suggested incorporating in the ordinance the exception for handicap people if they have proof from a doctor that it is necessary. Councilman Gross stated that it seems to him it is not a burden for a property owner to go before the BOA particularly because in the past the fees have been either made minor or have been waived for handicap issues. Mr. Nazarian said he agrees if the fee is waived.

Paul Andreades (145 New Castle Dr.) – Inquired about the elevator shafts above the first floor of living space and said for the FAR ratio the elevator shaft is not going to count against the FAR rating. Mr. Andreades asked what happens if you have a foyer. Councilman Gross stated that the elevator shaft would count on one level not all levels, but a foyer in front of an elevator would count on each level.

Gerry Masiello (309 W. 4<sup>th</sup> St.) – Inquired about the amendment to revise Board of Adjustment member qualification requirements and procedures. Councilman Gross asked Councilwoman

Voveris to address Mr. Masiello's question. Councilwoman Voveris said it was written in the Town Code that the Mayor would appoint the Chair of the Board of Adjustment but the law that the Town falls under (State of Delaware law) states that the Board of Adjustment elects their own Chair.

Councilman Gross noted that in the First and Second Readings there was the following paragraph on Page 4 which was an addition (it is not currently in the Town Code) that has been deleted for the Third Reading because the Code Enforcement Constable determined a problem with it regarding enforcement: ***Not considered repairs are new, upgraded, or complete replacement of such things as roofs, siding, windows, decks, stairways, railings, and fences.***

Councilman Gross stated that § 145-37(2)(c) has been deleted because in 2013 the Town adopted the International Residential Code which covers handrails more explicitly. Therefore this section no longer needs to be in the Town Code.

Kent Sanderson (128 Layton Dr.) – Regarding a discussion Mr. Sanderson read in prior meeting minutes, Mr. Sanderson inquired if building heights and bulkhead heights were covered in this ordinance. Councilman Junkin replied that those two issues are not part of this ordinance – those issues are proposals from the Sea Level Rise Committee addressing sea level rise issues. Councilman Gross added that once the Sea Level Rise Committee completes their recommendations and the Council accepts the recommendations, then those provisions will go to the Charter and Code Committee to develop an ordinance to address those issues. Councilman Junkin said then there will be public meetings/hearings in May on Sea Level Rise issues.

Norm Montigny (309 W. 9<sup>th</sup> St.) – Asked if it is identified as a repair if you rebuild an outside stairway and leave the stringers in but replaces the steps and rail. Councilman Gross said that would be determined by the Code Enforcement Constable, but normally if you are just replacing treads, for example, because they are worn or rotted that would be a repair and you would not be required to get a permit if you replace like kind. Councilman Gross said he would always advise that you go to the Code Enforcement Constable and let him determine the Code rather than you determine whether you need to apply for a permit or not. Mr. Montigny inquired about replacing windows that are damaged. Councilman Gross said if you replace panes that are broken or even one window, that would be a repair, but if you want to replace all of the windows or doors in your house that is a different issue.

There being no other comments, Mayor Pro-Tem Callaway closed the Public Hearing at 7:15 p.m.