

BOARD OF ADJUSTMENT MINUTES
TOWN OF OCEAN VIEW
September 20, 2018

1. Board of Adjustment Chair Susan Kerwin called the meeting to order at 6:00 pm with the Pledge of Allegiance. Also in attendance were Board Members Gene Brendel, John Reddington, Greg Neuner, and Don Walsh. Town Manager Dianne Vogel, Planning & Zoning Director Ken Cimino, Town Solicitor Dennis Schrader, Town Engineer Jim Lober, and Town Clerk Donna Schwartz. The meeting was held in the Ocean View Town Hall, 32 West Avenue.

2. **APPROVAL OF THE AGENDA**

A motion was made by Mr. Reddington, seconded by Mr. Neuner, to approve the agenda as presented. The motion carried unanimously 5/0.

3. **APPROVAL OF THE MINUTES**

A motion was made by Mr. Reddington, seconded by Mr. Brendel, to approve the minutes for July 19, 2018 meeting. The motion carried unanimously 5/0.

4. **OLD BUSINESS**

A. V-366 23 Atlantic Avenue (PIDN: 278.000 / Sussex CTM#: 134-13.00-25.01)

V-366, submitted by Mr. Joshua Mueller of Barn Hill Preserve of Delaware, with the approval of the property owners Balsamo and Norino Properties, LLC, requesting a Special Exception, as required by Article IV, §140-24 of the Town Code, to establish a Wildlife Learning Center on property zoned GB-1, located at 23 Atlantic Avenue (PIDN: 278.000 / Sussex CTM#: 134-13.00-25.01).

Mr. Schrader asked the members to read an official written decision and sign their names.

5. **NEW BUSINESS**

Donna Schwartz, and Ken Cimino were sworn in by Mr. Schrader. The following applications were all advertised in the Coastal Point on August 24, 2018.

A. V-372 51 & 55 West Avenue (PIDN: 269.001)

Mr. Cimino said the applicant, Mr. George Keen had submitted application V-372 with permission of the property owner, the Ocean View Church of Christ, seeking a variance from Article X, §140-65 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code. §140-65 limits freestanding signs for a single business site to one per site with a maximum 24 square feet per side, total sign area shall not exceed 48 square feet and the sign shall have a maximum height of 12 feet measured from grade.

The applicant wishes to install one (1) freestanding sign that will exceed the maximum per side total square footage of 24 sq. ft., maximum sign area of 48 sq. ft. and exceed the maximum height from grade of 12 ft.

TOWN COMMENTS

- The applicant is requesting one (1) freestanding sign for the Ocean View Church of Christ. The sign will be approximately 16’+/- high, 16.4’+/- wide including the post. The sign will be double-sided. The total square footage of each of the signs will be approximately 132+/- sq. ft. per side with a total sign area of 264+/- sq. ft.
- As proposed, the sign will exceed the per side total square footage of 24 sq. ft., exceed the total sign area of 48 sq. ft. and maximum height of 12’ from grade as allowed by Code. The signs will be externally illuminated.

Article X §140-65. Signs Permitted in the GB-1 and GB-2 Zones.

<p style="text-align: center;">Freestanding Sign, Single Business Site</p> <p>— Not wholly or partially attached to a building</p> <p>— Attached to pole, column, frame, or brace for support</p> <p>— Advertises a single business on a single lot or parcel</p>	Number Allowed	1 per lot or parcel; but not in conjunction with a ground-supported sign
	Maximum Area	24 square feet per side; total sign area not to exceed 48 square feet
	Maximum Height	12 feet measured from grade
	Placement	10 feet from front street/property line 20 feet from any other street/property line
	Illumination	Allowed
	Permit Needed	Yes; see §140-96

- The proposed location of the new sign will be along the frontage of Atlantic Avenue in the same location as the existing sign. The applicants are requesting a variance from §140-65 of the Town Code which states that the maximum area of a sign shall not exceed 24 square feet per side; total sign area not to exceed 48 square feet and the maximum height of a sign shall not exceed 12 feet from grade.
- Property owner has committed to removing the existing lettering located along the brick wall advertising the Ocean View Church of Christ.

Mr. George Keen was sworn-in by Mr. Schrader. He said the present sign was built in 1978. Mr. Keen said the present signs are too low to the ground to be seen. Due to changes of Rt. 26, much of the sign is blocked by a traffic signal box. He said the idea was to create a sign based off the church’s new logo.

Mr. Lynn Rogers, of Roger’s Signs, was sworn-in by Mr. Schrader. He noted that the sign would be internally lit not externally lit. He showed a graphic of the current brick sign with two flagpoles. The letters would be removed when the new sign is

installed. Currently they have a reader board sign, which has become dwarfed by the busy intersection and traffic control boxes. Mr. Rogers said the new sign is large but it is being placed on a huge lot. He said the sign is effective, functional, and appealing giving the church a fresh look. Mr. Schrader asked if it was externally lit. Mr. Rogers replied it was internally lit, or surface lit.

Mr. Schrader asked if it was an LED sign with changeable text. Mr. Rogers replied yes. Mr. Schrader asked if there was a way to control the brightness of the sign at night. Mr. Rogers replied all the signs have the ability to control the brightness, which is required by Sussex County. Mr. Schrader questioned why the sign could not be placed at ground level. Mr. Rogers replied that they were trying to but the sign at eye level, which he said is 4' above ground level.

Mr. Neuner asked if the sign would be perpendicular to Rt.26 and visible on West Avenue. Mr. Rogers replied that he was correct. Mr. Neuner asked what the height of the support pole, which he said is much more prominent than the message sign. Mr. Rogers replied the support pole is 16'. Mr. Neuner said he looks at the whole thing and sees one sign with a humungous presence. Mr. Rogers refers to just the message board as the "sign."

Mr. Reddington asked if it was a double-sided sign. Mr. Rogers agreed it was double-sided. Mr. Reddington also noted that the sign that says "Church of Christ" is actually smaller than what they have now. Mr. Reddington asked if they could reduce the size of the lighthouse. Mr. Rogers said he could reduce the size of the lighthouse to 12' if needed. The sign would be reduced slightly also to keep everything in perspective.

Mr. Brendel asked how close the sign would be to the road. Mr. Rogers replied there is a 20' easement. Mr. Rogers showed Mr. Brendel on the drawing where the sign would be placed. Mrs. Kerwin asked if the current sign and flags are lit at night. Mr. Rogers said yes.

Mr. Schrader questioned whether this would have a negative effect on the surrounding properties. Mr. Rogers replied no, the lot is so large it will have no negative effect. Mr. Schrader questioned if they need such a large sign to use they property. Mr. Rogers replied it is a large lot and open area.

Public Comment: none spoke in favor or against the application.

Mr. Schrader commented that there were two emails in opposition from Vicki York and Jane Galvin; and a lengthy letter in opposition from Mr. Miller/Ms. Weinman.

Mrs. Kerwin asked if there was any way they could have a smaller sign, she said to her this application is like two signs. Mr. Keen said they tried their best to stay within the size of the signs around them. Mr. Neuner said the support pole/lighthouse just grabs the eye and doubles the impact. He said something has to be done with the

size of the sign, it is too high at 16'. Mr. Brendel agreed with Mr. Neuner. Mr. Walsh agreed it needs to be revisited; he said they need to downsize the sign.

Mr. Schrader asked Mr. Keen having heard the conversation of the Board if he would like to withdraw the application. Mr. Reddington suggested that Mr. Keen read the letter from Mr. Miller and Ms. Weinman; he said their comments were very compelling.

A motion was made by Mr. Neuner, seconded by Mr. Reddington, to allow withdrawal the application at this time. The motion carried unanimously 5/0.

B. V-373 3 Avondale Drive (PIDN: 325.110)

Mr. Cimino said the applicant, Mr. James Stuart had submitted application V-373 with permission of the property owners, Kevin and Sherry Sullivan, seeking a variance from Article V, §140-32 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code which limits detached accessory structures to a maximum height of 14 ft. from grade. The applicant also seeks a variance from Article XVI, §140-100-D (12)(b)[4] and Article III, §187-10-A of the Land Use and Development Chapter (L.U.D.C.) of the Town Code which allow a driveway to be a maximum of 20 feet through the right of way (R.O.W.)

This variance seeks to allow the property owners to maintain an existing detached accessory structure (garage) which exceeds the maximum allowable height from grade. This variance also seeks to allow an existing driveway to be wider than the maximum 20 feet permissible through the R.O.W. on a lot zoned Residential Planned Community, (R.P.C.), located at 3 Avondale Drive (PIDN: 325.110 / Sussex CTM#: 134-17.00-586.00).

TOWN COMMENTS

- The applicant previously submitted application V-337 on January 17, 2017 seeking a variance from Article V, §140-32 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code which limits detached accessory structures to a maximum height of 14 ft. from grade. This variance request was granted approval to construct a detached accessory structure (garage) that exceeded the maximum height allowable by code, on a lot zoned Residential Planned Community, (R.P.C.), located at 3 Avondale Drive (PIDN: 325.110/Sussex CTM#: 134-17.00-586).
- Building Permit 16-435 issued on March 1, 2017 and associated with V-337 and as shown on the approved site plan for this project details the removal of the additional 4.5 ft. of driveway to bring the driveway into compliance with Article XVI, §140-100-D (12)(b)[4] and Article III, §187-10-A of the Land Use and Development Chapter (L.U.D.C.) of the Town Code which allow a driveway to be a maximum of 20 feet through the right of way (R.O.W.). The approved site plan also indicated a maximum height for the detached accessory structure (garage) to be 20 ft.

Mr. Cimino further stated that there was testimony in January 2017 by Mr. Stuart's son that the garage would not be used as living quarters, or a bedroom. We have found in the issuance of the certificate of occupancy that the room was furnished as a bedroom, or as living quarters. In addition, the house had been advertised by local real estate companies as a four-bedroom house for rent, which leads us to believe this includes the room above the garage.

Mr. Neuner recused himself from the application because he is on the ARC Board of Hunter's Run.

Mr. James Stuart was sworn-in by Mr. Schrader. He said the driveway was supposed to be 20', however when complete it measured 20'9". The builder does not know how that happened. Mr. Stuart also stated the roof is 9" higher than the variance than what granted. He said they asked the builder to expand the driveway by 4½' and are asking for a variance to leave the driveway the way it is. Mr. Stuart agreed the room over the garage was staged to look like a bedroom for the purpose of sale, although they were not using it as a bedroom. He said they had a bed, dresser, and recliner stored up there.

Mr. Schrader asked Mr. Stuart if he was told the outcome of the last meeting in January 2017. Mr. Stuart said he was told the results. Mr. Schrader asked Mr. Stuart why he expanded the driveway without approval from the Town. Mr. Stuart said he did not know he could not expand the driveway. He said he asked the builder who said it was okay to expand.

Mrs. Kerwin commented that one of the concerns they had approving the original variance was the room would not be used as a bedroom only as a storage area without water access. She asked if the realtor was aware it was not a bedroom. Mr. Stuart said he was not aware that they described it as a fourth bedroom.

Mr. Schrader asked Mr. Stuart what he considers the hardship with this application. Mr. Stuart replied that removing the roof and would have to be downsized by 9". He said the driveway could be fixed.

Sherry Sullivan, the new owner of the house, was sworn-in by Mr. Schrader. She testified that they found out from their attorney that Mr. Stuart was in the middle of a variance. She said they are calling the room above the garage a bonus room. She said they do not use it at this point. Mr. Reddington stated he was concerned that the intended use (for storage only) is not what the variance approval was given for. He asked Mrs. Sullivan if they would only use the room for storage. Mrs. Sullivan agreed.

Kevin Sullivan was sworn-in by Mr. Schrader. Mr. Sullivan stated he was most concerned about the 9” for the roof. He said it would be easy to correct the number of bedrooms in the rental listing, and he was not too concerned about the driveway.

Ms. Carol Gomez, 1 Avondale, was sworn-in by Mr. Schrader. She said she understood that the room above the garage was to be used only as storage so she was surprised it had so many windows. She said she was concerned about it being used as a bedroom. Ms. Gomez suggested the Town look at their inspection process of building permits to catch problems with people doing what they are supposed to do.

Letters of objection against the application were also received from Mr. and Mrs. Dietsch and Mr. and Mrs. Anderson.

A motion was made by Mr. Reddington, seconded by Mr. Brendel, to approve the variance for the 9” roof height if the room is used only for storage, and reject the variance requested for the width of the driveway. The motion carried unanimously 4/0.

C. V-374 120 Atlantic Avenue (PIDN: 081.000)

The applicant, Ms. Pamela Webb has submitted application V-374 with permission of the property owner, the Indian River School District, seeking a variance from Article X, §140-65 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code. §140-65 limits freestanding signs for a single business site to one per site with a maximum 24 sq. ft. per side, total sign area shall not exceed 48 sq. ft., location of sign shall be 10ft. from front street/property line.

The applicant wishes to install one (1) freestanding sign that will exceed the maximum per side total square footage of 24 sq. ft., maximum sign area of 48 sq. ft. and is located within 10ft. of the front street/property line.

TOWN COMMENTS

- The applicant is requesting one (1) freestanding sign for the Lord Baltimore Elementary School. The sign will be approximately 11.5’+/- high, 10.0’+/- wide including the post. The sign will be double-sided. The total square footage of each of the signs will be approximately 116+/- sq. ft. per side with a total sign area of 232+/- sq. ft.
- As proposed, the sign will exceed the per side total square footage of 24 sq. ft. and exceed the total sign area of 48 sq. ft.

Article X §140-65. Signs Permitted in the GB-1 and GB-2 Zones.

Freestanding Sign, Single Business Site — Not wholly or partially attached to a building — Attached to pole, column, frame, or brace for support — Advertises a single business on a single lot or parcel	Number Allowed	1 per lot or parcel; but not in conjunction with a ground-supported sign
	Maximum Area	24 square feet per side; total sign area not to exceed 48 square feet
	Maximum Height	12 feet measured from grade
	Placement	10 feet from front street/property line 20 feet from any other street/property line
	Illumination	Allowed
	Permit Needed	Yes; see §140-96

- The proposed location of the new sign will be along the frontage of Atlantic Avenue to the west of the entrance to the Lord Baltimore Elementary School. The applicants are requesting a variance from §140-65 of the Town Code which states that the maximum area of a sign shall not exceed 24 sq. ft. per side; the total sign area not to exceed 48 sq. ft.; placement of sign shall be 10ft. from the front street/property line.
- Property owner has also offered this sign for use by the Town of Ocean View for Emergency Management Messages such as hurricane evacuations and other relevant public safety messages.

Ms. Pamela Webb, of Lord Baltimore School, was sworn-in by Mr. Schrader. She stated that the school is looking for a plain and simple LED changeable message sign, about 4' in height, which is about eye level. She said they having been raising money for the last four years to raise money for the new sign. Ms. Webb said the sign has a reduced brightness control and could be adjusted for nighttime. She also said the sign could be used by the Town during an emergency. Mr. Brendel asked if the sign would be running or static. Ms. Webb said it was one color and static, although it can scroll.

No comments from the public.

A motion was made by Mr. Reddington, seconded by Mr. Neuner, to accept the request for a variance for the sign as requested. The motion carried unanimously 5/0.

6. ADJOURNMENT

A motion was made by Mr. Brendel, seconded by Mr. Reddington, to adjourn the meeting at 7:25pm. The motion carried unanimously 5/0.

Respectfully submitted,
Donna M. Schwartz, CMC