

**BOARD OF ADJUSTMENT MINUTES**  
**TOWN OF OCEAN VIEW**  
**June 18, 2015**

1. Board of Adjustment Vice-Chair Susan Kerwin called the meeting to order at 6:00 pm with the Pledge of Allegiance. Also in attendance were Board Members Gene Brendel, Jim Legates, Bob Bacon, and John Reddington. Town Solicitor Dennis Schrader, Town Administrative Official Charles McMullen, and Town Clerk Donna Schwartz were also present. The meeting was held at 6:00pm in the Ocean View Town Hall, 32 West Avenue.

2. **COMMISSION BUSINESS**

Town Solicitor Dennis Schrader swore-in new Commission Member John Reddington. Mrs. Kerwin thanked Mr. Tom Sylvia for his dedication and tenure on the Board of Adjustment.

*A motion was made by Mr. Brendel, seconded by Mr. Bacon, to nominate Mrs. Kerwin to the position of Chair of the Board of Adjustment. The motion carried unanimously 5/0.*

*A motion was made by Mrs. Kerwin, seconded by Mr. Brendel, to nominate Mr. LeGates to the position of Vice-Chair. The motion carried unanimously 5/0.*

*A motion was made by Mr. Reddington, seconded by Mr. Bacon, to nominate Mr. Brendel to the position of Secretary. The motion carried unanimously 5/0.*

3. **APPROVAL OF THE AGENDA**

*A motion was made by Mr. Reddington, seconded by Mr. LeGates, to approve the agenda as amended moving V-302 ahead of V-301. The motion carried unanimously 5/0.*

4. **APPROVAL OF THE MINUTES**

*A motion was made by Mr. LeGates, seconded by Mr. Brendel, to approve the minutes of the May 21, 2015 meeting as written. The motion carried unanimously 5/0.*

5. **NEW BUSINESS**

A. Mrs. Kerwin read the notice for Application V-302. Mr. McMullen was sworn in by Mr. Schrader and read his overview. He said the applicants are before the Board this evening seeking a variance from Article V, §140-28 of the Land Use and Development Chapter of the Town Code submitted by property owners Donald and Carolyn Lawson. Article V, §140-28 limits lot coverage to a maximum of 45% for single-family parcels in a Residential Planned Community wherein this parcel lies. This variance seeks to permit existing lot coverage to exceed the maximum lot coverage permissible by code on property located at 12 Golden Eagle Drive (PIDN: 402.246/ Sussex CTM#: 134-16.00-2005.00)

The applicants recently had a home constructed in Fairway Village at 12 Golden Eagle Drive by Insight Homes. They had believed that the driveway width would be at least equal to the width of their garage but no greater than the maximum 20ft wide permissible by code. Upon completion of construction, it was determined that the lot coverage would

exceed the 45% maximum allowable by code and the builder was required to narrow the driveway to keep the coverage within that limitation.

Mr. Lawson was sworn-in by Mr. Schrader. Mr. Lawson then passed out a photograph of his house showing the driveway and described to the Board how difficult it is for them to get into the garage with the way the driveway is. He told the Board they had attempted several fixes, but nothing has worked. They are asking for the 2% increase in lot coverage to make the driveway and garage useable. Mrs. Lawson was also sworn-in by Mr. Schrader who noted that they had increased the size of the garage in order to make it more useable. Mr. Schrader asked Mr. Lawson if these was the least variance he could request. Mr. Lawson replied it was.

Mrs. Kerwin asked if there was anyone for or against the application, there were no comments made. Mr. McMullen noted that he had received a letter from a Mr. Dominic Traveglini, 18 Golden Eagle Drive, stating that he was in favor of the application being approved.

***A motion was made by Mr. Bacon, seconded by Mr. Brendel, to approve the variance request as presented. The motion carried unanimously 5/0.***

- B. Mrs. Kerwin read the notice for Application V-301. Mr. McMullen read his overview saying the applicant is before the Board this evening seeking a variance from Article V, §140-28 and §140-32, Article IV, §140-25-C(5)(c)[7], Article VI, §140-100-D(12)(b)[3] of the Land Use and Development Chapter (LUDC) and Article II, §187-10-A of the Streets and Sidewalks Chapter of the Town Code submitted by property owners Scott and Nancy Burd. Article V, §140-28 and §140-32 each require a 25' setback from a side lot line abutting a street for principal structures and attached accessory structures or in this case a 14' setback for a side lot line abutting a street as set by the Board of Adjustment under variance application V-279 on November 12, 2013. Article V, §140-28 and §140-32 require a minimum 15' side yard setback for attached accessory structures and §140-32 requires a minimum 5' distance between detached accessory structure and other buildings and structures and Article IV, §25-C(5)(c)[7] requires that no building or structure be located less than 5' from the water's edge around the entire perimeter of the pool. Article VI, §140-100-D(12)(b)[3] and Article II, §187-10-10-A each require that the width of a driveway through the right of way be a maximum of 20'.

This variance seek to allow an existing principal structure and attached accessory structures with steps to encroach into the 14' setback of the side lot line abutting a street as granted by V-279, to allow an outside shower to encroach 1.9' into the required 15' side yard setback, a hot tub to remain within 5' of another building or structure and to allow a driveway to be wider than the maximum 20' width through the right of way on property located at 39 N. Primrose Lane (PIDN: 002.640 / Sussex CTM#: 134-12.00-746.00)

Mr. McMullen noted in his Town comments that the applicant appeared before the Board on November 21, 2013 seeking a variance, submitted under application V-279, that would allow an existing principal structure and a proposed addition to that principal structure with attached accessory structure to encroach into the required 25' setback for a side lot line abutting a street and to also allow a proposed addition to encroach into the required 25' setback for a side lot line abutting a street and to also allow a proposed addition

to encroach into the required 30' rear lot line setback. The Board granted the variance with the following conditions:

- Maximum encroachment of ten (10) foot into the required 30' rear setback and eleven (11) feet into the required 25' setback for a side lot line abutting a street.

After receiving the necessary reviews and approvals for the single lot development (§140-100), the contractor for Mr. Burd, applied for a building permit to begin construction and on June 4, 2014 the Town issued BP# 14-109. Upon completion of the construction, Mr. Burd was required to submit an as built survey for review and approval as a part of the single lot development requirement.

Upon receipt and review of the survey on January 5, 2015, I noted that construction on the side of the home had exceeded the limits and encroached further into the side lot line abutting a street than what was approved by V-279. Further review indicated that the footprint of the completed structure was different than what had been provided during the review of V-279 and what had been approved on the site plan submitted by the applicant for issuance of BP# 14-109. The differences were as follows:

- The length of the addition increased from 72' to 73'.
- The width of the addition which was supposed to be 23.3' and then return 2.5' before extending an additional 13.5' now ran straight across at a distance of 37.7'.

The proposed ramp and deck had also been extended further than what had been approved on the site plan. These extensions caused the new addition with ramp, deck, and steps to extend further into the 14' setback from the side lot line then approved by V-279. Those encroachments are as follows:

- The addition encroaches 1.2' into the 14' setback imposed by V-279.
- The deck/landing encroaches 2.5' into the 14' setback imposed by V-279.
- The steps encroach even further into the 14' setback imposed by V-279 and into the drainage easement.

In addition, the applicant changed a non-conforming driveway, which would require that the driveway become compliant with the current code. The current code requires that the total width of driveway within the limits of the Town right a way on a single lot shall not exceed 20'. The applicants' driveway exceeds this width.

The applicant also installed an outside shower and hot tub at the other end of the building that were not shown on the approved site plan and not included in the permit application. Unfortunately the outside shower extends 1.9' into the required side yard setback as required by §140-28 and §140-32 of the code and placement of the hot tub does not comply with §140-32 and §140-25-C(5)(c)[7] of the code which requires that a minimum separation of five feet be maintained between structures and from the water's edge.

Mr. McMullen also noted an email from a Ms. Effie Sullivant, 37 N. Primrose Lane, posing no objection to the variances. Mr. Schrader asked Mr. McMullen to itemize the needed variances. He said that there are six issues:

- Encroachment of the addition.
- Ramp and landing
- Steps
- Driveway

- Hot tub
- Shower

Mr. Burd was sworn-in by Mr. Schrader. Mr. Burd spoke to the Board saying errors and things happened. The hot tub was not a new item and had been connected for ten years. He said he had a letter from Country Village HOA saying the addition was okay. Mr. Burd also noted that the shower was just a wall with spigots it was not currently enclosed. Mr. Schrader asked Mr. Burd if his contractor, Mr. White, had been given a copy of the variance approvals. He also asked who surveyed the property prior to building the addition. Mr. Burd stated he did not have the property professionally surveyed and staked-out, he measured everything himself. He also noted that the hot tub and shower were not included on the building permit and the property was unique because he was back on a cul-de-sac and the lot was larger than most.

Mrs. Kerwin asked Mr. Burd if everything was already in existence. Mr. Burd said that it was. He said he thought he was in compliance. Mr. Brendel commented to Mr. Burd that he had broken the law not complying with V-279. Mr. Reddington asked if he was going to keep the shower “open” or enclose it, and Mr. Burd replied he had plans to enclose it eventually.

Mr. White, Mr. Burd’s contractor, was sworn-in by Mr. Schrader. He testified he had nothing to do with the survey or the staking errors. He noted that the plans and the measurements were done by Mr. Burd. Mr. White said he made no change to the driveway, he only added some stone to what was existing already. He said he moved an existing hot tub in order to build the addition. It was moved from the Horseshoe Drive side to the N. Primrose side. Mr. White said stake out was not done by him he relied on Mr. Burd. Mr. White also noted that more space was needed and the deck was moved to the left. He said was not familiar with a “jog” in the deck.

Mrs. Kerwin stated it appeared as if Mr. Burd had done what he wanted and not what was approved. Mr. Burd said it was not a huge mistake, just 4 or 5 square feet in total. Mrs. Kerwin asked if anyone in the audience was for or against the application. There were no comments made. Mr. McMullen said there are six variances to consider with this application and suggested that the issues be handled separately, one at a time.

Mr. McMullen stated the corner of the house is now at 12.8’ from the side lot line abutting the street, it was required to be 14’, there is an additional encroachment of 1.2’. He said, Mr. Burd most likely measured straight out from the building coming this way from the side lot line as opposed to the required 90° angle you are supposed to take from it, which caused him to be off and that’s where he set his corner. Mr. McMullen said this is a footer foundation, concrete set on concrete block with framing on top and carrying a roof and everything else. He is asking that he be allowed to maintain that additional 1.2’ encroachment. Mr. Reddington asked Mr. McMullen if the Town required a footer inspection. Mr. McMullen replied that the Town does not inspect footing foundations. ***A motion was made by Mr. Bacon, seconded by Mr. Brendel, that they approve the variance request for the corner of the house. The motion carried unanimously 5/0.***

Mr. McMullen said variance #2 would be for the landing of the decking that encroaches an additional 3.5’ into the required 14’ setback. He noted on the submission for the variance that ramp and landing are much smaller than on the as-built survey and the steps are wider than they are on the proposed site plan that was approved on the survey. The landing is 11.5’ and encroaches 3.5’ further into the setback than was granted and the

steps then additionally encroach further into that setback then is permissible by code. Mr. Schrader said, "2.5." Mr. McMullen agreed with him and corrected the amount to 2.5'. ***A motion was made by Mr. Brendel, seconded by Mr. Bacon, that they deny the variance on the landing. The motion carried unanimously 5/0.***

Mr. McMullen said variance #3 is for the steps attached to the landing, obviously, since the landing has been disapproved the steps would have to move with the landing. It was determined the landing is built for a swing door. ***A motion was made by Mr. Bacon, seconded by Mr. Brendel that they deny the variance for the steps and the steps must move with the landing. The motion carried unanimously 5/0.***

Mr. McMullen said the next variance #4 request is for the stone driveway. The driveway is wider than a 20' maximum width permissible by code through the right of way. The widening out on the lot is not a problem and can be maintained as is, but the driveway through the right of way to where it abuts that bold line is wider than required. ***A motion was made by Mr. Brendel, seconded by Mr. Bacon, to deny the variance to allow the wider driveway in the right of way. The motion carried unanimously 4/0, with Mr. Reddington abstaining.***

Mr. McMullen stated this variance #5 is for the hot tub. This was placed on the opposite side of the house. Mr. White stated it was placed 15' from the corner setback. The problem is it does not meet the 5' egress from the water's edge required by code for all swimming pools or hot tubs, and it does not maintain the 5' separation from other structures as required by Town code. You are being asked to allow the hot tub to remain in its current location, which is approximately 2' from the house. ***A motion was made by Mr. Bacon, seconded by Mr. Bacon, to deny the hot tub to remain in its current location. The motion carried unanimously 5/0.***

Mr. McMullen said finally, variance #6, is a shower just to the north of the hot tub, the distance from the shower is 13.1' from the side lot line. The requirement for an attached accessory structure is that it maintains the same distance as the principal structure of 15'. The shower is showing an encroachment of 1.9' into the 15' setback. The request is to maintain the shower in its current location as shown on the as-built survey provided by Delaware Surveying Service. Mr. McMullen said if it is simply a shower pad at grade then he does not need a variance, if it is above grade then he needs a variance because he is required to maintain 24' above grade. ***A motion was made by Mr. Reddington, seconded by Mr. Brendel, to deny the shower if it exists above grade. The motion carried unanimously 5/0.***

## 6. ADJOURNMENT

***A motion was made by Mr. Brendel, seconded by Mr. Bacon, to adjourn at 7:45pm. The motion carried unanimously 5/0.***

Respectfully submitted,  
Donna M. Schwartz, CMC