

BOARD OF ADJUSTMENT MINUTES
TOWN OF OCEAN VIEW
August 20, 2020

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

2. **REORGANIZATION OF BOARD**

Town Clerk Donna Schwartz swore-in new member Preston Coppels.

Mr. Neuner nominated Mrs. Kerwin for the position of chair. Mr. Brendel seconded. The motion carried unanimously 5/0.

Mr. Neuner nominated Mr. Walsh as co-chair. Mr. Brendel seconded. The motion carried unanimously 5/0.

3. **APPROVAL OF THE AGENDA**

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

4. **APPROVAL OF THE MINUTES**

A motion was made by Mr. Brendel, seconded by Mr. Neuner, to approve the minutes for the December 19, 2019 meeting. The motion carried unanimously 5/0.

Mr. Schrader gave all overall summary of the Conduct for Hearings to the audience. He swore-in Mr. Ken Cimino and Ms. Donna Schwartz. Ms. Schwartz confirmed that the application had been advertised, noticed, and posted in accordance to the rules of the hearing.

5. **NEW BUSINESS**

A. V-401 8 Daisey Avenue (PIDN:158.000/CTM# 134-12.00-577.00)

Mr. Cimino read his overview for Application V-401. He said this application is 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 a variance from the following Town Code:

1. Article V, §140-32 in order to maintain an existing detached accessory structure (garage) within the required side yard setback

Mr. Cimino had the following comments to make. He said the applicant is seeking a variance from Article V, §140-32 in order to maintain an existing detached accessory structure (garage) within the required side yard setback.

The new garage was mistakenly constructed into the side yard setback approximately 1.5 feet to the north and 0.5 feet to the south. The mistake does not have any negative effect on the surrounding properties.

Mr. Duncan Smith was present and sworn-in by Mr. Schrader. He explained that the garage is in the setback by 6' on the side setback and 1½ feet in the rear setback. Mr. Brendel question how the garage was being used. Mr. Smith replied as a garage to store things. Mrs. Kerwin asked if there was water availability to the garage. Mr. Smith replied no.

No public comment.

A motion was made by Mr. Brendel, seconded by Mr. Neuner, to grant the variance for 8 Daisey Avenue. The motion carried unanimously 5/0.

B. V-402 55 Daisey Avenue (PIDN: 134.020/CTM#134-12.00-2024.00)

Mr. Schrader asked Ms. Schwartz if the application had been advertised and posted. She replied yes. Mr. Cimino gave the overview for Application V-402, submitted by the property owners, Brent and Ingrid Poffenberger, requesting variances from Article V, §140-32 and Article VI, §140-35-B(2)(b) of the Land Use and Development Chapter (L.U.D.C.) of the Town Code. Article V, § 140-32 requires detached accessory structures to maintain the same side yard setback as the principal structure (15 feet in the R-1 zone). Article VI, § 140-35-B(2)(b) states that a patio may project into a required side yard setback as long as it is placed no closer than 10 feet to any lot line.

This variance application seeks to allow the applicants to maintain an existing detached accessory structure (shed) within the required side yard setback as well as an existing wooden patio that is placed closer than 10 feet to the side lot line, on a property zoned R-1 (Single Family Residential District), located at 55 Daisey Avenue (PIDN: 134.020 / CTM# 134-12.00-2024.00).

Mr. Cimino offered the town comments as saying the existing shed and wood patio are at the rear of the property abutting the White Creek and pose no significant change or adverse effect on the surrounding properties. He said he had no objection to this variance.

Mr. Brent Poffenberger was present and sworn-in by Mr. Schrader. He produced a letter from Steve Parsons, who designed the home, deck and shed under the old code. He said it was lawful when built. Mr. Poffenberger said he has county and fire marshal approval.

No public comment.

A motion was made by Mr. Neuner, seconded by Mr. Walsh, to grant the variance as requested. The motion carried unanimously 5/0.

C. V-403 14 S. Primrose Lane (PIDN:001.070/CTM#134-12.00-773.00)

Mr. Schrader asked Ms. Schwartz if the application had been advertised and posted. She replied yes. Mr. Cimino gave the overview for Application V-403, submitted by the property owners, Larion & Carole Klimovitz, requesting variances from Article V,

§140-28 and Article V, §140-32 of the Land Use and Development Chapter (L.U.D.C.) of the Town Code. Article V, § 140-28 sets a maximum lot coverage of 35% for all buildings and structures in the R-1 zone and Article V, §140-32 requires that attached accessory structures maintain the same rear yard setback as the principal structure (30 feet in R-1 zone).

This variance application seeks to allow the applicants to construct an attached accessory structure (outdoor shower) which would project into the required 30' rear yard setback and also exceed the maximum allowable lot coverage on a property zoned R-1 (Single Family Residential District), located at 14 S. Primrose Lane (PIDN: 001.070 / CTM# 134-12.00-773.00).

The existing home and features were constructed under the under the old Town Code prior to the 35% lot coverage restriction. This existing condition does not have an adverse effect on the neighboring properties.

Mr. Cimino offered the town comments as saying the proposed outdoor shower is located at the rear of the dwelling and the yard is enclosed by a fence. This dwelling also abuts Central Avenue in the rear. The proposed outdoor shower will not have an adverse effect on the surrounding properties.

Mr. Neuner questioned how much over the lot coverage the shower would intrude. Mr. Cimino replied 3/10 of a percent.

Mr. Larry Klimovitz was present and sworn-in by Mr. Schrader. Mr. Klimovitz stated he had Country Village HOA approval. The shower would be surrounded by a solid wood fence. Mr. Walsh questioned if this was an outdoor shower. Mr. Klimovitz replied yes. He said it was a pvc shower kit that matches his house.

No public comment.

A motion was made by Mr. Neuner, seconded by Mr. Brendel, to grant the variance as requested. The motion carried unanimously 5/0.

D. V-404 28 Luzerne Drive (PIDN: 413.053/CTM#134-16.00-901.00)

Mr. Schrader asked Ms. Schwartz if the application had been advertised and posted. She replied yes. Mr. Cimino gave the overview for Application V-403, submitted by the property owners, Bruce and Rosemary Rose, for a variance from Article VII, §140-50-B of the Town Code, which sets some dimensional regulations for Planned Communities, allows Town Council to set other dimensional regulations, and indicates that dimensional regulations not defined will comply with those set forth in R-3 zoning requirements. Ordinance 321 adopted by Town Council on March 10, 2015 established the following requirements for the Silverwoods Mixed-Use Planned Community (M.X.P.C.): “the minimum separation between dwelling units and attached accessory buildings/structures shall be 15 feet”; and also that “a drainage easement, equal to the minimum separation of 15 feet required between dwelling units, shall be provided.”

The property owners wish to construct an attached accessory structure (outdoor shower) on the side of their house, which would result in a reduced building separation between the attached accessory structure and the neighboring dwelling unit on property zoned M.X.P.C. (Mixed Use Planned Community), located at 28 Luzerne Drive (PIDN: 413.053 / CTM# 134-16.00-901.00).

Mr. Cimino offered the town comments as saying this existing home is in a Residential Planned Community. Residential Planned Communities offer uniform consistency and a sense of order throughout the community. The applicant has stated in the standards for relief that the lot is unique due to the placement of the dwelling creating a “narrowness or shallowness” of lot size.

Construction of this shower is within the building restriction line but will encroach into the Town’s 10-foot drainage easement. If the Board so chooses to approve this application for the variance, it should be noted that should the Town need to access the area of the drainage easement and remove the shower enclosure the cost of removal shall be the responsibility of the property owner.

Mr. and Mrs. Bruce Rose were present and sworn-in by Mr. Schrader. Mr. Rose stated the rough-in for the shower is on the side of the house. He is installing the shower in gravel, not concrete, so he is okay with having to dig it up if necessary.

Mr. Walsh asked if there were any other outdoor showers in Silverwoods. Mr. Rose replied yes. Mr. Walsh asked if they were on the side of the house. Mr. Rose replied yes. Mr. Schrader reiterated that Mr. Rose would have to bear the cost of removing the shower from the drainage easement if needed in the future. Mr. Rose replied that he understood.

No public comment.

A motion was made by Mr. Neuner, seconded by Mr. Coppels, to grant the variance with condition that if needed the homeowner would have to pay to remove the shower from the drainage easement. The motion carried 3/2 with Mr. Walsh and Mr. Brendel in opposition.

6. ADJOURNMENT

A motion was made by Mr. Brendel, seconded by Mr. Neuner, to adjourn the meeting at 7:00pm. The motion carried unanimously 5/0.

Respectfully submitted,
Donna M. Schwartz, CMC