

**BOARD OF ADJUSTMENT MINUTES**  
**TOWN OF OCEAN VIEW**  
**March 17, 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, and John Reddington. Town Administrative Official Charles McMullen, Town Solicitor Dennis Schrader, and Town Clerk Donna Schwartz were also present. Mr. Bacon and Mr. Brendel were 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. LeGates, seconded by Mr. Reddington, to approve the agenda as presented. The motion carried unanimously 3/0.*

4. **APPROVAL OF THE MINUTES**

*A motion was made by Mr. Reddington, seconded by Mr. LeGates, to approve the minutes of the February 18, 2016 meeting. The motion carried unanimously 3/0.*

5. **NEW BUSINESS**

A. Mr. McMullen read the notice for Application V-319 and V-320, 98 Central Avenue. Mr. Schrader pointed out to the applicants that with only three members of the Board present they would need a unanimous vote for approval, and asked if they wished to continue. Mr. and Mrs. Smith stated they did and they wished to continue. Mr. McMullen was sworn in by Mr. Schrader and offered his overview.

He said the applicants, Jeremy and Megan Smith have submitted, on behalf of the property owners Smithiesi, LLC, Application V-319, which is a request for a Special Exception as required by Article IV, §140-24 of the Town Code and Application, V-320, a request, for a variance from Article V, §140-31 which requires a front yard setback of 30 feet, limits lot coverage to 50% in GB-1 & GB-2 Zones and from Article XVI, §140-100-D (12)(b)[2] and [4] & Article II, §187-10-A which requires driveways to be a minimum of 5' from adjacent property lines and limits the width of a driveway through the Right of Way (R.O.W.) to 20 feet on property zoned GB-1, located at 98 Central Avenue (PIDN: 059.000 / Sussex CTM#: 134-12.00-523.00).

**Application V-319:** request by the applicant to establish a medical office at 98 Central Avenue. The Land Use and Development Chapter (L.U.D.C.) of the Town Code allows for this use if the board of Adjustment approves a Special Exception permitting such use by the property owner on property zoned GB-1, located at 98 Central Avenue (PIDN: 059.000 / Sussex CTM#: 134-12.00-523.00).

A Special Exception is defined in Article XVIII, § 140-109 of the L.U.D.C. as follows:

*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.*

A Medical Office/Clinic is defined in Article XXI of the L.U.D.C. as follows:

*MEDICAL CLINIC—An establishment where patients are admitted for examination and treatment on an outpatient basis by 1 or more physicians, dentists, other medical personnel, psychologists, or social workers and where patients are not lodged overnight.*

Criteria to be considered when granting a Special Exception is provided in Article XVIII, § 140-109 thru § 140-116 of the L.U.D.C. which has been provided with this overview.

Mr. Jeremy Smith and Mrs. Megan Smith were sworn-in by Mr. Schrader. Mr. Smith stated the house will be renovated unless the cost is prohibitive in which case they would consider rebuilding. Mrs. Smith is a chiropractor. There would be two employees, her and a secretary. She said would have only part-time hours at first, maybe two or three patients an hour. Weekend hours for emergencies only.

Mr. Reddington asked Mr. Smith what was next door to their property. Mr. Smith replied an office type building, G.A. Hastings and other businesses. Mrs. Kerwin asked if Mrs. Smith would be the only chiropractor in Town. Mrs. Smith said she believed she would be.

No public comments were made for or against the application.

***A motion was made by Mr. Reddington, seconded by Mr. LeGates to approve the application as presented. The motion carried 3/0.***

**Application V-320:** seeks to allow the applicant to have a front yard setback that is less than required, lot coverage in excess of 50%, a driveway that is within five feet of an adjacent property line and wider than twenty feet through the R.O.W. on property zoned GB-1, located at 98 Central Avenue (PIDN: 059.000 / Sussex CTM#: 134-12.00-523.00).

Upon initial receipt of this application I was unsure how far the existing structure was from the front property line so I included the need for a variance from the 30 foot front yard setback requirement. The plat indicates that the current front yard setback is at 30.67 +/- feet which meets the 30 foot setback required by §140-31 of the L.U.D.C. therefore a variance is not needed for a front yard encroachment.

There was some confusion as to language that would be included on the plat regarding area to be dedicated / reserved for the State of Delaware. The language was finally changed to indicate that the area would be a permanent easement for the State of Delaware which will allow us to move forward with V-320 this evening.

The remaining variances that were noticed would still be required.

- The driveway has issues because of DelDOT mandated configurations of driveways abutting a state maintained roadway which causes the need for variances.
  - ✓ As indicated on the plat the driveway will be 1.9 +/- feet from the adjacent property line to the east and is required to a minimum of 5 feet from any property lines. *Article XVI, §140-100-D (12)(b)[2] & Article II, §187-10-A*

- ✓ Driveway has a 10 foot driving lane in a ‘U’ shaped configuration which would meet Code requirements if it did not widen as it approaches the front property line. These additional widths at the property line and through the R.O.W. to the existing street will exceed the permissible maximum of 20 foot as set by the Code. The exact width where the driveway abuts the street must be provided by the preparer of the site plan. *Article XVI, §140-100-D (12)(b)[4] & Article II, §187-10-A*
- The lot coverage exceeds the maximum allowable 50% as indicated in Article V, §140-31.
  - ✓ Lot coverage as shown on the plat is somewhat disjointed and difficult to calculate. The preparer need simply breakout each individual structure (*as defined by Code*), delineate its square footage and provide a percentage of lot coverage that is readily understood.
  - ✓ The reduction in lot size proposed by the dedication of land to the State will increase the lot coverage percentage even more when the lot is reduced in size.

Mr. Reddington asked what DelDOT might want the front yard easement for. Mr. McMullen replied that they might want to install a sidewalk or a sign. Mr. LeGates questioned if there was enough parking. Mr. McMullen stated there was room for six spaces which was needed by code.

No public comment made for or against the application. Mr. Schrader asked a series of questions to which Mr. Smith replied that the circumstances were unique, an exceptional practical difficulty existed, the neighborhood would not be harmed by the intended use of the property and this was the minimum variance they could ask for.

*A motion was made Mr. Reddington, seconded by Mr. LeGates, to allow the variance. The motion carried unanimously 3/0.*

## 6. ADJOURNMENT

*A motion was made by Mr. Reddington, seconded by Mr. LeGates, to adjourn the meeting at 6:40pm. The motion carried unanimously 3/0.*

Respectfully submitted,  
Donna M. Schwartz, CMC