

BOARD OF ADJUSTMENT MINUTES
TOWN OF OCEAN VIEW
October 15, 2015

1. Board of Adjustment Chair Susan Kerwin called the meeting to order at 2:00 pm with the Pledge of Allegiance. Also in attendance were Board Members Jim Legates, Bob Bacon, Gene Brendel 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 2:00pm in the Ocean View Town Hall, 32 West Avenue.

2. **COMMISSION BUSINESS** - None

3. **APPROVAL OF THE AGENDA**

A motion was made by Mr. LeGates, seconded by Mr. Brendel, to approve the agenda as amended with moving application V-308 to the end of the procedure. The motion carried unanimously 5/0.

4. **APPROVAL OF THE MINUTES**

A motion was made by Mr. LeGates, seconded by Mr. Bacon, to approve the minutes of the September 17, 2015 meeting. The motion carried unanimously 5/0.

5. **NEW BUSINESS**

A. Mr. McMullen read the notice for Application V-310, 33 Betts Avenue. Mr. McMullen was sworn in by Mr. Schrader and offered his overview.

He said the applicant is before the Board of Adjustment seeking a variance from Article VI, §140-34-A of the Land Use and Development Code of the Town of Ocean View which requires that every building or structure be on a lot adjacent to a public street. The Board is being asked to provide an exception to this requirement so that the applicant can move forward to the Planning and Zoning Commission with a proposed lot subdivision. The proposed subdivision would subdivide one large lot of 9.83 +/- acres into three (3) .75 +/- acre lots and one 7.58 +/- acre lot. Two of the .75 +/- acre lots would only have frontage abutting a private street (Hickman Avenue) and the third .75 +/- acre lot would have frontage on both a private road (Hickman Avenue) and a public street (Betts Avenue) as delineated on the plat provided. The remaining 7.58 +/- acre lot would have frontage on Betts and Woodland Avenues and a very small frontage on Daisey Avenue.

Mr. Timothy Tribbitt was sworn in representing property owner Mrs. Sally Hickman. He stated the reason the lots would face Hickman is because there is a pond which would offer waterview lots. He also noted that although the lots would face a private road they would be connected to Town water and sewer. Mr. Tribbitt said the large lot would remain a field. Mr. Bacon asked Mr. Tribbitt if they had considered making Hickman Avenue a Town road. Mr. McMullen said he could have the Town engineer look at it, however, making it a Town road required more than the desire to do so. Mr. Schrader suggested to Mr. Tribbitt that he consider have the shared care and maintenance of the street included in property transfer documents.

There were no public comments made.

A motion was made by Mr. Brendel, seconded by Mr. Bacon, to approve the application as requested. The motion carried unanimously 4/1 with Mr. LeGates voting nay.

- B. Mr. McMullen read the notice for Application V-306. He said the applicant, Mr. Brice Butler, is before the Board seeking a variance from Article V, §140-32 of the Land Use and Development Chapter of the Code which restricts the height of a detached accessory structure to 14' from grade. This variance seeks to allow an existing detached accessory structure that exceeds this height limitation to remain on property located at 37945 Muddy Neck Road.

Mr. McMullen then read his overview to the Commission. He said the applicant applied for a building permit on 3/9/15 to build a 24' x 36' detached accessory structure (pole barn) on his property. After site plan approval by the Town engineer, building permit #15-054 was issued. On 6/18/15 a final site plan (as built) was submitted for review and approval by the Town engineer and the Town Administrative Official and it was determined at that time that the height of the detached accessory structure was 16.9" above grade which exceeded the maximum permissible height of 14" for a detached accessory structure. The applicant was advised of the issue and has applied for a variance.

Mr. Butler was present and sworn-in by Mr. Schrader. He stated that he was not aware that the building was above the required 14' grade because the plans had been approved by Mr. McMullen and the plans specified the height of the barn.

There were no public comments made.

A motion was made by Mr. Reddington, seconded by Mr. LeGates, to approve the application as requested. The motion carried unanimously 5/0.

- C. Mr. McMullen read the application for V-305. He said the applicant, Mr. and Mrs. Morrow, is before the Board seeking a variance from Article V, §140-28 and §140-32 of the Land Use and Development Code. Article V, §140-28 and §140-32 of the LUDC each require a rear yard setback of 30' for principal structures and attached accessory structures and §140-32 of the LUDC requires a rear yard setback of 10' for detached accessory structures. This variance seeks to allow an existing utility room, shed and outside shower to remain within the required setbacks on property located at 20 N. Horseshoe Drive (PIDN: 004.100)

Mrs. Morrow and her builder, Mr. Michael Todd, were sworn-in by Mr. Schrader. Mrs. Morrow noted that when they purchased the house in 1985 everything was where it is now. She purchased the house this way. She is currently adding a 16' x 12' addition to the house and learned about these problems.

There were no public comments made.

A motion was made by Mr. Brendel, seconded by Mr. Bacon, to grant the variance as requested. The motion carried unanimously 5/0.

- D. Mr. McMullen read the application for V-311. He said the applicant, Steven Smith, is before the Board seeking a variance from Article V, §140-31, which requires a 30' front yard setback and 15' side yard setback for principal structures and attached accessory structures, limits lot coverage to 50%, on GB-1 parcels, and §140-100-D(12)(b)[2] and Article II, §187-10-A requiring driveways to be a minimum of 5' from adjacent property lines.

This variance seeks to allow an encroachment into the required front and side yard setbacks, lot coverage to exceed 50%, the front steps to exceed the 4' permissible encroachment into the required front yard setback and the driveway to be within 5' of the adjacent property line on a parcel zoned GB-1 at 68 Atlantic Avenue. (PIDN: 064.000)

Mr. McMullen read his overviews. He said the applicant, Mr. Smith, is requesting the variance because he is proposing to begin a general business at this site that requires site plan approval from the Planning and Zoning Commission. Before the applicant can appear before the Commission there are a number of issues pertaining to this lot that require a variance. Many of these issues mirror those variances requested under application V-266 on 4/18/13, when the Mr. Smith, began a business at 70 Atlantic Avenue, the adjacent property for which you will also be hearing a variance request this evening. The variance before the Board as it relates to this application is for encroachments associated with a structure that most likely was constructed before the Town Code was enacted. The structure sat close the street line when constructed however, with the recent DelDOT acquisition for the SR26 Mainline Project it sits even closer. As you can see the main structure sits only 9.7' from the front property line and the attached screen porch actually crosses the property line and should be relocated as the Board does not have the authority to approve encroachment onto another entities land.

Mr. Smith also has an issue with lot coverage which exceeds the code's maximum allowable lot coverage of 50% by 21% in order for the applicant to meet the code requirements for parking.

- E. Mr. McMullen read the application of V-312 saying the applicant, Steven Smith is before the Board seeking a variance from Article V, §140-31 which limits lot coverage to 50% on GB-1 parcels. This variance seeks to allow lot coverage to exceed 50% on a parcel zoned GB-1 at 70 Atlantic Avenue (PIDN:065.01)

Mr. McMullen said this variance is before the Board for an increase in lot coverage. The applicant, Mr. Smith, was before the Board on 4/18/13 and was granted a number of variances under application V-266, one of which was for lot coverage. At the same time the Board agreed to approve lot coverage of 58% which exceeded the maximum allowable 50% as required by the LUDC. The applicant is seeking an additional variance to increase the existing lot coverage by 3% so that the site will comply with parking space requirements written in the code. The applicant is seeking approval to have 61% lot coverage as noted on the plat provided.

The Board of Adjustment decided to hear applications V-311 and V-312 together.

Mr. Steven Smith was sworn-in by Mr. Schrader. He explained to the Board the need for a variance and that he will be moving his business, which is currently at 70 Atlantic Avenue, to 68 Atlantic Avenue.

There were no public comments made.

A motion was made by Mr. Reddington, seconded by Mr. LeGates, to approve the variances as submitted with the encroachment of the steps. The motion carried unanimously 5/0.

- F. Mr. McMullen read the application of V-308. He said the applicant, C. J. Pines, LLC, is before the Board seeking a variance from Article V, §140-31 of the LUDC of the code

which limits lot coverage in GB-1 and GB-2 Zones to 50%, Article XVI, §140-100-D(12)(b)[4] of the LUDC and Article II, §187-10-A of the Streets and Sidewalks Chapter of the Town Code which limits the width of a driveway through the right-of-way to 20 feet and Article XI, §140-73(1)(b) of the LUDC which requires screening for all non-residential uses. This variance seeks to allow lot coverage to exceed the maximum 50% permissible by code, to construct a commercial driveway that would exceed the maximum width of 20' permissible by code and to eliminate or reduce screening on the GB-1 parcel located at 83 Atlantic Avenue (PIDN: 093.000)

Mr. McMullen stated that the applicant is in the process of having a site plan reviewed by the Planning and Zoning Commission to develop his commercial property at the above location. During the submission process it was determined that the applicant's driveway exceeded the maximum 20' width of a driveway permitted by code through the right-of-way and that the lot coverage exceeded the maximum 50% allowable by code. He said he included with this packet a letter from the Town engineer addressing the necessity of a 28' wide driveway for this commercial property. He also added that having been involved in updating of the code it was never anticipated that a commercial entrance would be necessary on a Town road and that DelDOT standards would govern all commercial entrances as they would be on SR26. You can see that was not the case and had the Town taken that into consideration a commercial driveway width would have been included. The lot coverage for commercial parcels also did not take into account parking lots which under the new code are considered structures and count toward lot coverage. The Town requirements for parking can cause the lot coverage to exceed the permissible percentage in order to meet those parking requirements. The applicant is also requesting relief from the requirement that all non-residential parcels are required to provide screening as outlined in §140-73-B(1)(b).

Mr. Tom Ford and Mr. Russell Archut were sworn-in by Mr. Schrader. Mr. Ford made note of the three variances they were seeking 1) additional lot coverage to 61%; 2) additional width of driveway to 28'; and 3) no screening between the GB-1 lots only. He went on to say they have over three acres and 40% will be open space. He said they are required to have 136 parking spaces, and have proposed 139, plus two loading zones. Mr. McMullen noted that DelDOT has reviewed the driveway on Woodland and approved it.

The following comments were received from the public:

1. Ann Whaley – 18 White Creek Lane, stated she was opposed to the variances.
2. Gerald Richmond – 10 Caroline Street, opposed to the variances.
3. Tess Mathieu – 18 Sally Lane, opposed to the variances.
4. John Kirkpatrick – 9 Caroline Street, stated he was concerned the street entrance would not be wide enough for a 40' truck.
5. Randy Alton – 4 Sally Lane, opposed to the variances.
6. Sheila Stedman – 4 Caroline Street, spoke against the variances.
7. Don Sherwood – 23 Port Royal, opposed to the widening of the driveway.
8. Gerald Richman – 10 Caroline Street, concerned with screening between the commercial properties.

9. Brenton Archut – 83 Atlantic Avenue, spoke in favor of the application, clarifying the facts regarding the application requested.

Mr. McMullen noted that the following emails and/or letters were received regarding this application, which were presented to the Board and entered into the record.

- Sheldon – 2 Caroline Street
- Stedman/Neel – 4 Caroline Street
- Donahue – 6 Caroline Street
- Richman – 10 Caroline Street
- Swarter – 7 Caroline Street
- Alton – 4 Sally Lane
- Zanelotti – 16 Sally Lane
- Sturm/Miller – 17 Sally Lane
- Arnold – 28 Seabrook Road
- Ray – 17 Columbia Avenue

A motion was made by Mr. Reddington, seconded by Mr. Bacon, to approve the variance for increased lot coverage. The motion unanimously carried 5/0.

A motion was made by Mr. Brendel to deny the width of the driveway. No second was made. Motion denied.

A motion was made by Mr. Bacon, seconded by Mr. Reddington, to approve the 28' driveway. The motion carried unanimously 3/2. Mr. Brendel and Ms. Kerwin voting nay.

A motion was made by Mr. Bacon to grant the motion as presented. No second was made. Motion denied.

A motion was made by Mr. LeGates, seconded by Mr. Reddington, to deny the variance for no screening between the GB-1 lots. The motion carried unanimously 3/2. Mr. Bacon and Mr. Brendel voting nay.

6. ADJOURNMENT

A motion was made by Ms. Kerwin, seconded by Mr. Brendel, to adjourn at 4:45pm. The motion carried unanimously 5/0.

Respectfully submitted,
Donna M. Schwartz, CMC