

**BOARD OF ADJUSTMENT MINUTES**  
**TOWN OF OCEAN VIEW**  
**December 20, 2018**

1. Board of Adjustment Chair Susan Kerwin called the meeting to order at 6:40 pm with the Pledge of Allegiance. Also in attendance were Board Members Gene Brendel, John Reddington, Greg Neuner and Don Walsh. Planning & Zoning Director Ken Cimino, James Lober Town Engineer, Town Solicitor Dennis Schrader, 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. Brendel, seconded by Mr. Reddington, to approve the minutes for November 15, 2018 meeting. The motion carried unanimously 5/0.*

4. **NEW BUSINESS**

**A. V-376 3 Atlantic Avenue (PIDN: 284.002/Sussex CTM#:134-13.00-30.00)**

Mr. Schrader swore-in Ken Cimino and Donna Schwartz. Ms. Schwartz noted that this application was properly noticed and posted. Mr. Cimino read his overview. He said Application V-376 has been submitted by Adams Family Enterprises, LLC, with the approval of the property owners Crosswinds Holdings, LLC, requesting a Special Exception, as required by Article IV, §140-24 of the Town Code, to establish a Miniature Golf Course on property zoned GB-1 (General Business District 1), located at 3 Atlantic Avenue (PIDN: 284.002 / Sussex CTM#: 134-13.00-30.00).

Town Council approved Miniature Golf Courses as a permissible use with granting of a Special Exception by the Board of Adjustment on October 9, 2018 via Ordinance 352. The use is only applicable in the GB-1 zoning district.

A Special Exception is outlined in Article XVIII, § 140-109 of the L.U.D.C. with the following definition: *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.*

Article XVIII, § 140-116 states that the Board should establish “*Required Findings*” for the granting of a Special Exception to ensure that the application meets certain conditions:

§ 140-116. Required Findings

The Board of Adjustment shall determine whether each special exception application meets the following conditions:

A. Is it in harmony with the purposes and intent of the comprehensive plan;

- B. Will be in harmony with the general character of its neighborhood considering density, design, bulk, and scale of proposed new structures;
- C. Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties;
- D. Will not cause objectionable noise, vibrations, fumes, odors, dust, glare, or physical activity;
- E. Will have no detrimental effect on vehicular or pedestrian traffic;
- F. Will not adversely affect the health, safety, security, or general welfare of residents, visitors, or workers in the area; and
- G. Complies with all other applicable standards, laws, and regulations in addition to the provisions of this Chapter.

The following materials have been provided with this overview:

1. A concept plan prepared by Rauch, Inc. along with the Special Exception application and questionnaire required for the review of a Special Exception.
2. Ordinance 352 adopted by Town Council approving Miniature Golf Courses as a permissible use with the granting of a Special Exception by the Board in the GB-1 district. Ordinance 352 also set forth additional use regulations on Miniature Golf Courses in § 140-24.4.
3. Article IV, § 140-24 of the L.U.D.C. of the Town Code – “Permitted Uses and Structures.”

Attorney James Griffin, representing the Adams Family LLC, spoke to the Board saying the property was site appropriate for a miniature golf business to receive a special exception. He noted that this would be an improvement over the current use of the property at 3 Atlantic Avenue. Mr. Griffin said the mini golf course would not be a home-made, hand-built plywood and carpeted course, but rather a professionally designed and landscaped course. The lighting would be downward screened. The hours of operation would be 9am to 11pm as per the ordinance. He stated there would be no adverse use of the property. People would be able to walk or bike to the mini golf. The mini golf is in harmony with the comprehensive plan and it would improve the overall streetscape appearance of Atlantic Avenue.

Rebecca Adams was sworn-in by Mr. Schrader. Mrs. Adams said both she and her husband were born and raised in the area and she loves Sussex County. She said the old warehouse at 3 Atlantic Avenue would be torn down and the mini golf course built. Mrs. Adams stated the mini golf would have a shipwrecked design theme to blend in with the area. The mini golf course would be designed by Harris Miniature Golf and have 18 holes with a 19<sup>th</sup> hole to win a free game. She said the course would have a waterfall and two ponds. There would also be an open area with tables and a snack bar with restrooms.

Mr. Schrader asked her where the granite displays would go to? Mrs. Adams replied the granite would have to be moved. She said they currently rent the blacktop the granite sits on.

Brian Swain, of Fancy Cutz LLC, was sworn in by Mr. Schrader. He stated the miniature golf would have native plants and shrubs, and the unique landscape plan would be 80% eco-friendly. He said visitors would be able to enjoy learning about the native species, as the plants would all be labeled.

Mr. Reddington asked if there were any Harris's mini golf courses in the area. Mrs. Adams replied there was a course at Frontier Town in Maryland and several other locations on the Eastern Shore. Mr. Brendel asked where they would be placing signs. Mrs. Adams replied they would be placed where they get approval to place them. Mr. Neuner asked about parking spaces. Mrs. Adams replied they would have 18 spaces with three handicap. Ms. Kerwin questioned where the entrance would be on Route 26. Mrs. Adams replied they would be using the current entrance, or where DeIDOT tells them where to put it. Mr. Schrader asked if there would be any type of loud shipwrecked sounds. Mrs. Adams said there would be low-level music only.

Patrick Adams was sworn-in by Mr. Schrader. He noted that there would be no large fiberglass structures; everything would have a very natural look.

Mr. Walsh asked about fencing. Mrs. Adams replied there would be fencing around the outside of the course. Ms. Kerwin asked about the availability of additional parking. Mrs. Adams said they would have access to a gravel lot.

Mr. Griffin summarized by saying it was in harmony with the Town's 2010 comprehensive plan, which suggested creating recreational opportunities. He said the mini golf would not be detrimental or objectionable to the Town.

Mr. Schrader noted there were two letters of support and two letters of opposition from residents. The public comments were as followed:

- Tom Mast was sworn-in by Mr. Schrader and stated he was in favor of the mini golf course.
- Brenda McIntyre, William Ave, was sworn-in by Mr. Schrader and stated she was in opposition to the mini golf course.
- Jeanette Cane, Seahawk Lane, was sworn-in by Mr. Schrader and stated she was in opposition to the mini golf course.
- Trisha Supik, William Ave, was sworn-in by Mr. Schrader and stated she was in opposition to the mini golf course.

Mr. Griffin offered rebuttal to the public comments. Mr. Reddington asked if the mini golf would have bathrooms and if they would be open year round. Mrs. Adams replied there would be bathrooms and most likely would be closed in January, February and March.

***A motion was made by Mr. Reddington, seconded by Mr. Brendel, to approve the special exception. The motion carried unanimously 5/0.***

**B. V-377 20 Winchester Drive (PIDN: 004.861/Sussex CTM#: 134-12.00-1804.00)**

Ms. Schwartz stated that the application had been properly noticed and posted.

Mr. Cimino read his overview. He said Application V-377 submitted by the property owners Douglas M. & Alice A. Morris, requesting a variance from Article V, §140-32 which limits detached accessory structures to a maximum height of fourteen (14) feet from grade. The applicants also seek 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 erect a detached accessory structure (garage) which would exceed the maximum allowable height from grade. This variance also seeks to allow the creation of a secondary driveway with a width that, when added to the existing driveway width, would exceed the maximum 20 feet permissible through the R.O.W. on a property zoned R-1 (Residential) located at 20 Winchester Drive (PIDN: 004.861 / Sussex CTM#: 134-12.00-1804.00).

Lot combination P-274 was approved by Planning and Zoning on November 21, 2013 resulting in a total street frontage on this lot of approximately 180 feet.

Mr. Doug M. Morris was sworn-in by Mr. Schrader. He said he purchased the lot in 2006 and soon after, he bought the house. Due to a setback problem, he combined lots in 2013 and now needs a variance for the driveway and a variance for the height of the garage, which he is adding a second floor. He would like the pitch of the garage roof to match the pitch of the house roof.

Mr. Neuner questioned the width of the driveway at the street. Mr. Morris said it was 12'. He also noted that there would be no living quarters on the second floor. Mr. Reddington asked what would be on the second floor. Mr. Morris said just rafters.

There were four letters of support from his neighbors. No public comment.

***A motion was made by Mr. Reddington, seconded by Mr. Neuner, in favor of allowing the driveway variance of 12' at street to 28' at garage. The motion carried 5/0.***

***A motion was made by Mr. Brendel, seconded by Mr. Neuner, in favor of allowing the height on the garage as long as the second floor is not used for living quarters. The motion carried unanimously 5/0.***

**C. V-378 14 Betts Avenue (PIDN: 127.000/Sussex CTM#: 134-12.00-320.00)**

Ms. Schwartz noted that the application was advertised and posted.

Mr. James Lober was sworn-in and read his overview. He said Application V-378 was submitted by John A. Sergovic, Jr., Esq., on behalf of the property owners Jane W. Tribbitt, Nancy H. Rhodes, and Laura L. Hickman regarding 14 Betts Avenue, Sussex CTM # 134-12.00-320.00, PIDN 127.000. The property owners are seeking multiple variances associated with the proposed subdivision of the property. Specifically, the variances requested apply to proposed lots 4 and 5 of the 5 lot subdivision. Proposed lot 5 will contain all of the improvements associated with the existing dwelling. The specific variances are enumerated below.

1. A Variance from Article IV, §140-25-C (5) (b) 2 to allow the water's edge of an existing swimming pool to encroach into the required rear yard setback.

The existing parcel prior to the proposed subdivision is approximately 3.5 acres. The swimming pool is located within the boundary of the existing parcel such that it does not currently violate any required setbacks. However, the proposed subdivision of the parcel places a lot line approximately 22 ft. from the water's edge of the pool. This lot line separates proposed lot 5 from proposed lot 4 and will become the new rear lot line for lot 5. As such, this rear lot line requires a 30 ft. building setback. Article IV, §140-25-C(5)(b)2 states that swimming pools on residential lots must be located so that the distance from the water's edge to the rear lot line is not less than the required building setback. The existing pool will encroach approximately 8 ft. into the required building setback based on the proposed lot line. Therefore, to permit the proposed subdivision of the lot as currently configured and to permit the existing pool to remain, a variance from this section of the code is required.

2. A Variance from Article VI, §140-35-A (2) (b) to allow an existing deck to encroach into the required rear yard setback.

The deck is associated with the swimming pool referenced above. It is attached to the principal dwelling and it is also located within the boundary of the existing parcel such that it does not currently violate any required setbacks. However, the proposed subdivision of the parcel places a lot line approximately 15.2 ft. from the edge of the deck. This lot line separates proposed lot 5 from proposed lot 4 and will become the new rear lot line for lot 5. As such, this rear lot line requires a 30 ft. building setback. Article VI, §140-35-A(2)(b) states that a deck attached to a building or structure shall be subject to the same rear setback standard as the building to which it is attached. The existing deck will encroach approximately 14.8 ft. into the required building setback based on the proposed lot line. Therefore, to permit the proposed subdivision of the lot

as currently configured and to allow the deck to remain, a variance from this section of the code is required.

3. A variance from Article V, §140-32 to allow an existing detached accessory structure to remain forward of the principal structure.

The existing detached garage is currently located forward of the principal structure. As such, it is an existing non-conformity on the lot. Article V, §140-32 states that detached accessory structures are not permitted within the front yard. The proposed subdivision of the parcel requires that the existing non-conformity be brought into compliance or permitted by virtue of obtaining a variance to allow it to remain.

4. A variance from Article III, §187-10-A to allow an existing driveway to exceed the maximum width and to remain within the minimum setback from the side lot line.

The existing driveway is currently wider than 20 ft. within the right-of-way and located approximately 1.6 ft. from the side lot line. As such, it is an existing non-conformity on the lot. Article III, §187-10-A states that driveways shall have a maximum width of 20 ft. for the area within the limits of the Town right-of-way and not be placed within 5 ft. of a property line. The proposed subdivision of the parcel requires that the existing non-conformity be brought into compliance or permitted by virtue of obtaining a variance to allow it to remain.

5. A variance from Article V, §140-32 to allow an existing detached accessory structure to remain taller than the maximum allowable height.

The existing detached garage referenced in item #3 above is currently approximately 23.3 ft. tall. As such, it is an existing non-conformity on the lot. Article V, §140-32 states that detached accessory structures shall not be taller than 14 ft. The proposed subdivision of the parcel requires that the existing non-conformity be brought into compliance or permitted by virtue of obtaining a variance to allow it to remain.

Mr. John Sergovic, attorney for the property owners, was present and spoke briefly to the Board. Mr. Greg Hook was sworn-in by Mr. Schrader. Mr. Hook showed the Board that all the waterfronts lot as 30' setbacks. The L-shape lot is the problem.

Mr. Sergovic asked to suspend the hearing on the variances and go to the appeal, because it would explain better their interpretation.

***A motion was made by Mr. Reddington, seconded by Mr. Neuner, to defer action on the hearing of the variances and move to the appeal. The motion carried unanimously 5/0.***

**D. A-001 14 Betts Avenue (PIDN: 127.000/Sussex CTM#: 134-12.00-320.00)**

Ms. Schwartz commented that this was noticed and advertised as required. Mr. Lober stated a request to appeal a decision made by the Administrative Official was submitted by John A. Sergovic, Jr., Esq., on behalf of the property owners Jane W. Tribbitt, Nancy H. Rhodes, and Laura L. Hickman regarding 14 Betts Avenue, Sussex CTM # 134-12.00-320.00, PIDN 127.000. The property owners are seeking to subdivide the subject parcel into five residential lots. This subdivision will create four new unimproved building lots. The proposed lot 5 will contain all of the improvements associated with the existing dwelling.

All five of the lots will front on and take access from the Town right-of-way for Betts Avenue. This, in accordance with Article XXI §140-152 defines the property line along Betts Avenue as the front lot line for all five lots. Article XXI §140-152 of the code defines the rear lot line as the line opposite and most distant from the front lot line. This, in turn, sets the southern boundary lines along the subdivision of Winding Waters as the rear lot lines for lots 1-4 and the proposed lot line between lots 5 and 4 as the rear lot line for lot 5. Finally, Article XXI §140-152 defines the side lot lines of each parcel as all of the other lot lines.

Article V§140-28 requires minimum building setbacks for single family homes in R-1 zoning of 25 ft. from a front lot line or a side lot line abutting a street, 30 ft. for rear lot lines and 15 ft. for side lot lines. Therefore, the property line along Betts Avenue for all five lots and the side lot line along Powell Lane for lot 1, require a 25 ft. building setback. The southern boundary lines along the subdivision of Winding Waters for lots 1-4 and the proposed lot line between lots 5 and 4 require a 30 ft. building setback, and all other lot lines require 15 ft. setbacks.

The subdivision plan submitted depicts 15 ft. setbacks on the southern boundary of lot 4 along Winding Waters and on the proposed lot line between lots 4 and 5. It also shows 30 ft. setbacks along the western boundary of lots 4 and 5 along White's Creek. In a minor subdivision plan review letter dated 9/7/18, it is brought to the applicant's attention that the setbacks on these lines are shown incorrectly and the statement is made that the plan must be revised to correct the setbacks. The point is also made in that same letter that the correct depiction of the setbacks will result in existing improvements on the proposed lot 5 being rendered as in violation of the required setbacks based on the proposed configuration of the subdivision. A previous review letter dated 6/15/18 noted the possibility that the configuration of the proposed subdivision could possibly create non-conformities on the proposed lot 5, it requested that all non-conformities created be enumerated by the applicant and stated that any non-conformities would need to be corrected or variances obtained to permit them to remain.

In response to this direction, the applicant, through their surveyor and attorney, offered an alternative interpretation of the way in which building setbacks are applied to the respective lot lines. This interpretation was taken into consideration by the Town Administrative Official, and debated at a meeting with the Town Administrative Official, the Town Solicitor, The Town Engineer and Town staff. Ultimately, it was determined by the Town Administrative Official that the alternative interpretation offered by the applicant was incorrect, and the applicant was directed to comply with the review comments of record issued by the Town. It is this decision, to deny the alternative interpretation of the application of building setbacks that is being appealed.

Mr. Schrader asked Mr. Hook to approach the dais to verify which of the drawings they should all be looking at. Mr. Schrader marked them exhibit #1 and exhibit #2. Exhibit #1 was dated 3/6/2018 and Exhibit #2 was dated 11/30/2018.

Mr. Sergovic stated the problem is an issue with Mr. Lober's interpretation. Mr. Lober stated the line opposite front line is rear lot line. Everyone agreed that Lots #1, 2, 3 have no problems. Lot #4 and #5 have setback problems. Line between lots #4 and #5 have a 15' side setback.

Mr. Neuner commented that this could not be the only L-shaped lot in Ocean View. Mr. Reddington stated that he felt you could not have two rear lot lines and agreed with the applicant.

*A motion was made by Mr. Reddington, seconded by Mr. Neuner, to agree with the applicants' interpretation. The motion carried unanimously 5/0.*

Mr. Schrader said the Board still needed to consider variances #3, #4, and #5.

*A motion was made by Mr. Reddington, seconded by Mr. Walsh, to reopen the bearing on variances. The motion carried unanimously 5/0.*

#3 Garage: The garage was permitted in 1993, and is the location of Laura Hickman's framing studio. Its hardship is that it is in front of the primary residence. Laura Hickman was sworn-in. She stated her father designed the garage, and she wants to use it as a studio. She noted she has had a business license with the Town for the last ten years.

#4 Driveway: Mr. Sergovic the driveway has been there as long as everyone knows. Mr. Timothy Tribbitt was sworn-in. He said he worked for his father-in-law until 1986 when he took over the business. The hardship is that having to change the concrete driveway would be economically wasteful. Mr. Neuner asked if other vehicles use it. Mr. Tribbitt replied it is used as a cul-de-sac.

#5 Garage Height: Mr. Sergovic there was no height restriction when the garage was built. They are requesting the minimum variance they can.

No public comment.

*A motion was made by Mr. Neuner, seconded by Mr. Reddington, to approve the variance requested for the garage. The motion carried unanimously 5/0.*

*A motion was made by Mr. Neuner, seconded by Mr. Walsh, to allow the variance on the driveway. The motion carried unanimously 5/0.*

*A motion was made by Mr. Neuner, seconded by Mr. Reddington, to allow the height on the garage. The motion carried unanimously 5/0.*

5. **ADJOURNMENT**

*A motion was made by Mr. Neuner, seconded by Mr. Brendel, to adjourn the meeting at 9:25pm. The motion carried unanimously 5/0.*

Respectfully submitted,  
Donna M. Schwartz, CMC