

**BOARD OF ADJUSTMENT MINUTES**  
**TOWN OF OCEAN VIEW**  
**February 19, 2015**

1. Board of Adjustment Chair Tom Sylvia called the meeting to order at 6:00 pm with the Pledge of Allegiance. Board Members Bob Bacon, Jim Legates, and Susan Kerwin attended. Town Solicitor Dennis Schrader, Town Administrative Official Charles McMullen, and Town Clerk Donna Schwartz were also present. The meeting was held in the Ocean View Town Hall, 32 West Avenue. Gene Brendel was not present.

2. **APPROVAL OF THE AGENDA**

A motion was made by Mrs. Kerwin, seconded by Mr. Bacon, to approve the agenda. **The motion carried unanimously 4/0.**

3. **APPROVAL OF THE MINUTES**

A motion was made by Mrs. Kerwin, seconded by Mr. LeGates, to approve the minutes of the October 16, 2014 meeting as written. **The motion carried unanimously 4/0.**

4. **NEW BUSINESS**

A. Mr. Sylvia read the notice for Application V-295 submitted by the property owners, Daniel and Beverly Flynn, requesting a variance from Article V, §140-28 of the Land Use and Development Chapter of the Town Code which requires a 25' setback for side lot lines abutting a street. This variance seeks to allow the applicant to erect a dwelling unit on the parcel that would encroach 5.9' into the required 25' setback for side lot lines abutting a street on property located at 110 West Avenue (PIDN: 036.050 / Sussex CTM: 134-12.00-474.00)

Mr. Schrader swore in Mr. McMullen. Mr. McMullen read his overview to the Board. He said the applicant is requesting that a variance be granted so that he can place a new dwelling unit on a property located at 110 West Avenue that is zoned R-1 (single family residential). The lot sits on the NW corner of West and Sussex Avenues and has the following setbacks: Front – 25', Rear – 30', Side – 15', and Side abutting a street – 25'

The lot is 100 +/- feet wide along West Avenue and 125' +/- feet deep along Sussex Avenue. This leaves a building envelope of 60 +/- feet on the West Avenue side and 70 +/- feet on the Sussex Avenue side of the lot. The applicant has purchased a modular home that is delineated on a plat as being 31.3 +/- feet deep by 60 +/- feet wide. The applicant wishes to place the structure on the lot so that the width is parallel with West Avenue. In doing so, the structure would surpass the setback line along Sussex Avenue by 5.9 +/- feet, which would require that a variance be granted.

There is also a gravel driveway that abuts the adjacent property line that existed previously and can remain as it is. If however, the property owner chooses to change this area he must ensure a five foot separation between the adjacent property line so that it is compliant with §140-100D (12)(b)[2] and §187-10 of the Town Code.

A shed shown on the plat at the rear of the property is currently in the required rear yard setback for detached accessory structures but is to be moved by the applicant during construction of the dwelling unit. There is no variance request for the driveway or the detached accessory structure before the Board.

Mr. Flynn was sworn-in by Mr. Schrader, and stated the reason he was before the Board was to get permission to have his house face West Avenue. He submitted 15 photographs of the lot and the current structure and the new home, which will eventually be moved to the lot. Mr. Schrader asked Mr. Flynn a series of questions, which Mr. Flynn answered expressing that his new home would positively be an asset to the community.

Mrs. Kerwin asked if there was any opposition from his neighbors in having the house face West Avenue. Mr. Flynn said he knew of no one who was against it; in fact, they are anxious for the change. Mr. LeGates asked if the house was a complete house and how it would be moved here. Mr. Flynn replied it is a complete house and will be trucked here in three pieces. Mr. Bacon asked if he had considered facing Sussex Avenue. Mr. Flynn said there was a site plan done; however, esthetically he preferred the house facing West Avenue.

Mr. Jim Finnegan, 5 Sussex Avenue, was sworn-in by Mr. Schrader, and spoke in support of Mr. Flynn's application. Mr. Finnegan said he has lived there fourteen years and this is the best the property has ever looked. He is anxious for the doublewide to be removed and the new home to be put in place.

A motion was made by Mrs. Kerwin, seconded by Mr. LeGates, to grant the variance as requested with the condition a foundation survey is done before the house is put in place and the owner move the shed out of the setback area. The motion carried 3/1 in favor, with Mr. Bacon voting nay.

- B. Mr. Sylvia read the notice for Application V-296 submitted by the property owner Eugenia Athan, requesting a Special Exception, to operate a Bed and Breakfast on property zoned R-1 (single family residential) located at 17 Central Avenue (PIDN: 036.050 / Sussex CTM: 134-12.00-474.00)

Mr. McMullen read his overview to the Commission. He said the property owner, Ms. Eugenia Athan, is before the Board seeking a Special Exception so that she might operate a bed and breakfast at her property, which is zoned R-1 and is located at 17 Central Avenue. A bed and breakfast is a permissible use in the R-1 district with the granting of a special exception by the Board of Adjustment and as defined in the Code as follows:

- *Bed and Breakfast: - overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation.*

Ms. Athan applied for and was granted a conditional use by Town Council on 7/13/10 to operate a bed and breakfast from her home. The approval was given with the understanding that the application comply with the conditions recommended by the Planning and Zoning Commission. The applicant however failed to establish the bed and breakfast within a year and a day of the approval, which voided the conditional use.

Ms. Athan was sworn-in by Mr. Schrader. She told the Board that she would like to rent three bedrooms of her house as a bed and breakfast for additional income. Mrs. Kerwin asked her if this was her primary residence and if she would be living there. Ms. Athan replied that it is her primary residence and that she would be there while renting the rooms out. Mr. Bacon questioned the use of the bed and breakfast by a handicap person. Ms. Athan said all her bedrooms were on the second floor. She said she could possibly make a bedroom on the first floor; however, there is only a 1/2 bath on available on that floor. Mr. McMullen explained that the Board need only concern themselves with granting the special exception, the other items such as ADA compliance would need approval by other state agencies and the Town itself.

A motion was made by Mr. Bacon, seconded by Mr. LeGates, to approve the Special Exception with the condition she get the necessary documentation and the Board also attached the original six conditional uses from Planning and Zoning in 2010 to their approval. (handicap parking , sixth parking place, use no more than three bedrooms, comply with all governmental regulations, have no more than two 2 x 2 grounded-lighted signs). The motion carried unanimously 4/0.

4. **ADJOURNMENT**

A motion was made by Mrs. Kerwin, seconded by Mr. Bacon, to adjourn at 6:55pm. The motion carried unanimously 4/0.

Respectfully submitted,  
Donna M. Schwartz, CMC