

BOARD OF ADJUSTMENT MINUTES
TOWN OF OCEAN VIEW
November 19, 2015

1. Board of Adjustment Chair Susan Kerwin called the meeting to order at 5:00 pm with the Pledge of Allegiance. Also in attendance were Board Members Jim Legates, Bob Bacon, Gene Brendel and John Reddington. Town Administrative Official Charles McMullen and Town Clerk Donna Schwartz were also present. Town Solicitor Dennis Schrader and Mr. Bacon were not present. The meeting was held at 5:00pm 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 presented. The motion carried unanimously 4/0.
4. **APPROVAL OF THE MINUTES**
The October minutes will be approved at the December 17, 2015 meeting.
5. **NEW BUSINESS**
 - A. Mr. McMullen read the notice for Application V-307, 37 N. Primrose Lane. Mr. McMullen was sworn in by Mr. William Scott and offered his overview.
He said the applicant is before the Board of Adjustment seeking a variance from Article V, §140-28 and §140-32 of the Land Use and Development Chapter of the Code. Article V, §140-28 and §140-32 each require a rear yard setback of 30' and a 15' side yard setback for principal structures and attached accessory structures. Article V, §140-32 requires that detached accessory structures maintain a 10' rear yard setback and a minimum 5' separation between structures. This variance seeks to allow proposed additions to be within the required 30' rear yard setback, a proposed attached structure (a carport) to be within the required 15' side yard setback and a proposed detached accessory (garage) to be within the required rear yard setback and within 5' of another structure on the property.

Mr. McMullen stated the application was publically noticed in the Coastal Point on October 23, 2015.

Mr. White is before the Board seeking variances from sections of the LUDC of the Town Code so that improvements might be constructed on a property located at 37 N. Primrose Lane, owned by Ms. Effie Sullivant. The property owner wishes to have the following improvements added to her parcel:
 1. Construct a room and covered patio that will extend 16' from the rear of the existing structure. This extension would encroach 2.9' into the required rear yard setback.
 2. Erect a detached accessory structure, a 14' x 20' garage at the rear corner of the lot which would be 3.7' from the rear property line thus encroaching 6.3' into the required 10' rear yard setback for detached accessory structures.

3. Attach a 14' x 20' carport to the side of her dwelling unit that would encroach 5' into the required 15' side yard setback for principal structures and attached accessory structures.

The construction of items 1 and 2 above would create an encroachment into the required 5' setback between structures (proposed room and garage).

A brief history of the parcel shows that building permit #496 was issued to Ms. Kathleen Sullivant on July 13, 1987 to construct a 28' x 44' dwelling on the parcel. The dwelling unit was required to setback some 49.9 +/- feet from the front line for the installation of a septic system that was abandoned when central sewer was provided by Sussex County. A certificate of occupancy was issued by the Town for this dwelling on September 26, 1987.

On August 2, 1988 the Town sent a letter to Ms. Sullivant informing her that a rear deck and outside shower had been added to the dwelling unit without the required permit. Ms. Sullivant applied for and was issued building permit #602 on August 16, 1988 for the deck, outside shower and a shed. There is no CO on file for this building permit however it may be a moot point with the proposed construction.

There has also been some discussion between the property owner, contractor and surveyor regarding the proposed lot coverage. I was uncertain whether the lot coverage would exceed the 35% maximum allowed by code. The applicant assured me in an email dated November 16, 2015 that she will make whatever adjustments are needed to meet the maximum allowable lot coverage of 35%.

Building plans have been provided by the applicant and her contractor which have some contradictions regarding dimensions and placement of the structure as shown on the plat provided for the variance application. I'd like to ensure that if the variance is granted the applicant and contractor are aware of these. Please refer to proposed construction layout in the package.

Ms. Effie Sullivant and Mr. Greg White were sworn-in by Mr. Scott. Ms. Sullivant told the Board she planned to retire to Ocean View in 10-12 years. Ms. Kerwin asked if she had HOA approval. Mr. McMullen noted that HOA approval was dated 11/18/15.

Mr. LeGates asked why she needed a garage and a carport. Ms. Sullivant explained she needed the garage for storage and the carport for her boat.

Mr. Brendel questioned the encroachment into all the setbacks. Ms. Sullivant said she was willing to work with the Board to adjust measurements if necessary.

Mr. Reddington asked if she could move the garage forward. Mr. White replied that he was trying not to cut off access to the rear yard.

Ms. Kerwin suggested if they made the room additions 3' less in length they would not need one of the variances. Ms. Sullivant agreed she could do that.

Mr. Reddington suggested moving the garage 1.4" forward so there would be less of an encroachment into the rear yard setback which Mr. White said he could do and still have a 5' separation between the garage and the house.

There were no public comments made.

A motion was made by Mr. Brendel, seconded by Mr. Reddington, to accept the 5' encroachment into the required side yard setback for attached accessory structure

(carport) and encroachment of detached accessory structure (garage) into required rear lot line setback by maintaining a minimum rear yard setback property line at 5.1'. The proposed room and proposed covered patio variance is denied. The motion carried unanimously 4/0.

B. Application V-313 was deferred to December.

C. Mr. McMullen read the notice for Application V-314, Belle Via Way and Woodland Avenue. He said the applicant is before the Board seeking a variance from Article X, §140-63-D(2) and §140-66-B(11) of the LUDC of the Town code. Article X, §140-63-D(2) restricts the area of a development sign to 12sqft per side, maximum 24sqft for two-sided sign, the height to 8' from grade and placement a minimum of 10' from the street line. Article X, §140-66-B(11) prohibits off-site signs. This variance seeks to allow the applicant to erect a sign that exceeds the maximum area square footage, the maximum height and required placement distance from the street line and to have off site signs promoting sale of homes that are not within the Town on property located at Belle Via Way and Woodland Avenue (PIDN:033.100 and 033.110 / Sussex CTM# 134-12.00-468.11)

Mr. McMullen stated that on October 1, 2015 Town employees advised me of a sign that had been placed outside of the Reserves on Woodland Avenue Extended. I also received a number of emails from residents within the Reserves about the signs and questioning the placement in what they referred to as Reserves Common Space area. I had someone from my office visit the site and take photographs of the sign as well as measurements so that I had a complete understanding of what the sign was advertising and if it met the sign requirements as outlined in §140-63-D(2) of the LUDC. When I received the information I determined that the sign did not meet the requirements of §140-63-D(2) for developmental signs permitted in all districts and §140-66 which prohibits certain types of signs. In this instance the violations were as follows:

- §140-66-B(11) would be the most notable as it inhibits signs directing attention to a location other than the premises on which the sign is located as stated below.
 - ✓ *Off-site signs (Billboards) – a sign directing attention to a business, commodity, service or entertainment conducted, sold, or ordered at a location other than the premises on which the sign is located.*

The area where the sign was placed is within Town limits and the houses being offered for sale are in an area that is not within the Town limits.

- §140-63-D(2) which places size and placement restrictions on a development sign as indicated below:
 - Development sign: Advertises the sale or rental of a structure being built as part of a land development project.*
 - Number allowed: 1 for each street entrance*
 - Maximum area: 12sqft per side, total sign area not to exceed 24sqft*
 - Maximum height: 8 feet measured from grade*

Placement: 10 feet from street line

Illumination: not permitted

Removal required: within 15 days of the sale of the last buildable lot

Permit needed: Yes, see §140-96

- ✓ The sign placed by the applicant was 32sqft per side with a total sign area of 64sqft, had a maximum height of 10'2" and was placed within 10' of the street line.

After gathering these facts and responding to numerous emails from residents I contacted NVR Homes and was put in touch with a Ms. Karen Lipinski. After discussing the issues with Ms. Lipinski and explaining the options Ms. Lipinski had the sign removed to an area inside the Reserves where the houses for sale are being constructed. She also completed an application requesting a variance for location and placement of the sign and I also included in the size requirements to ensure that all possible aspects were publicly noticed.

Mr. William Scott, of Scott and Schuman, was present representing NVR Homes. He said the current owner purchased the property out of bankruptcy. The proposed location of the sign is at the entrance to the development in the front of the community on Woodland Avenue. Mr. Scott said the current location of the sign is in the unincorporated section of Ocean View. It was moved there when it was determined the sign was not in compliance with Town Code. He said NV Homes will be building houses, advertising, and patronizing Town businesses, which will benefit the community.

Public comments were made by the following people:

Sharon Buffington, Bella Via Way, read a prepared statement asking to Board not to approve the sign. Text attached to the minutes

Dick Nippes, Briarcliff, asked the Board not to approve the application.

Victor Covey, Bella Via Way, read a prepared statement from Mr. Wayne Siflies of Bella Via Way, who asked the application be denied. Text attached to the minutes.

Kathy Vengazo, Briarcliff, stated she agreed with the non-residents of Ocean View and said the sign was of no benefit to the Town.

Dan Verona, Briarcliff, said he didn't see any reason to give a variance for the sign.

A motion was made by Mr. Reddington, seconded by Mr. Legates, to approve the location of the development sign. The motion carried 3/1 with Mr. Brendel voting nay.

A motion was made by Mr. Brendel, seconded by Mr. Reddington, to deny the size of the sign. The motion carried unanimously 4/0.

A motion was made by Mr. Legates, seconded by Mr. Reddington, to allow 12sqft per side and comply with the Ocean View sign code. The motion carried unanimously 4/0.

6. **ADJOURNMENT**

A motion was made by Mr. Brendel, seconded by Mr. Reddington, to adjourn the meeting at 6:25pm. The motion carried unanimously 4/0.

Respectfully submitted,
Donna M. Schwartz, CMC