

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

1. Board of Adjustment Chair Tom Sylvia called the meeting to order at 6:00 pm with the Pledge of Allegiance. Also in attendance were Board Members Bob Bacon, Jim Legates, and Susan Kerwin. 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**

Chairman Sylvia asked that application V-298 be heard ahead of application V-297. A motion was made by Mrs. Kerwin, seconded by Mr. Bacon, to approve the agenda as amended. **The motion carried unanimously 4/0.**

3. **APPROVAL OF THE MINUTES**

A motion was made by Mr. Bacon, seconded by Mrs. Kerwin, to approve the minutes of the February 19, 2015 meeting as written. **The motion carried unanimously 4/0.**

4. **NEW BUSINESS**

A. Mr. Sylvia read the notice for Application V-298 a variance from Article VII, §140-32 of the Land Use and Development Chapter of the Town Code submitted by the property owners, William and Betty Dawson. Article VII, §140-50-B and Article V, §140-32 require a rear lot line setback of 20 feet for principal structures and attached accessory structures in the Planned Community (RPC) District. This parcel is located in the Planned Community (RPC) District of Fairway Village.

Mr. McMullen was sworn in and read his overview to the Board. He said property owners William and Betty Dawson are requesting that the Board grant a variance from Article VII, §140-50-B and Article V, §140-32 of the LUDC of the Town Code that require a rear lot line setback of 20 feet for principal structures and attached accessory structures in the Planned Community (RPC) District of Fairway Village. This variance seeks to allow the applicants to construct or have constructed a deck and screen porch that will encroach into the required 20-foot rear lot line setback on property located at 86 Fairway Drive. (PIDN: 402.295 / Sussex CTM#:134-16.00-2054.00).

In his Town comments, Mr. McMullen stated that this parcel is located in Fairway Village, a Residential Planned Community (RPC) has setbacks determined by Town Council as follows: Front and Rear – 20 feet / Sides – 10 feet. He said the applicant wishes to construct a deck, with railing, and a screen porch at the rear of the house however §140-32 of the LUDC requires the setback for attached accessory structures be the same as the principal structure. The setbacks for the principal structure were determined by Town Council during annexation and RPC review and approval process as is permitted by §140-50-B of the LUDC of the Town Code.

The lot on which the existing dwelling unit is located is somewhat irregular and the applicant is requesting a variance so that they might construct a deck and a screen porch at the rear of the existing structure. The proposed deck and screen porch would project 10 feet off the rear of the house. Because the angle of the rear lot line is somewhat irregular, there are only 6.8 +/- feet available to work with inside of the building envelope. The deck, which is delineated as having a railing, would project 3.2 +/- feet into the required setback line. He said as best as I can determine there would be an encroachment of approximately 1.55 +/- feet at the midway mark of the two proposed structures or 2 +/- feet at the point where the deck and screen porch meet. The applicant is requesting a variance that would allow a maximum encroachment of 3.2 +/- feet into the required rear yard setback.

Mrs. Betty Dawson, of Forest Hill, MD, owner of 86 Fairway Village was sworn in. She presented six photos of the rear of her home to the Board, which was made part of the record. Mrs. Dawson stated they would like to add a screen porch and a deck and were not aware at the time of purchase of the need for a variance. Mr. Schrader asked her if their HOA approved the addition. She handed the Board a copy of the letter of approval.

Mrs. Siobhan Rather, 90 Fairway Village, spoke in support of her neighbors, saying she has no issue with the deck. Mr. Richard Allen, 84 Fairway Village, also spoke in support of the variance saying they do not have an option.

A motion was made by Mr. Bacon, seconded by Mrs. Kerwin, to grant the variance for a screened porch only and open deck with a railing as requested. The motion unanimously carried 4/0.

- B. Mr. Sylvia read the notice for application V-297, a request for a variance from Article XXI, §222-92 and §222-94 of the Zoning Chapter (previous code section) of the Town Code submitted by Brian McManus of K Hovnanian Homes, on behalf of the property owner Windansea, LLC. Article XXI, §222-92 and §222-94 restrict the number, size and placement of signs in a Residential Planned Community (RPC). This parcel is located in the RPC District of the Ocean View Beach Club. The variance seeks to allow the applicant to erect signage on the parcel that will exceed the number, size and location permitted by §222-92 and §222-94 of the Zoning Chapter (previous code section) on property located at 38399 Muddy Neck Road (PIDN: 408.000 / Sussex CTM: 134-17.00-11.00)

Mr. McMullen before reading his overview to the Board suggested reviewing each sign individually with the Board. He said this development was reviewed under Chapter 222 of the previous code that governed zoning. The applicant is seeking a variance that would allow his company, K Hovnanian, to erect the following signage at the Ocean View beach Club that is currently under construction at the address above.

- 1 – Entrance sign – 4' x 8' double face at entrance of community.
  - ✓ Mr. McMullen noted that the only entrance sign approved in §222-92-B of the previous Zoning Code was for two permanent subdivision identifying signs noting the community name. This would require a variance.

- ✓ He also noted §140-63-D(2) of the LUDC of the new code allows for a Development Sign that is 12sqft per side but not to exceed 24sqft, measuring 8' from grade and placed 10' from the street line.
- 1- Sales Center Sign – 4' x 3' double faced.
  - ✓ Mr. McMullen noted the previous zoning code did not allow for a sales center sign and would require a variance. The LUDC of the new code does not allow for a Sales Center sign although one might consider the as one of the following:
    - Identification sign for public facilities which permitted by §140-64 of the LUDC.
    - A directional sign which is permitted by §140-65 of the LUDC can be a maximum of 24sqft per side but not to exceed 48sqft, measuring 10' from grade and placed 30' from the street line.
- 6 – 18" x 24" Model ID signs (one for each model home)
  - ✓ The previous zoning code did not allow for model home signs and would require a variance
  - ✓ §140-63-D (2) of the LUDC of the new code allow for one-sided model home sign with a maximum of 12sqft measuring 4feet from grade and placed 10' from the street line. The number allowed would be determined by the number of different models constructed.
- 1 – 14" x 24" Clear Plexi Brochure Box
  - ✓ The previous zoning code did not allow for a brochure box and would require a variance.
  - ✓ The LUDC of the new code does not allow for a brochure box. They do not have an adverse effect on surrounding properties and I have deemed them to be informational allowing them to be attached to model home signs.
- 11 – 16" x 18" parking signs.
  - ✓ The previous zoning code did not allow for parking signs and would require a variance.
  - ✓ The LUDC of the new code does not specifically note parking signs but I have determined these to be a directional sign which is permitted by §140-65 of the LUDC which can be a maximum of 2sqft, measuring 4 feet from grade.
- 3 – permanent flags on 22' poles (US flag, Delaware flag and K Hovnanian flag)
  - ✓ Both the previous zoning code in §222-91-D and §140-65 of the LUDC of the new code allow for 3' x 5' non-commercial and commercial flags. The United States and State of Delaware would be considered non-commercial and are permitted. Commercial flags are restricted to the use of the word "OPEN" per both codes and therefore the K Hovnanian flag would require a variance, as would the size of the flags.
- 2 – 4' x 6' Construction Safety Signs and 1 – 4' x 3' Stormwater Compliance Program sign.

- ✓ The previous zoning code has no mention of Construction Safety Signs and this request would require a variance.
- ✓ The LUDC of the new code does not specifically note Construction Safety Signs but does allow for construction signs in §140-63-D (2) “to identify those engaged in construction.” One could also interpret this as a public interest as outlined in §140-63-E(1) however the display period is not to exceed 30 days and would require a variance to exceed this time frame.
- 1 – 18” x 24” “Lot sign” in front of each home/home site.
  - ✓ The previous zoning code as well as the LUDC of the new code allows for real estate sign to advertise the sale, rental, or lease of a property where the sign is to be displayed.
  - ✓ The previous zoning code limits the size of real estate signs to a maximum of 6sqft whereas the LUDC allows for 6sqft per side and the total sign area is not to exceed 12sqft.
  - ✓ The previous zoning code had no removal time state although it was understood that once the property was sold, rented, or leased the real estate sign would be removed. The LUDC requires that the real estate sign be removed with 15 days of the sale of the property.

The applicant is requesting a variance that will require removal of the real estate sign within 15 days of their customers 3<sup>rd</sup> party closing. Mr. McMullen noted he is not sure how that conflicts with the code and would request that the applicant provide further explanation. The applicant may however need a variance for the size of the sign as he is referencing the requirements listed in the LUDC. In addition to the variances required for size, number and placement the Board should also be considering the need for company names on some of the signs.

Mr. Brian McManus, Ocean View, was sworn in by Mr. Schrader. Mr. Schrader asked Mr. McManus why his company could not comply with the Town of Ocean View code. Mr. McManus stated that his company has a proven plan for signage, which they use in all their developments. Mrs. Kerwin asked if they had any other developments in Sussex County. Mr. McManus replied “yes, Plantation Lakes and Villages at Red Mill Pond.” Mr. McManus noted that all of the white board signs he brought were the actual size being requested by his company. Mrs. Kerwin questioned the size of sign #1 – Entrance sign. Mr. McManus stated he thought the sign was sized appropriately to be seen driving by at the 45mph speed limit on Muddy Neck Road. Mr. McMullen remarked to the Board that the majority of the signs are temporary and will be removed as the project sells.

Mr. Duane Knoepfel, Fairway Village, commented that he had no objection to the signs but noted that sometimes temporary signs can be around for a number of years.

A motion was made by Mr. Bacon, seconded by Mr. LeGates, to grant the variance for sign #1 one Entrance Sign. The motion carried 3/1 in favor, with Mrs. Kerwin voting nay.

A motion was made by Mr. Bacon, seconded by Mr. LeGates, to grant the variance for sign #2 one Sales Center Sign including inserts. The motion carried unanimously 4/0.

A motion was made by Mr. Bacon, seconded by Mrs. Kerwin, to grant the variance for sign #3 six Model ID signs. The motion carried unanimously 4/0.

A motion was made by Mr. Bacon, seconded by Mr. Sylvia, to grant the variance for sign #4 one Plexi Brochure Box. The motion carried unanimously 4/0.

A motion was made by Mr. LeGates, seconded by Mr. Sylvia, to grant the variance for sign #5 11 Parking signs. The motion carried unanimously 4/0.

A motion was made by Mr. Bacon, seconded by Mr. Sylvia, to grant the variance for sign #6 a K Hovnanian flag. The motion carried unanimously 4/0.

A motion was made by Mr. Bacon, seconded by Mr. LeGates, to grant the variance for signs #7 and #8 Construction safety signs. The motion carried unanimously 4/0.

A motion was made by Mr. LeGates, seconded by Mr. Sylvia, to grant the variance for sign #9 Stormwater Compliance sign. The motion carried unanimously 4/0.

4. **ADJOURNMENT**

A motion was made by Mr. Bacon, seconded by Mr. Sylvia, to adjourn at 7:05pm. The motion carried unanimously 4/0.

Respectfully submitted,  
Donna M. Schwartz, CMC