

BOARD OF ADJUSTMENT MINUTES
TOWN OF OCEAN VIEW
February 18, 2016

1. Board of Adjustment Chair Susan Kerwin called the meeting to order at 2:30 pm with the Pledge of Allegiance. Also in attendance were Board Members Jim Legates, Bob Bacon, and John Reddington. Town Administrative Official Charles McMullen and Town Clerk Donna Schwartz were also present. Mr. Brendel was not present. The meeting was held in the Ocean View Town Hall, 32 West Avenue.
2. **COMMISSION BUSINESS** - None
3. **APPROVAL OF THE AGENDA**
A motion was made by Mr. Reddington, seconded by Mr. Bacon, to approve the agenda as presented. The motion carried unanimously 4/0.
4. **APPROVAL OF THE MINUTES**
A motion was made by Mr. Reddington, seconded by Mr. Bacon, to approve the minutes of the October 15, 2015 meeting.
A motion was made by Mr. Reddington, seconded by Mr. Bacon, to approve the minutes of the November 19, 2015 meeting.
5. **NEW BUSINESS**
 - A. Mr. McMullen read the notice for Application V-317, 40 West 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 special exception to allow the Ocean View Historical Society to operate a museum on the property zoned R-1. Mr. McMullen stated the application was publically noticed in the Coastal Point on January 29, 2016.
The property owner, Ms. Carol Brunner, has entered into an agreement with the Historical Society to donate the property so that it can be used by the Historical Society, who is before the Board seeking a Special Exception so that they might operate a museum on the parcel. The Historical Society, currently operates a museum at a Town owned parcel located at 39 Central Avenue for which they were granted a Special Exception by the Board of Adjustment on October 12, 2011 under application V-244.
A Special Exception is defined in Article XVIII, §140-109 of the L.U.D.C. as follows:
 - *A special exception is a use that is generally desirable for the general convenience and welfare, but, because of its nature and location, requires additional review by the Board of Adjustment to assess its impact on neighboring properties and the entire Town.*The use of the parcel as a museum, is permissible as outlined in Article IV, §140-24 of the L.U.D.C. which has been attached for your review. I have also attached §140-109 of the L.U.D.C. which provides information that should be considered by the Board for the granting of a Special Exception.

It should also be noted that a survey of the parcel has not been provided and should the Board grant the request for a Special Exception future variances may be required for existing structures if they are not compliant with the Code.

Dr. Richard Nippes was present and said if granted the special exception would like to begin restoration of the house as soon as possible. He noted that they have already restored an old barn (garage) on the property. The Historic Society will then have two historic homes in Ocean View. They will use this home as a Coastal Towns Museum.

Mr. LeGates asked when they expected to take ownership of the home. Dr. Nippes replied in March 2017. Mr. LeGates also asked if there was a formal agreement with the other Towns to establish the museum. Dr. Nippes said there was no formal agreement, however, the Historic Society has invited them to participate. Mr. LeGates asked about funding. Dr. Nippes said the house was in good shape and not much was needed to be done.

Mr. Schrader asked if they will be making any structural changes and Dr. Nippes responded that they would be removing a bathroom that had been added to the house. Mr. Schrader asked about parking for the museum. Dr. Nippes replied that they plan to use the Town parking lots. Mr. Schrader asked if they would have a museum shop and Dr. Nippes replied not at this time.

There were no public comments for or against this application.

A motion was made by Mr. Bacon, seconded by Mr. Reddington, to approve the special exception and allow the house to be used as a museum. The motion carried 4/0.

- B.** Mr. McMullen read the notice for Application V-315, 9 Sussex Avenue. He said the applicants, Stephen Grimberg and Michael Scanlon, who are represented by the law office of Sergovic, Carmean & Weidman, have submitted variance application V-315 on behalf of the property owners William and Kimberly Mercadante, seeking a variance from Article V, §140-28 which requires a 30 foot rear yard setback for principal structures and attached accessory structures and from Article V, §140-33 which limits the projection of uncovered steps into the required rear yard setback to a maximum of 4 feet.

This variance seeks to allow an existing deck to encroach into the required rear yard setback, and to allow existing uncovered steps to exceed the maximum allowable encroachment into the required rear yard setback on property zoned R-1, at 9 Sussex Avenue (PIDN: 036.220 / Sussex CTM# 134-12.00-477.00).

Mr. McMullen read his overview. The applicants recently sold the property and when the Town was asked to review the plat for Code compliance it was determined that there were setback encroachments. When the attorney's office was advised of the encroachment they inquired about a variance and were informed that there was nothing in the Town file indicating one had been approved. The attorney's office then provided documents indicating a variance was granted by the Ocean View Board of Adjustment on July 18, 1991. The variance granted permitted construction of a 16' x 26' screened porch at the rear of the exiting house that would encroach 4.1' into the required 30' rear yard setback.

The following is a history of the property based on available documentation in the Town property file:

1. There is no Building Permit (BP) on file for the construction of the dwelling unit (D.U.). If the home was built before the Town Code existed then there would have been no application to the Town as the County was the overseeing agency. The applicants' attorney has indicated that the D.U. was constructed in 1972 which would have been pre Ocean View Code as the first BP that I have a record of was issued on May, 10, 1976.
2. On June 16, 1986, BP# 375 was issued to a James Scanlon for construction or placement of a pre-fabricated 8' x 10' shed to be placed at the right rear corner (NE) of the lot. A hand drawn plat provided with the BP application indicated that the shed was to be placed 10' from the rear and side lot line as was required by the Code in effect at that time. A subsequent survey provided by Peter E. Lowenstein and Associates, Inc., dated May 1991 indicated the shed location was 9.6' from the side lot line and had crossed the property line of lot#23 (PIDN: 036.230) by 2.4'.
3. James M. Scanlon applied for a variance (no number affixed) on June 25, 1991, to build a 16' x 26' screen porch attached to the rear of the D.U. that would encroach into the required 30' rear yard setback by 4.1'. Included with the application was the May 1991 plat from Lowenstein, depicting the shed encroachment with a hand drawing of the proposed 16' x 26' screen porch. This variance was approved by the Board of Adjustment on July 18, 1991.
4. BP# 1063 was submitted on September 10, 1991 by the builder, Frank Morris Co., on behalf of the property owners James M. & Elizabeth A. Scanlon. The BP was requested to construct a 16' x 26' rear porch (*approved by variance on July 18, 1991*) and a 10' x 16' deck that would be attached to the porch. This BP was approved by the Town on September 19, 1991 even though the 10' x 16' deck was not part of the variance approval.
5. On October 12, 1991, a BP# 1083, was submitted by the same builder on behalf of the property owners to widen the deck an additional 2' thus making it 12' x 16'. This BP was also approved by the Town.

As previously stated I was asked to review a plat for Code compliance which showed the deck, which had not been approved by the 07/1891 variance. This is what bring the applicants before the Board this evening. They are requesting that Board approve the variance requested under application V-315, so that the following structures can remain:

- The 12' x 16' deck, that encroaches 4.2' into the required 30' rear yard setback (§140-28) that was approved by the Town under BP#'s 1963 an 1983.
- The steps that encroach more than the permissible 4' (§140-33) into the required 30' rear yard setback.

The shed previously noted is to be removed. Inclusive with this overview are copies of documents referenced above, applicable Code section, an approval not for the variance from a neighbor (Rossano) and pictures of the deck and steps in question.

Ms. Shannon Carmean Burton, of Sergovic, Carmean, and Weidman, was present representing Stephen Grimberg and Michael Scanlon who purchased the property in 2007 without having a survey done. They recently sold the home to William and Kimberly

Mercadante. The problem was found on the 2015 survey. Ms. Burton said that a variance was granted for the sunroom in 1991 but not the deck and steps. She said no one knows why a variance was not granted for the whole addition. The placement of the dwelling creates a difficulty with the deck and steps. If the steps are removed the owners will have no access to the rear yard unless they walk around from the front of the house.

Ms. Kerwin inquired about the shed on the property. Ms. Burton stated the shed was being removed.

There were no public comments for or against this application.

A motion was made by Mr. Reddington, seconded by Mr. Bacon, to approve the variance as documented. The motion carried unanimously 4/0.

- C. Mr. McMullen read the notice for Application V-318 a request for a variance from Article VII, § 140-50-B and Article V, § 140-32, of the Town Code submitted by Premier Glass and Screen on behalf of the property owners Mark and Danette Travaglini. Article VII, § 140-50-B permitted Town Council to set dimensional regulations in a Planned Community and Town Council set a rear yard setback of 30 feet for single family lots in Bear Trap Dunes. Article V, §140-32 requires a rear yard setback of 30' for accessory structures attached to the principal structure. He said this variance seeks to allow existing attached accessory structures (deck and screened porch) to continue to encroach .4 feet into the rear yard setback and to convert the screen porch into a sunroom on the existing deck that will also encroach .4 feet into the required 30 foot rear yard setback on property zoned Residential Planned Community (R.P.C.) located at 117 October Glory Avenue (PIDN: 328.750 / Sussex CTM#: 134-16.00-1397.00).

In his overview Mr. McMullen said during the acceptance of a Residential Planned Community (R.P.C.), Town Council is permitted by Code to set dimensional regulations that may differ from the zoning requirements set forth in the Code. Article VII, § 140-50-B of the Land Use and Development Chapter (L.U.D.C.) of the Town Code mirrors, for the most part, § 222-45, Article VIII of the Zoning Chapter in the previous Code, which was in effect when this parcel was accepted as an R.P.C. by Town Council. I have included with this overview a copy of the R.P.C. conditions set by Town Council when they accepted Bear Trap Dunes as an R.P.C.

As you can see under Item 9A, of Exhibit 'A', the third bullet required a rear yard setback of 30 feet for single family dwelling units. This also includes accessory structures that are attached to the principal structure.

Building Permit (BP) # 6507 was issued on June 14, 2002 to construct the existing dwelling unit along with an attached deck and screen porch at the rear. The Town issued a Certificate of Zoning Compliance / Occupancy (CO) for the project on September 26, 2002 however, there is no plat with the permit package.

On December 11, 2012, a building permit application was submitted along with a plat, dated October 25, 2012, to extend the garage and add living space above the garage. It was noted that there was a .4' encroachment into the required 30' rear yard setback by a deck and covered porch. Because the applicant was not requesting to extend or enlarge the non-conformity (encroaching deck & covered porch) BP# 12-174 was approved and issued on December 12, 2012. A CO for BP# 12-174 was issued on July 31, 2013. I believe at the

time of issuance, the encroachment and the reason for not denying the permit was mentioned to the contractor.

The property owner then submitted a building permit application via Premier Glass & Screen, Inc. on January 5, 2016. The permit was to remove the existing screening in the covered porch so that it could be enclosed with sliding glass doors. Because this would extend a non-conformity the permit application was denied. The applicant was advised that if they wished to move forward with the proposed project that would have to apply for and be granted a variance by the Board of Adjustment. The variance application was received on January 14, 2016.

Included with this overview is an enlarged copy of the October 12, 2012 plat, applicable sections of the Code and the Bear Trap conditions set by Town Council.

Mr. Jordon Workman, of Premier Glass and Screen, was present to represent the Travaglini's. He was sworn in by Mr. Schrader and stated his company is enclosing an existing screened porch into a sunroom. The home was built like this in 2002 and a C/O was issued. He stated they cannot "cut" anything off the porch without creating structural problems.

There were no public comments for or against the application.

A motion was made by Mr. Bacon, seconded by Mr. LeGates, to grant the variance. The motion carried unanimously 4/0.

- D.** Mr. McMullen read the notice for the application. He said the applicant, Paula Howard, is before the Board seeking a variance from Article V, §140-28 which requires a 25 foot side yard setback for a side lot line abutting a street and Article V, §140-25-A (1) which requires that an accessory structure be incidental and subordinate to the principal use.

This variance seeks to allow an existing dwelling unit to encroach into the required 25 foot setback of a side lot line abutting a street and for an existing detached accessory structure (garage) to remain on a lot where there is no principal structure on property zoned R-1, at 111 Central Avenue (PIDN: 057.010 / Sussex CTM# 134-12.00-498.01).

In Mr. McMullen's overview he stated that during a recent request by the applicant and her sons to combine two parcels of land for subdivision into three parcels it was learned that there were two issues requiring variance review and approval by the Board before the subdivision could be heard by the Planning and Zoning Commission. All structures on the parcel were built before the Town Code was in effect, therefore any structure that does not comply with the Code past or present is considered non-conforming and can remain as it is without the need for a variance. The request to combine and subdivide lots is considered a change and therefore the applicant must either make the structures compliant or request and be granted a variance in order to proceed for lot combination/subdivision.

The first of the two issues before the Board is the encroachment of the existing dwelling unit into the required 25 foot setback of a side lot line abutting a street that was created when the previous Zoning Code was revised to create the Land Use and Development Chapter (L.U.D.C.) of the existing Code. The previous Code only required a setback of half the distance of the front yard setback for side yards abutting a street. The southwest corner of the dwelling unit on the Woodland Avenue side encroaches 1.1 feet into the required 25 setback of a side lot line abutting a street.

The second of the two issues is the existing barn which is considered a detached accessory structure by Code and is defined as being incidental and subordinate to the principal structure. As it exists today it is on the same lot with the principal structure or the dwelling unit as required by Code. The proposed subdivision would have the barn on a lot by itself. This would require a variance because a detached accessory structure is incidental and subordinate to the principal structure and there would be no principal structure on the proposed lot.

Mrs. Howard was sworn in by Mr. Schrader. She said the house and barn were built about 1912. She told the Board she wished to turn her two lots into three, one for each of her sons.

There were no public comments for or against the application.

A motion was made by Mr. Bacon, seconded by Mr. Reddington, to grant the variance as presented. The motion carried unanimously 4/0.

6. **ADJOURNMENT**

A motion was made by Mr. Bacon, seconded by Mr. Reddington, to adjourn the meeting at 3:45pm. The motion carried unanimously 4/0.

Respectfully submitted,
Donna M. Schwartz, CMC