

BOARD OF ADJUSTMENT MINUTES
TOWN OF OCEAN VIEW
January 24, 2019

1. Board of Adjustment Chair Susan Kerwin called the meeting to order at 7:00 pm with the Pledge of Allegiance. Also in attendance were Board Members John Reddington and Don Walsh. Planning & Zoning Director Ken Cimino, Town Solicitor Ross Karsnitz, and Town Clerk Donna Schwartz. The meeting was held in the Ocean View Town Hall, 32 West Avenue. Mr. Brendel and Mr. Neuner were not present.

2. **APPROVAL OF THE AGENDA**

A motion was made by Mr. Reddington, seconded by Mr. Walsh, to approve the agenda as presented. The motion carried unanimously 3/0.

3. **APPROVAL OF THE MINUTES**

A motion was made by Mr. Walsh, seconded by Mr. Reddington, to approve the minutes for December 20, 2018 meeting. The motion carried unanimously 3/0.

4. **NEW BUSINESS**

A. V-379 19 Sally Lane (PIDN: 094.880/Sussex CTM#:134-12.00-2133.00)

Mr. Cimino read the following, Application V-379, submitted by the property owners Gerald T. Mikesell & Anne J. Loughney for property zoned R-1 (Residential) located at 19 Sally Lane (PIDN: 094.880 / Sussex CTM# 134-12.00-2133.00). The applicants request variances from the following Town Codes:

1. Article V, §140-28 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code in order to exceed the maximum lot coverage of 35% allowed in the R-1 single family district so that the applicants may construct an addition onto their existing dwelling unit.
2. Article V, §140-32, §140-33, and §140-35 for an existing enclosed porch and open deck on the west side of the dwelling as well as an existing garage, covered deck and open deck on the east side of the dwelling in order for all of these existing features to continue to project into the required building setbacks.
3. Article V, §140-32 for an existing detached accessory structure (shed) which encroaches into the required side and rear yard setbacks.
4. Article XVI, §140-100-D (12)(b)[4] and Article III, §187-10-A of the Town Code in order to maintain an existing driveway which exceeds the maximum width of 20 feet through the right-of-way (R.O.W.).

The applicants Gerald Mikesell and Anne Loughney were also sworn-in by Mr. Karsnitz. Mr. Cimino read his overview and made the following statements:

1. The applicant is requesting a variance from Article V, §140-28 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code in order to exceed the maximum lot coverage of 35% allowed in the R-1

single family district so that the applicants may construct an addition onto their existing dwelling unit. The Town has no comment on this request.

2. The applicant is requesting a variance from Article V, §140-32, §140-33, and §140-35 for an existing enclosed porch and open deck on the west side of the dwelling as well as an existing garage, covered deck and open deck on the east side of the dwelling in order for all of these existing features to continue to project into the required building setbacks. These existing non-conformities were previously constructed in accordance with all requirements at the time that they were constructed.
3. The applicant is requesting a variance from Article V, §140-32 for an existing detached accessory structure (shed) which encroaches into the required side and rear yard setbacks. This existing non-conformity was previously constructed in accordance with all requirements at the time that it was constructed.
4. The applicant is requesting a variance from Article XVI, §140-100-D (12)(b)[4] and Article III, §187-10-A of the Town Code in order to maintain an existing driveway which exceeds the maximum width of 20 feet through the right-of-way (R.O.W.). This existing non-conformity was previously constructed in accordance with all requirements at the time that it was constructed.

Ms. Kerwin questioned all the non-conformities. Mr. Mikesell said all the non-conformities were there when the house was built in 1999. He purchased the house in 2002. Mr. Cinimo said they were in conformity when they were built, then the code changed. Mr. Mikesell stated he is adding an addition to add a bedroom. Mr. Karnsitz questioned the amount of lot coverage. Mr. Cimino replied it is 35%.

Mr. Karsnitz asked if there was anything unique about his property. Mr. Mikesell said his property is a corner lot facing two streets. Mr. Reddington asked about the layout of the addition. Mr. Mikesell explained they are making a new master bedroom and smaller bedroom. Mr. Cimino noted the Town has no objection to this variance.

A motion was made by Mr. Reddington, seconded by Mr. Walsh, to approve all four variance requests. The motion carried unanimously 3/0.

B. V-380 9 Colt Lane (PIDN: 004.490/Sussex CTM#:134-12.00-697.00)

Application V-380, submitted by Insight Homes on behalf of the property owners Thomas M. & Sharon A. Mullaney, requesting a variance from Article V, §140-28 of the Land Use and Development Chapter (L.U.D.C.) which requires a 30 ft. rear setback in the R-1 (Residential) Zone. The applicants wish to erect a dwelling unit that will encroach approximately 15

ft. into the required rear yard setback on a lot zoned R-1 (Residential) located at 9 Colt Lane (PIDN: 004.490 / Sussex CTM# 134-12.00-697.00). Mr. Cimino stated the applicant is requesting a variance from Article V, §140-28 of the Land Use and Development Chapter (L.U.D.C.) which requires a 30 ft. rear setback in the R-1 (Residential) Zone. The construction of this dwelling as requested could have a negative impact on the property located directly behind it and could negatively impact any future improvements at the rear of the property due to the lack of required setback.

He further stated that the Department of Planning, Zoning and Development does not believe the applicant has demonstrated that any hardship outlined in their application for relief has been created by factors outside of their control. Residential dwellings exist on each adjacent lot and all lots in the Country Estates Community are of similar size. It should be incumbent upon the applicant (purchaser/owner) to research local Zoning requirements to determine if the parcel they purchased can support the size dwelling they wish to construct.

Mr. Bryan Elliott, representing Insight Homes, was sworn-in by Mr. Karsnitz. Mr. Elliott said he disagrees with Mr. Cimino about the rear lot setbacks. He noted that they would be placing a modest 2,380sqft house on the property.

Mr. Walsh asked if there was another size home they could put on this lot. Mr. Elliott said it is becoming increasingly difficult to build modest homes on smaller lots. He said this beach-type home would enhance the neighborhood. Mr. Karsnitz inquired whether this lot was smaller than the other lots in the neighborhood. Mr. Elliott replied no. He said the lots surrounding this lot have older smaller homes on them.

Mr. Reddington asked what was on the lot behind the lot in question. Mr. Elliott replied it is a wooded lot with trees.

There was no public comment.

Mr. Cimino suggested centering the house on the lot. Mr. Karsnitz stated he did not see much uniqueness to this lot, nor any practical difficulty associated with the property itself. Mr. Elliott stated he felt the practical difficulty is that the lot is less than a quarter acre. Mr. Reddington stated the buyer should have been aware of Town code when they purchased the lot and knew this property was not suitable for the house they wanted to build. The Town code is in place for a reason.

A motion was made by Mr. Reddington, seconded by Mr. Walsh, to deny the variance request for 9 Colt Lane. The motion carried unanimously 3/0.

C. V-381 8 Daisey Avenue (PIDN: 158.000/Sussex CTM#:134-12.00-577.00)

Mr. Cimino stated that Application V-381, was submitted by the property owners Duncan G. & Cynthia R. Smith for property zoned R-1 (Residential) located at 8

Daisey Avenue (PIDN: 158.000 / Sussex CTM# 134-12.00-577.00). The applicants request variances from the following Town Codes:

1. Article V, §140-28 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code in order to maintain an existing dwelling unit that encroaches into the required 15' side yard setback.
2. Article XVI, §140-100-D (12)(b)[4] & Article III, §187-10-A in order to maintain an existing driveway which exceeds the maximum allowable width of 20' through the Right-of-Way and is also placed closer than five (5) feet to the property line. The applicants wish to extend this existing driveway to a proposed garage.
3. Article V, §140-32 in order to erect a detached accessory structure (garage) which will exceed the maximum allowable height of 14 feet from grade.

Mr. Cimino read the following Town Comments:

1. The applicant is requesting a variance from Article V, §140-28 of the Land Use Development Chapter (L.U.D.C.) of the Town Code in order to maintain an existing dwelling unit that encroaches into the required 15' side yard setback. This existing non-conformity was previously constructed in accordance with all requirements at the time it was constructed.
2. The applicant is seeking a variance from Article XVI, §140-100-D (12)(b)[4] & Article III, §187-10-A in order to maintain a driveway which exceeds the maximum allowable width of 20' through the right-of-Way and is also placed closer than five (5) feet to the property line. The applicants wish to extend this driveway to a proposed garage. The existing driveway was previously constructed in accordance with all requirements at the time it was constructed. The driveway extension will be constructed with the proper five (5) foot offset from the property line.
3. The applicant is seeking a variance from Article V, §140-32 in order to erect a detached accessory structure (garage) which will exceed the maximum allowable height of 14 feet from grade.

The new garage, as proposed would be twenty-three (23) feet, four (4) inches in height, exceeding the maximum height allowed by the Town Code by nine (9) feet, four (4) inches. The characteristics of this proposed detached accessory structure are similar to that of the detached accessory structure located on the adjacent property at 10 Daisey Avenue.

The Department of Planning, Zoning and Development recommends that should the Board of Adjustment grant this variance it shall be noted with the stipulation that the additional space above the garage shall not be used as a living quarters and shall be used for storage only

Mr. Duncan Smith was sworn-in by Mr. Karsnitz. Mr. Walsh questioned if it was necessary for the garage to be that high. Mr. Smith explained that it must be this high in order to match the pitch of the roof of the historic house.

Mr. Robert Svenson, Woodland Avenue, spoke in favor of the application saying it was one of the oldest houses in Ocean View, pre-Civil War, and the garage will match the historic look of the house.

A motion was made by Mr. Reddington, seconded by Mr. Walsh, to approve the variance application as requested with the condition that the second floor of the garage not be used as living quarters. The motion carried unanimously 3/0.

5. **ADJOURNMENT**

A motion was made by Mr. Walsh, seconded by Mr. Reddington, to adjourn the meeting at 7:35pm. The motion carried unanimously 3/0.

Respectfully submitted,
Donna M. Schwartz, CMC