

**BOARD OF ADJUSTMENT MINUTES**  
**TOWN OF OCEAN VIEW**  
**May 10, 2016**

1. Board of Adjustment Chair Susan Kerwin called the meeting to order at 4:30 pm with the Pledge of Allegiance. Also in attendance were Board Members Jim Legates, Gene Brendel, Don Walsh and John Reddington. Town Administrative Official Charles McMullen, Town Solicitor Dennis Schrader, and Town Clerk Donna Schwartz were also present. The meeting was held in the Ocean View Town Hall, 32 West Avenue.

2. **APPROVAL OF THE AGENDA**

*A motion was made by Mr. Brendel, seconded by Mr. Reddington, to approve the agenda as presented. The motion carried unanimously 4/0.*

3. **APPROVAL OF THE MINUTES**

*A motion was made by Mr. LeGates, seconded by Mr. Brendel, to approve the minutes of the March 17, 2016 meeting. The motion carried unanimously 4/0.*

4. **COMMISSION BUSINESS** – Mr. Don Walsh was sworn-in by Mr. Schrader to a three-year term on the Board of Adjustment.

5. **NEW BUSINESS**

A. Mr. Schrader read the notice for Application V-323, 18 Calgary Avenue. He said, the applicant is seeking a variance from Article V, §140-28 and §140-32 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code. Article V, §140-28 requires principal structures to maintain 15 foot side and 30 foot rear yard setbacks, §140-32 requires attached accessory structures to maintain the same side and rear setbacks as a principal structure and that detached accessory structures are not permissible in the front yard but must maintain a rear lot line setback of 10 feet. This variance seeks to allow the applicant to maintain a principal structure (dwelling unit) and an attached accessory structure (cantilevered closet) that encroach .3 feet and 4.2 feet respectively into the required 15 foot side yard setback, attached accessory structures (screen porch and outside shower) that encroach 6.3 feet and 3.4 feet respectively into the required 30 foot rear yard setback, detached accessory structures (shed and deck) that encroach 1 foot and 9.7 feet respectively into the required 10 foot rear lot line setback and to enclose the screen porch and erect a 10 x 20 carport on the existing driveway on a parcel zoned R-1.

Mr. Schrader swore-in Administrative Official Charles McMullen. Mr. McMullen then gave his overview to the Board.

He listed the following permits on file for the above parcel:

- Building Permit (BP) # 159 issued 05/04/83 to construct a 48' x 28' dwelling unit on the parcel. Plat dated April 1983 submitted. No Certificate of Zoning Compliance / Occupancy (CO) on file (see next item).
- BP# 163 issued 052883 to construct a 12' x 8' deck on the west side of the structure and a 12' x 20' screen porch at the rear of the property as delineated on a plat dated April 1983 (Note: Screen Porch within 30' rear setback). CO issued 06/20/83.

- BP# 8629 issued 04/21/08 to replace roof. CO issued 03/15/10.
- BP# 9031 issued 08/23/10 to pave existing driveway. CO issued 09/23/10.
- Repairs to shed roof on 05/11/07 did not require a permit because the repairs were under \$300.00.

The applicant met with me earlier this year to discuss proposed improvements to his property:

1. Enclosing his screen porch to create a sunroom.
2. Adding a carport in front of his home.
3. Adding a new shed and/or repairing existing shed.
4. Erecting a trash enclosure at the front of his property.

Upon reviewing the 1983 plat I realized that there were a number of issues with the proposed improvements as well as with other structures on the parcel that would require variances. I advised the applicant that if he wished to move forward with a variance request he would be required to provide an updated survey of the parcel which he did. The survey dated 030916 revealed the need for the following variances:

1. The screen porch w/ steps, that is proposed to become a sunroom w steps, within the required 30' rear yard setback.
2. The carport, which is a detached accessory structure, would be in the front yard which is not permissible.
3. The existing shed (a detached accessory structure) with deck/landing attached within the required rear yard setback.
4. The dwelling unit and cantilevered living area encroachment into the required 15' side yard setback.
5. The outside shower encroachment into the required 30' rear yard setback.

Mr. and Mrs. Lowell Jacobs were sworn-in by Mr. Schrader. Mr. Jacobs stated everything was the way they purchased the house in 1991. He said they would like to have a carport for snow and ice protection. Mr. Schrader asked if the carport was approved by their HOA. Mr. Jacobs said their development did not have an active HOA. Mr. LeGates noted that a carport was not permissible by Town code. Mr. Jacobs noted that the carport may be too expensive for them to do.

In public comment, Mr. Norman Amendt of Kent Avenue, spoke in favor of the application, saying he sees no problem with the changes.

*A motion was made by Mr. Brendel, seconded by Mr. Reddington, to approve the variance application for the shed, screen porch deck, closet and outside shower. The motion carried unanimously 5/0.*

*A motion was made Mr. Reddington, seconded by Mr. Brendel, to allow the sun room. The motion carried unanimously 5/0.*

*A motion was made by Mr. LeGates, seconded by Mr. Brendel, to deny the variance for the carport. The motion carried unanimously 5/0.*

**B.** Mr. Schrader read the notice for Application V-313, 30 Kent Avenue. He said, the applicant is before the Board seeking a variance from Article IV, §140-25-C (5)(b)[3], Article V, §140-32, Article XVI, §140-100-D (12)(b)[2] of the Land Use and Development Chapter (L.U.D.C.) of the Town Code and Article II, §187-10-A of the Streets and Sidewalk Chapter of the Town Code. Article IV, §140-25-C(5)(b)[3] prohibits the water's edge of a swimming pool to be within the front yard setback, Article V, §140-32 restricts the maximum height of detached accessory structure to 14' from grade and Article XVI, §140-100-D(12)(b)[2] and Article II, §187-10-A require driveways to be a minimum of 5' from any adjacent property line. This variance seeks to allow the water's edge of an existing pool to encroach into the required 25' front yard setback, a detached accessory structure (garage) to exceed the maximum height limit of 14' and a driveway to be closer than 5' to an adjacent property line on property zoned R-1.

Mr. McMullen read his overview to the Board. He said, on June 10, 2013 the applicant submitted a Freedom of Information Act request for building plans and on August 2, 2013 a site plan, as required by Code, was submitted for review. Upon approval of the site plan, on August 26, 2013, building permit (BP) # 13-163 was issued to construct a dwelling unit and garage on an unimproved parcel at 30 Kent Avenue. Upon completion there were some grading issues with the as built survey. The property owners' requested to occupy the home for the holidays and a temporary CO for BP # 13-163 was issued on December 31, 2013. This was done after a boundary survey of the dwelling unit and garage was submitted showing that they were within the building envelope.

An as built survey and subsequent revision of the as built survey for BP# 13-163 were submitted in May 2014 for BP # 13-163. It was at that time that the encroachment for the driveway was discovered and the applicant was advised to reduce the edge of the driveway or apply for a variance.

The applicant then began the process of obtaining a building permit to construct an in ground swimming pool and fence on or around June 23, 2014 when a site plan was submitted for review as required by Code. Upon approval of the site plan, BP # 14-151 was issued on July 9, 2014 to begin construction. The applicant was contacted on February 9, 2015 by the Town, via email, advising him that an as built survey of the parcel with improvements was required.

Upon receipt and review of the as built survey it was determined that the water's edge of the pool encroached into the required 25' front yard setback, the height of the detached accessory structure, a garage, was 14.7 feet which was .7 feet higher than the maximum height allowable for this type of structure and the driveway still encroached .3 feet into the required minimum 5 foot separation between driveways and adjacent property lines.

Notifications of the violations were forwarded to the applicants surveyor and follow up notification was made later to the property owner indicating the need for a variance. An application for variances was received September 8, 2015.

Mr. and Mrs. Ricker were sworn-in by Mr. Schrader. Mr. Ricker explained why the garage was .7' too high. He said in an effort to keep rainwater out of the garage they built it on concrete blocks which added to the height. He stated he didn't feel there was a negative effect on the neighborhood or on property values. Mr. Ricker also noted that according to his measurements, the "lip" of the pool encroached into the front yard setback but not the water in the pool.

In public comment, Mr. Norman Amendt of Kent Avenue, spoke in favor of the application saying he sees no problem with granting the variances.

*A motion was made by Mr. Brendel, seconded by Mr. Walsh, to approve the variances for the height of the garage and the water edge of the pool. The motion carried unanimously 5/0.*

- C. Mr. Schrader read the notice for Application V-324, 175 October Glory Avenue. He said, the applicants are requesting a variance from Article VII, §140-50-B and Article V, §140-29 and §140-28 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code. Article VII, § 140-50-B sets some dimensional regulations for Planned Communities, allows Town Council to set other dimensional regulations if they choose and indicates that dimensional regulations not defined will comply with those set in §140-29 and §140-28. The maximum lot coverage permissible for a lot with a single family home in the Residential Planned Community (R.P.C.) of Bear Trap Dunes is 45% including all buildings and structures as stated in §140-28 of the L.U.D.C. This variance seeks to allow the applicants to continue to exceed the maximum allowable lot coverage of 45% by maintaining an extended garage and replacing a deck and screen porch with a sunroom, on a lot zoned R.P.C.

Mr. McMullen read his overview to the Board. He said, the following permits were on file for the above parcel:

- Building Permit (BP) # 7128 issued 071503 for construction of Masterpiece B Model Dwelling Unit (D.U.). Certificate of Zoning Compliance / Occupancy (CO) issued by the Town on 10/27/03 based on a plat dated 112003.
- BP# 12-128 issued 090712 for construction of a 4' x 7' outside shower (O/S) to be constructed at the rear that would be within the building envelope based on a plat provided and dated 04/23/12. A CO was issued by the Town on 11/21/12.
- BP# 16-086 issued 03/23/16 to construct a second floor addition above the garage. This BP was amended at the contractor's request to expand the footprint of the garage by 81 square feet.

The applicants submitted a building permit through their contractor Sea Light Design on 03/21/16. A review of the application indicated that they wished to add additional living space on the second floor above their garage. They also wanted to remove an existing deck and screen porch at the rear to replace it with a sunroom that would occupy the same footprint and would have a deck on the roof accessible from the new second floor addition. Because the sunroom exceeded 125 square feet a single lot development (SLD) review was required by the Town.

The applicant decided to move forward with the rest of the contracted work while a site plan was prepared for the sunroom. Upon receipt of the grading plan for the sunroom from Simpler Surveying it was immediately noted that the lot coverage was in excess of the 45% permissible by the Land Use and Development Chapter (L.U.D.C.) of the Town Code in §140-29 and §140-28. The site plan indicated that the lot coverage was at 54.45% including the garage expansion approved on BP# 16-086. Because the lot coverage was in excess and the applicants wished to remove a structure whose square footage contributed to the overage in lot coverage they were required to obtain a variance.

The Code allows for a non-conformity to exist as it is but when changed to more than 50% of the appraised value the non-conformity must become conforming. In this case the sunroom with a square footage of 500 +/- square feet was to be removed completely which would have exceeded the 50% value. I also ensured that the 83 +/- square feet for the garage expansion, approved by the Town, was not the deciding factor for overage in lot coverage. It did not and as indicated on the site plan the structure as originally built had a lot coverage of 54.07%.

The applicant's contractor in anticipation of the BP has already removed the existing screen porch and deck as evident by the photos submitted by the applicant. They are seeking a variance that will allow them to build a sunroom that will be within the original footprint of the home and to maintain the garage expansion.

Mr. Mark Dreux, property owner, and Mr. Chuck Coleman, of Seelight, were sworn-in by Mr. Schrader and available to answer questions from the Board. Mr. LeGates asked about the footprint. Mr. Dreux replied that the footprint would stay exactly the same. Mr. Reddington questioned whether the sunroom was one story. Mr. Dreux replied that it was one story with a deck on top of the sunroom. Mr. Schrader asked if they had HOA approval, which they replied yes. They noted this was the fourth property in Bear Trap that they've been hired to construct.

There were no public comments made for or against the variance.

***A motion was made by Mr. Reddington, seconded by Mr. Walsh, to approve the variance request to build the sunroom and maintain the garage expansion. The motion carried unanimously 5/0.***

- D. Mr. Schrader read the notice for Application V-321, 1, 3, 5, 7, 9, 11, 13, 15 & 17 Broadkill Lane. He said, Mr. Brian McManus has submitted, on behalf of the property owners K Hovnanian Homes, Application V-321, seeking a variance from Article VI, § 222-22 of the previous Town Zoning Code, which mirrors our current Code in the Land Use and Development Chapter (L.U.D.C.) Article VI, § 140-38-B(2)(a) limiting fence height to three (3) feet in the front yard. This variance seeks to allow a fence in the front yard to exceed the three (3) foot maximum height on property zoned Residential Planned Community (R.P.C.) located at 1, 3, 5, 7, 9, 11, 13, 15 & 17 Broadkill Lane (PIDN's: 408.079 thru 408.084 / Sussex CTM#'s: 134-17.00-977.05 Units S79L thru S84L).

Mr. McMullen read his overview to the Board. He said, below is a description of building permits issued to K Hovnanian Homes, LLC for parcels included in the variance application.

BP# Location Issued BP Description CO Issued

- 14-279 7 Broadkill Lane 120514 D.U. – Bethany II Temporary – 021216
- 14-280 9 Broadkill Lane 120514 D.U. – Lewes II Temporary – 021216
- 14-281 11 Broadkill Lane 120514 D.U. – Dewey II Temporary – 021216
- 15-154 13 Broadkill Lane 070115 TH – Seashore Not Yet Issued
- 15-155 15 Broadkill Lane 070115 TH – Henlopen Not Yet Issued
- 15-156 17 Broadkill Lane 070115 TH – Rehoboth Not Yet Issued
- Paver Patio, O/S
- 16-099 7 Broadkill Lane 032916 & Irrigation Not Yet Issued
- Paver Patio
- 16-100 9 Broadkill Lane 032916 & Irrigation Not Yet Issued
- 16-101 11 Broadkill Lane 032916 Irrigation Not Yet Issued
- 16-102 13 Broadkill Lane 032916 Irrigation Not Yet Issued
- 16-103 15 Broadkill Lane 032916 Irrigation Not Yet Issued
- 16-104 17 Broadkill Lane 032916 Irrigation Not Yet Issued

As Built grading plans, as required by Code, were submitted for 7, 9 & 11 Broadkill Lane on 01/29/16. At that time I noted that paver patios had been installed at 7 & 9 Broadkill Lane and an outside shower at 7 Broadkill Lane. These accessory structures had not been included on the original building permit (BP) and I made notification to K Hovnanian Homes. On 02/09/16, Greg Durstine, the Code Compliance person noted that fencing had been installed by Denison Landscaping across the front of 7, 9, 11, 13, 15 & 17 Broadkill Lane as well as down the side of 17 Broadkill Lane. The fence measured 54” in height, exceeding the maximum permissible height of 36” in the front yard as outlined in Article VI, § 222-22 of the previous Town Zoning Code and in Article VI, § 140-38-B (2) (a) of the L.U.D.C. and had been installed without a BP. K Hovnanian Homes was notified and building permit applications to address all of the issues were submitted to the Town. The BP’s for the paver patios, outside shower and irrigation were issued however the building permits for the fence were denied. The Ocean View Beach Club (O.V.B.C.), was reviewed and approved under the previous zoning Code which explains the reference to Article VI, § 222-22.

An application was submitted by Mr. McManus on 02/24/16 seeking a variance for the fence. The application was revised to include the parcels at 1, 3 & 5 Broadkill Lane where K Hovnanian Homes, LLC has received a Temporary Structure permit to place their sales center at 3 Broadkill Lane and other amenities at 1 & 5 Broadkill Lane where they have proposed installing a fence to match what exists at 7, 9, 11, 13, 15 & 17 Broadkill Lane.

Mr. Brian McManus was present to answer questions from the Board and was sworn-in by Mr. Schrader. He said the fence was installed as a maintenance fence for the model homes

and is temporary. The fence will be removed when the houses are sold for permanent occupancy. Unfortunately the fence exceeds the 36” height requirement of the Town code. Mr. LeGates questioned why the fence installed was 54”. Mr. McManus said it was installed in error. Mr. Walsh asked if fences would be allowed in the development. Mr. McManus replied that they would be as approved by an ARC Committee.

No comments were made by the public for, or against, the variance request.

*A motion was made by Mr. Reddington, seconded by Mr. Walsh, to allow the variance for a temporary fence with the condition the fence be removed when the houses are sold for permanent occupancy. Mr. Walsh, Mr. Reddington, Ms. Kerwin and Mr. Brendel voted in favor, Mr. LeGates voted against the variance. The motion carried 4/1.*

6. **ADJOURNMENT**

*A motion was made by Mr. Brendel, seconded by Mr. Reddington, to adjourn the meeting at 6:10pm. The motion carried unanimously 5/0.*

Respectfully submitted,  
Donna M. Schwartz, CMC