

SINCE 1889



**TOWN OF OCEAN VIEW, DELAWARE
BOARD OF ADJUSTMENT
VARIANCE APPLICATION**

Land Use • Permitting • Licensing • Code Enforcement • Public Works

302 539-1208 (office) • 302 537-5306 (fax)

admin@oceanviewde.com / www.oceanviewde.com

SINCE 1889



Fee: \$ 750.00

V - 447
448

Variance is defined as relief from the strict application of the provisions of Chapter 140 of the Code when, owing to special conditions or exceptional situations, a literal interpretation of this Chapter will result in exceptional practical difficulties to the property owner.
Application, requesting a variance from the Code of the Town of Ocean View, is hereby made for property located at: Silver Woods Villas, TMP 134-16.00-45.00, 914.00, 951.00. The Justification for the Variance

(Explanation of Hardship) is: the combination of narrower lots for townhouses and the number and size of driveways for on-lot parking; see attached.

I/We, the property owner(s) and/or applicant(s) do certify that all information and documents provided for this application are accurate, to the best of our knowledge, and I/We further understand that a hearing will not be scheduled until this application is complete as determined by the Administrative Official of the Town of Ocean View.

Owner(s) of Record (Print): Silverstock WP, LLC, Silverstock Builders, LLC, Robert Thornton Phone #: 302.430.8053

Address of residence: 19 Colt Ln., Ocean View, DE 19970

Signature(s): Date: 6/15/23
(Property Owner(s))

Applicant(s) (Print): Same as above

Phone #:

Address:

Signature(s): Date: 6/15/23
(Applicant(s))

TO

Silver Woods Mixed-Use Planned Community – Proposed Townhouse District

(PIDNs: 413.200, 413.300, & 413.400)

Va.

CTMs# 134-16.00-914.00, 134-16.00-951.00, 134-16.00-45.00

NOTICE IS HEREBY GIVEN BY the Board of Adjustment of the Town of Ocean View that public hearings will be held on the following variance applications associated with the proposed Townhouse District of the Silver Woods community:

Co

V-447: a request for a variance from Article II, § 187-11-B of the Streets and Sidewalks chapter of the Town Code which requires that all curbing shall be DelDOT PCC Type 1 Vertical Face with eight-inch reveal. This variance seeks to permit Type 2 Integral Curb & Gutter ("Rolled Curb") in the proposed Townhouse District as opposed to the Type 1 Vertical Face with eight-inch reveal required by Article II, § 187-11-B.

—

V-448: a request for a variance from Article II, § 187-10-A and Article XVI, § 140-100-D(12)(b) of the Town Code. Article II, § 187-10-A states: "Driveways shall not be placed within five (5) feet of a property line." Article XVI, § 140-100-D(12)(b) states that "driveways shall be a minimum of five (5) feet from any property line." The developer proposes to construct driveways on 161 townhouse lots that will be installed less than five (5) feet from a property line. The applicant requests a reduction of the 5-foot driveway setback to 1.5 feet.

Va

The applications are submitted by the property owner/developer, Mr. Robert Thornton, Silverstock WP, LLC. Silver Woods is zoned as a Mixed-Use Planned Community (MXPC) and located along Beaver Dam Road.

Date Received: 6/15/23 Date Advertised: 6/30/23 Hearing Date: 7/20/23

BOARD OF ADJUSTMENT USE ONLY:

Approved: _____
Date

Chairperson, Board of Adjustment

Denied: _____
Date

Chairperson, Board of Adjustment

Town of Ocean View

****RECEIPT FOR TOWN FEES****

Financial Good Standing

DATE 07/07/2023	PROPERTY OWNER NAME Silverstock WP LLC
PIDN 413.200 various	PROPERTY LOCATION Silverwoods MXPC

Taxes current?	Checked:
Yes	JO
Invoices, if any, current?	
Yes	JO
Water charges, if any, current?	
N/A	JO

MCSJ Acct #	Description of Fees	Amount
01-400-120-105	Building Permit # _____	
01-400-120-110	Sign Permit # S- _____	
01-400-120-115	Impact Fees (\$1,436.00 per New Construction for Capital Costs)	
01-400-120-120	Impact Fees (\$ 500.00 per New Construction for ESEF Program)	
01-400-120-120	ESEF @ .5%	0.00
01-400-120-125	Single Lot Development Fee	
01-400-125-175	P- _____ P&Z V-447&448 Board of Adj Fees	850.00
01-400-120-130	Other Fee (circle): Deed Recordation Bid Package	
	Other (describe): _____ Subtotal	\$ 850.00
01-400-130-175	CREDIT CARD CONVENIENCE FEE: General 3%	
	TOTAL FOR MCSJ FINANCE MODULE (General Fund Money Market)	\$ 850.00
01-400-121-110	Temp Bus License # _____	
01-400-121-135	Business License # _____	
01-400-121-155	Rental License # _____	
01-400-130-175	CREDIT CARD CONVENIENCE FEE: General 3%	
	TOTAL FOR MCSJ A/R MODULE (General Fund Money Market)	\$ -
01-400-115-003	Real Estate Transfer Tax @ 1.5% (Transfer Tax Acct)	
01-400-130-175	CREDIT CARD CONVENIENCE FEE: General 3%	
	TOTAL TRANSFER TAX MONEY MARKET ACCOUNT	\$ -
05-400-101-102	Water Permit # _____ (Water Fund)	
05-400-101-103	Water Service Connection (Water Fund)	
05-400-101-104	Water Inspection (Water Fund)	
	Subtotal	\$ -
05-400-201-110	CREDIT CARD CONVENIENCE FEE: Water 3%	
	TOTAL WATER SYSTEM CHECKING ACCOUNT	\$ -
	TOTAL DEPOSIT RECEIVED (May pay on one check)	\$ 850.00

Payment received by:	JO	Check #/CC Auth Code	ck# 3102
Name on Check if not Property Owner		Date Received	6/15/23

Updated: cal 06/15/2015

V-447 +
V-448



SETH L. THOMPSON
Wilmington Office
Direct Dial: 302-594-3333
sthompson@pgslegal.com
Firm Website: www.pgslegal.com

June 15, 2023

VIA EMAIL (Kenneth Cimino kcimino@oceanviewde.gov)

Board of Adjustment
Town of Ocean View
201 Central Ave.
Ocean View, DE 19970

**RE: Variances Requested for
Silver Woods Villas, TMP 134-16.00-45.00, 914.00, 951.00**

Dear Town of Ocean View Board of Adjustment Members:

I write regarding an application (“the Application”) submitted by my client, Silverstock WP, LLC & Robert Thornton (“the Applicant”) for two variances related to the above properties, TMP 134-16.00-45.00, 914.00, 951.00 (collectively “the Property”). The Application seeks two variances from the Town of Ocean View Code (“the Code”) in connection with the development and construction of the Single Family “Villa” (a/k/a Townhouse) District in the Mixed Use Planned Community of Silver Woods (the “Community”). The Community Silver Woods is zoned as a Mixed-Use Planned Community (“MXPC”) and located along Beaver Dam Road. Specifically, the Application requests:

1. A VARIANCE TO PERMIT TYPE 2 INTEGRAL CURB AND GUTTER (“ROLLED CURB”), AS OPPOSED TO THE TYPE 1 VERTICAL FACE WITH EIGHT-INCH REVEAL, REQUIRED UNDER CODE SECTION 187-11B; and
2. A VARIANCE TO REDUCE CODE SECTION 187-10A’S 5-FOOT DRIVEWAY SETBACK TO 1.5 FEET.

For the reasons that follow and the information that will be provided at the hearing on the Application, the variance requests meet the Code requirements, as well as the standards set forth in *Board of Adjustment v. Kwik-Check Realty*.¹

¹ 389 A.2d 1289 (Del. 1978).

Regarding the Code, the legal standard is set out in Section 140-108's criteria. Those criteria are as follows:

- (1) The variance relates to a specific parcel of land, and the hardship is not shared generally by other properties in the same zoning district and vicinity;
- (2) The variance can be granted without substantial detriment to the public good;
- (3) The benefits from granting the variance would substantially outweigh any detriment;
- (4) Approval of the variance would not substantially impair the intent and purposes of the Comprehensive Plan or this chapter; and
- (5) All requirements for the grant of a variance under Delaware law.²

Next, the *Kwik-Check* factors the Board is required to balance are: (1) the nature of the zone in which the property lies; (2) the character of the immediate vicinity and uses therein; (3) whether, if the restriction was removed, such removal would seriously affect neighboring properties and uses; and (4) whether, if the restriction was not removed, such restriction would create unnecessary hardship or exceptional practical difficulty to the Applicant in its effort to make normal improvements in the character of the property's permitted use.

These factors constitute a weighing analysis, requiring the Board of Adjustment to "weigh[] the potential harm to the neighboring properties by granting the variance against the potential harm to the property owner by denying it."³ The Delaware Supreme Court has described the exceptional practical difficulty standard as a "lesser" standard than that applied in a use variance analysis.⁴ Furthermore, "the fact that an applicant has prior knowledge of existing zoning regulations applicable to the land does not preclude the right to a variance; it is merely an element to be considered when determining the existence of a hardship."⁵ Similarly, while economic hardship alone is not sufficient evidence to grant a variance, it is a factor that the Board may consider when weighing the evidence.⁶ In addition to the information below, enclosed are copies of the Board's form promulgated for the variance standards.

² Title 22, Section 327 notes that the variance "will not be contrary to the public interest where, owing to special conditions or exceptional situations, a literal interpretation of this chapter or any zoning regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of this chapter or zoning regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter, zoning regulation, or map."

³ *McLaughlin v. Bd. Of Adjustment of New Castle Cty.*, 984 A.2d 1190, 1192-93 (Del. 2009)

⁴ *City of Lewes v. Nepa*, 212 A.3d 270, 275 (Del. 2019)

⁵ *Hanley v. City of Wilmington Zoning Bd. of Adjustment*, 2000 WL 1211173, at *4 (Del. Super. Ct. Aug. 3, 2000).

⁶ *See Zober v. Kent Cty. Dep't of Planning Servs.*, 2014 WL 1156274, at *4 (Del. Super. Ct. Mar. 12, 2014) ("Economic hardship is one factor that may be considered in justifying an area variance,

I. THE ROLLED CURB VARIANCE.

Notably, the Board of Adjustment previously granted the same variance for the Community. The minutes of May 21, 2015 appear to reflect the 2015 request applied throughout the Community “but in particular throughout the single-family lot areas.” To the extent the prior approval applies to the Property, this request is a bit of “belts and suspenders.” On the substance, the 2015 request was essentially premised on the same considerations as are at play for the present Application. Indeed, in addition to consistency within the Community, those considerations apply to a greater extent for the Property’s townhouses a/k/a villas. Thus, based upon the evidence and testimony that will be presented at the Board’s public hearing, the Code and *Kwik-Check* Factors weigh in favor of Granting the Rolled Curb variance, i.e., permitting Rolled Curb in lieu of Code Section 187-11B’s requirement of DelDOT PCC Type 1 vertical face with eight-inch reveal.

A. *The variance relates to a specific parcel of land, and the hardship is not shared generally by other properties in the same zoning district and vicinity.* The hardship results from the Property’s narrow townhouse/villa lots, coupled with the desire to have two off-street parking spaces on each lot. The narrower townhouse lots permitted aggregating the open space into a common area and preserving environmental resources, as contemplated by the MXPC’s purposes, while avoiding multi-family structures and parking lots other MXPC development might otherwise involve.

B. *The variance can be granted without substantial detriment to the public good.* The Community’s single-family lot areas (a/k/a Phase 1) contain Rolled Curb, based on the 2015 variance. There has not been substantial detriment to the public good from the type of curbing there. Indeed, the Rolled Curb adds to proper aesthetics and avoids “the roller coaster” effect. The same will be true of the Property.

C. *The benefits from granting the variance would substantially outweigh any detriment.* As well described in the May 7, 2015 letter from Alan S. Kercher, P.E., in his review for the Board in 2015, the purposes for the Town’s flush curb requirement (i.e., preventing parking on lawns and allowing for an additional overlay without having to mill the pavement surface) are not an issue in the Community. That remains true for the Property, particularly with the townhouses being attached and on necessarily narrower lots. Thus, there is no loss of purpose here. The benefits include avoiding the “the roller coaster” effect and tripping hazards, promoting ADA compliance, and maintaining consistency in and for the Community.

D. *Approval of the variance would not substantially impair the intent and purposes of the Comprehensive Plan or this chapter.* As shown by use in in Phase 1 of the Community, Rolled Curb does not substantially impair the intent and purposes of either the Town’s Comprehensive Plan or the land use regulations. Indeed, the Rolled Curb facilitates the two off-street parking

and the landowner’s inability to improve his business or to stay competitive as a result of the restriction many amount to an exception practical difficulty.”)

spaces on the townhouse lots, thereby promoting the land use development regulations' purposes of lessening congestion in the streets, which in turn helps to secure safety from fire and other dangers and promote public health and general welfare.

E. *All requirements for the grant of a variance under Delaware law.* In addition to the previously noted information, as shown by the Rolled Curb in Phase 1, it is not contrary to the public interest. Rather, Rolled Curb throughout the Community would promote a sense of continuity. The need for the variance flows from the special conditions or exceptional situation of Property's narrow townhouse/villa lots that allow for the aggregated common open space but, when coupled with the two off-street parking spaces per lot, make flush curbing impractical and overall detrimental. The spirit of the curbing regulation is observed via the Roll Curb, as shown in Phase 1, and substantial justice requires its continued use on the Property.

F. *The nature of the zone in which the Property lies.* The Property is zoned MXPC. Its express purposes and intents include "creat[ing] a superior living environment through unified development" and "permitting mixes of residential dwelling units and compatible commercial uses, [where] innovative design is encouraged," and "[f]lexible dimensional standards are allowed in order to minimize infrastructure costs." These concepts of unified development, innovative design, and flexibility to minimize infrastructure costs support the use of continued Rolled Curb in the Community, including on the Property.

G. *The character of the immediate vicinity and uses therein.* The most immediate current use adjacent to the Property is Phase 1 of the Community, which has the Rolled Curb. Permitting the Application will not introduce a new concept to the area.

H. *Whether, if the restriction was removed, such removal would seriously affect neighboring properties and uses.* Phase 1 of the Community already has the Rolled Curb; the continued use will not have a serious or detrimental effect and, instead, will promote uniformity.

I. *Whether, if the restriction was not removed, such restriction would create unnecessary hardship or exceptional practical difficulty to the Applicant in its effort to make normal improvements in the character of the Property's permitted use.* As noted above, there will be exceptional practical difficulty in installing the Code's standard curbing, particularly in light of the numerous transitions and the need for ADA compliance. At this point, Rolled Curb is the "norm" for the Community's character in the residential areas.

II. THE DRIVEWAY SETBACK VARIANCE.

Many of the facets that support granting the Rolled Curb variance also support granting a variance of the 5-foot setback from property lines for driveways. Nevertheless, for ease of reference, below is an analysis of the factors in application to the setback. Additionally, the adage that "a picture is worth a thousand words" holds true here, and attached to the Application is the Driveway Variance Exhibit demonstrating the driveway locations of the various townhouse/villa

models. As the exhibit shows, Units B and C would maintain 2.2 feet from the side property line, while Unit A would have 1.5 feet. Please note that a variance is only required on one side of the driveway; the other side maintains the five-foot distance.

A. *The variance relates to a specific parcel of land, and the hardship is not shared generally by other properties in the same zoning district and vicinity.* The hardship results from the Property's narrow townhouse/villa lots, coupled with the desire to have two off-street parking spaces on each lot. The narrower townhouse lots permitted aggregating the open space, as contemplated by the MXPC's purposes, while avoiding multi-family structures (with far fewer lot lines) and parking lots other MXPC development might otherwise involve.

B. *The variance can be granted without substantial detriment to the public good.* While the Property's townhouses will be connected, the proposed variance would still maintain separation between driveways. Because the request only relates to one side of the driveway, no two driveways would be closer than 6.5 feet, maintaining a clear delineation as to what driveway belongs to what villa.

C. *The benefits from granting the variance would substantially outweigh any detriment.* Granting the variance facilitates the ability to have two off-street parking spaces on each lot, which avoids the use of a parking lot, mitigates congestion on the street, and allows owners and residents easier access to their vehicles. There is little detriment, given the typically limited uses of front yard space.

D. *Approval of the variance would not substantially impair the intent and purposes of the Comprehensive Plan or this chapter.* Shortening the driveway setback will not substantially impair the intent and purposes of either the Town's Comprehensive Plan or the land use regulations. On the contrary, the 2020 Comprehensive Plan provides as a goal, "supporting mixed and efficient uses of land." The variance allows for off-street on-lot parking, which promotes the land use development regulations' purposes of lessening congestion in the streets, which in turn helps to secure safety from fire and other dangers and promote public health and general welfare.

E. *All requirements for the grant of a variance under Delaware law.* In addition to the previously noted information, the shorter setback is not contrary to the public interest, particularly for townhouse units when proximity is expected with principal and accessory structures. The need for the variance flows from the special conditions or exceptional situation of Property's narrow townhouse/villa lots that allow for the aggregated open space but, when coupled with the two off-street parking spaces per lot, make five-foot setbacks on each side impossible in practice. The spirit of the regulation is observed via the maintained area that differentiates neighboring units' driveways, and substantial justice dictates a variance to facilitate the preference for on-lot parking.

F. *The nature of the zone in which the Property lies.* The Property is zoned MXPC. Its express purposes and intents include "creat[ing] a superior living environment through unified

development” and “permitting mixes of residential dwelling units and compatible commercial uses, [where] innovative design is encouraged,” and “[f]lexible dimensional standards are allowed in order to minimize infrastructure costs.” These concepts of unified development, innovative design, and particularly flexibility in dimensional standards to minimize infrastructure support the use of continued Rolled Curb.

G. *The character of the immediate vicinity and uses therein.* The most immediate current use adjacent to the Property is Phase 1 of the Community, which has comparatively narrow lots for single-family detached homes, and those homes have two-car driveways. Permitting the Application will not alter the character of the area.

H. *Whether, if the restriction was removed, such removal would seriously affect neighboring properties and uses.* Phase 1 of the Community has two-car driveways and relatively narrow lots. The result of this variance’s approval use will not have a serious effect on neighboring properties and uses .

I. *Whether, if the restriction was not removed, such restriction would create unnecessary hardship or exceptional practical difficulty to the Applicant in its effort to make normal improvements in the character of the Property’s permitted use.* As noted above, there will be exceptional practical difficulty, really a virtual impossibility, in providing two on-lot off-street parking spaces for these townhouse units. As noted above, the MXPC zone calls for flexibility in dimensional standards to minimize infrastructure, while also aggregating open space.

In sum, the two requested variances are necessary to ensure that the proposed development of the Property is done efficiently and safely. Because each of the *Kwik-Check* and Code factors weigh in favor of granting the Applicant’s requested variances, the Applicant respectfully requests that the Board grant relief from the Code and permit the development of the Property to proceed consistent with the foregoing variance requests.

Thank you for your time and consideration of these requests, as well as your service to the Town. A representative of the Applicant and I will be available at the public hearing to answer any questions or concerns you may have regarding the Application.

Sincerely,

/s/ Seth L. Thompson
Seth L. Thompson

enc: Town stds, driveway exh.
c: Applicant, Becker Morgan

1. A VARIANCE TO PERMIT TYPE 2 INTEGRAL CURB AND GUTTER ("ROLLED CURB")

In order for the Board of Adjustment to grant a special use exception or variance, the Board must find that the applicant has proven the following:

STANDARDS FOR GRANTING OF VARIANCES

1. **Uniqueness**
 - a. Unique physical circumstances or conditions (such as irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions, peculiar to the property).
 - b. That unnecessary hardship or exceptional practical difficulty is due to such unique conditions, and not to general circumstances or conditions and cannot be developed in strict conformity.
2. **Cannot otherwise be developed**
 - a. There is no possibility the property can be developed in strict conformity with the zoning ordinance.
 - b. That the variance is necessary to enable reasonable use of the property.
3. **Not created by the applicant**
 - a. The unnecessary hardship or exceptional practical difficulty cannot have been created by the applicant.
4. **Will not alter the essential character of the neighborhood**
 - a. The variance will not alter the essential character of the neighborhood.
 - b. The variance will not substantially or permanently impair the appropriate use or development of adjacent property.
 - c. The variance will not be detrimental to the public welfare.
5. **Minimum variance**
 - a. The variance is the minimum that will afford relief.
 - b. The variance will represent the least modification possible of the regulation in issue.

STANDARDS FOR GRANTING A SPECIAL USE EXCEPTION

1. Such exception will not substantially affect adversely the uses of adjacent and neighboring property.
2. Any other requirements which apply to a specific type of special use exception as required by the Sussex County Code (for instance, time limitations).

BOARD OF ADJUSTMENTS STANDARDS FOR RELIEF

In order for the Board of Adjustment to grant a variance or a special use exception, the Applicant **must** be prepared to answer the following questions and address the following factors:

VARIANCES

1. Uniqueness

- a. Do you have a unique circumstance or condition, such as, irregularity, narrowness or shallowness of lot size or shape or exceptional typographical or other physical condition peculiar to the property? If so, please explain:

The hardship results from the Property's narrow townhouse/villa lots, coupled with the desire to have two off-street parking spaces on each lot. The narrower townhouse lots permitted aggregating the open space into a common area and preserving environmental resources, as contemplated by the MXPC's purposes, while avoiding multi-family structures and parking lots other MXPC development might otherwise involve.

- b. Is there an exceptional practical difficulty due to such unique condition (and not related to general circumstances or conditions)? If yes, please explain:

Given the Property's narrow townhouse/villa lots and the desire to have two off-street parking spaces on each lot, there will be exceptional practical difficulty in installing the Code's standard curbing, particularly in light of the numerous transitions and the need for ADA compliance.

2. Possibility of Development

- a. Can the property be developed in strict conformity with the zoning ordinance without a variance? If not, please explain:

Not without exceptional practical difficulty, because of the numerous transitions and the need for ADA compliance, as well as seeking to promote the purposes of the MXPC.

- b. Is the variance necessary to enable reasonable use of the property?

Yes, as Rolled Curb is the “norm” for the Community’s character in the residential areas, and the narrower townhouse lots permitted aggregating the open space into a common area and preserving environmental resources, as contemplated by the MXPC’s purposes. The Property is zoned MXPC. Its express purposes and intents include “creat[ing] a superior living environment through unified development” and “permitting mixes of residential dwelling units and compatible commercial uses, [where] innovative design is encouraged,” and “[f]lexible dimensional standards are allowed in order to minimize infrastructure costs.” These concepts of unified development, innovative design, and flexibility to minimize infrastructure costs support the use of continued Rolled Curb in the Community, including on the Property.

3. Has the difficulty been created by the Applicant? If not, please explain:

No, the narrower lots are a function of the townhouse/villa buildings, which are planned instead of less desirable multi-family. Adding to the difficulty is the planning preference of two on-lot, off-street parking spots.

4. Effect on Surroundings

- a. Will the variance alter the essential character of the neighborhood?

No, as the existing portions of the Community have Rolled Curb.

- b. Will the variance substantially or permanently impair the appropriate use for development of adjacent property?

No, as the existing uses within the Community mirror what is requested here, and the commercial areas (that will be planned as part of the MXPC) are not impacted.

- c. Will the variance be detrimental to the public welfare?

No, as the Rolled Curb facilitates the two off-street parking spaces on the townhouse lots, thereby promoting the land use development regulations’ purposes of lessening congestion in the streets, which in turn helps to secure safety from fire and other dangers and promotes public health and general welfare. Phase 1 of the Community already has the Rolled Curb; the continued use will not have a serious or detrimental effect and, instead, will promote uniformity.

5. Extent of variance

- a. Will the variance represent the least modification possible of regulations at issue?

Yes. This is simply a request to substitute a different type of curbing, not to eliminate curbing.

- b. Is the variance necessary to afford relief?

Yes.

- c. Will the variance represent the least modification possible of regulations at issue?

Yes.

SPECIAL USE EXCEPTION

1. Will the exception substantially affect adversely the uses of adjacent and neighboring property?

2. Are there any other requirements, which are applicable to the specific exception being requested (for example, time limitations)?

2. A VARIANCE TO REDUCE CODE SECTION 187-10A'S 5-FOOT DRIVEWAY SETBACK

In order for the Board of Adjustment to grant a special use exception or variance, the Board must find that the applicant has proven the following:

STANDARDS FOR GRANTING OF VARIANCES

1. **Uniqueness**
 - a. Unique physical circumstances or conditions (such as irregularity, narrowness or shallowness of lot size or shape, or exceptional typographical or other physical conditions, peculiar to the property).
 - b. That unnecessary hardship or exceptional practical difficulty is due to such unique conditions, and not to general circumstances or conditions and cannot be developed in strict conformity.
2. **Cannot otherwise be developed**
 - a. There is no possibility the property can be developed in strict conformity with the zoning ordinance.
 - b. That the variance is necessary to enable reasonable use of the property.
3. **Not created by the applicant**
 - a. The unnecessary hardship or exceptional practical difficulty cannot have been created by the applicant.
4. **Will not alter the essential character of the neighborhood**
 - a. The variance will not alter the essential character of the neighborhood.
 - b. The variance will not substantially or permanently impair the appropriate use or development of adjacent property.
 - c. The variance will no be detrimental to the public welfare.
5. **Minimum variance**
 - a. The variance is the minimum that will afford relief.
 - b. The variance will represent the least modification possible of the regulation in issue.

STANDARDS FOR GRANTING A SPECIAL USE EXCEPTION

1. Such exception will not substantially affect adversely the uses of adjacent and neighboring property.
2. Any other requirements which apply to a specific type of special use exception as required by the Sussex County Code (for instance, time limitations).

TOWN OF OCEAN VIEW

201 CENTRAL AVE, 2ND FLOOR
OCEAN VIEW, DE 19970

TO: Board of Adjustment

FROM: Kenneth L. Cimino – Director of Planning, Zoning and Development

DATE: July 20, 2023

SUBJECT: **OVERVIEW OF APPLICATION V-447**

Application V-447, submitted by the property owner/developer, Mr. Robert Thornton, Silverstock WP, LLC. Silver Woods is zoned as a Mixed-Use Planned Community (MXPC) and located along Beaver Dam Road. This property owner is seeking a variance from Article II, §187-11-B of the Streets and Sidewalks chapter of the Town Code which requires that all curbing shall be DelDOT PCC Type 1 Vertical Face with eight-inch reveal. This variance seeks to permit Type 2 Integral Curb & Gutter (“Rolled Curb”) in the proposed Townhouse District as opposed to the Type 1 Vertical Face with eight-inch reveal required by Article II, § 187-11-B.

TOWN COMMENTS

§ 187-11. Curbs.

- A. Curbs shall be installed along both sides of the street.*
- B. All curbing shall be DelDOT PCC Type 1 vertical face with eight-inch reveal. Construction of curbing shall be in accordance with DelDOT Standard Specifications 2001, or latest addendum.*

The applicant has requested to place Type 2 Integral Curb and Gutter (Rolled Curb) throughout the Townhouse District. The Town eliminated Rolled Curb & Gutter and initiated vertical face curb requirements throughout new developments when the Code was updated in 2010.

The Town has, in many communities, granted the use of Type 2 Integral Curb and Gutter (Rolled Curb) in several communities, including in Silver Woods Phase 1.

The Office of Planning and Zoning is currently suggesting changes to the Town Code that will include the use of Type 2 Integral Curb and Gutter (Rolled Curb) and has no objection to this variance request.

BOARD OF ADJUSTMENTS STANDARDS FOR RELIEF

In order for the Board of Adjustment to grant a variance or a special use exception, the Applicant **must** be prepared to answer the following questions and address the following factors:

VARIANCES

1. Uniqueness

- a. Do you have a unique circumstance or condition, such as, irregularity, narrowness or shallowness of lot size or shape or exceptional typographical or other physical condition peculiar to the property? If so, please explain:

The hardship results from the Property's narrow townhouse/villa lots, coupled with the desire to have two off-street parking spaces on each lot. The narrower townhouse lots permitted aggregating the open space, as contemplated by the MXPC's purposes, while avoiding multi-family structures (with far fewer lot lines) and parking lots other MXPC development might otherwise involve.

- b. Is there an exceptional practical difficulty due to such unique condition (and not related to general circumstances or conditions)? If yes, please explain:

Given the Property's narrow townhouse/villa lots, there will be exceptional practical difficulty, really a virtual impossibility, in providing the two requested on-lot, off-street, parking spaces of a property width for these townhouse units without relief from one of the sideyard setbacks for the driveway.

2. Possibility of Development

- a. Can the property be developed in strict conformity with the zoning ordinance without a variance? If not, please explain:

No, because of the needed width of the driveway for two on-lot spaces.

- b. Is the variance necessary to enable reasonable use of the property?

Yes, two off-street, on-lot parking spaces are normal in the Community, and homeowners would reasonably expect to be able to park two cars in front of their villa.

3. Has the difficulty been created by the Applicant? If not, please explain:

No, the narrower lots are a function of the townhouse/villa buildings, which are planned instead of less desirable multi-family. Adding to the difficulty is the planning preference of two on-lot, off-street parking spots.

4. Effect on Surroundings

- a. Will the variance alter the essential character of the neighborhood?

No, as the existing portions of the Community have similar driveways.

- b. Will the variance substantially or permanently impair the appropriate use for development of adjacent property?

No, as the existing uses within the Community and the commercial areas (that will be planned as part of the MXPC) are not substantially negatively impacted. There is, however, a benefit to the Community in promoting less congestion on the roads due to off-lot parking.

- c. Will the variance be detrimental to the public welfare?

No, as the setback variance facilitates the two off-street parking spaces on the townhouse lots, thereby promoting the land use development regulations' purposes of lessening congestion in the streets, which in turn helps to secure safety from fire and other dangers and promotes public health and general welfare. Additionally, the townhouses avoid less desirable multi-family while still allowing for the aggregated common open space for the Community.

5. Extent of variance

- a. Will the variance represent the least modification possible of regulations at issue?

Yes. The request is only for one side of each driveway, and even then, the subject setback would not be eliminated, so owners and residents will still have clearly delineated driveways. Additionally, only Unit A models would require the 1.5-foot setback, while other models would allow for 2.2 feet.

- b. Is the variance necessary to afford relief?

Yes. Otherwise, the two parking spaces cannot be placed on the lot.

- c. Will the variance represent the least modification possible of regulations at issue?

Yes. Please see above.

SPECIAL USE EXCEPTION

1. Will the exception substantially affect adversely the uses of adjacent and neighboring property?
2. Are there any other requirements, which are applicable to the specific exception being requested (for example, time limitations)?

TOWN OF OCEAN VIEW

201 CENTRAL AVE, 2ND FLOOR
OCEAN VIEW, DE 19970

TO: Board of Adjustment

FROM: Kenneth L. Cimino – Director of Planning, Zoning and Development

DATE: July 20, 2023

SUBJECT: **OVERVIEW OF APPLICATION V-448**

Application V-448, submitted by the property owner/developer, Mr. Robert Thornton, Silverstock WP, LLC. Silver Woods is zoned as a Mixed-Use Planned Community (MXPC) and located along Beaver Dam Road. This property owner is seeking a variance from Article II, §187-10-A and Article XVI, §140-100-D(12)(b) of the Town Code. Article II, §187-10-A states: “Driveways shall not be placed within five (5) feet of a property line.” Article XVI, §140-100-D(12)(b) states that “driveways shall be a minimum of five (5) feet from any property line.” The developer proposes to construct driveways on 161 townhouse lots that will be installed less than five (5) feet from a property line. The applicant requests a reduction of the 5-foot driveway setback to 1.5 feet.

TOWN COMMENTS

§ 187-10. Driveways.

A. The minimum width of driveways shall be 10 feet and the maximum width shall be 20 feet for the area within the limits of the Town right-of-way. The total width of a driveway within the limits of the Town right-of-way on a single lot shall not exceed 20 feet. Driveways shall not be placed within five feet of a property line.

§ 140-100-D(12)(b). Driveways.

Driveways shall be a minimum of five feet from any property line.

The developer proposes to construct driveways on 161 townhouse lots that will be installed less than five (5) feet from a property line. The applicant requests a reduction of the 5-foot driveway setback to 1.5 feet.

The Office of Planning and Zoning has reviewed this request and determined that Town Code does not contemplate the application of these requirements to townhouses. Townhouses are permitted by Town Code in the R-3 Townhouse & Multifamily District. It is the opinion of the Office of Planning and Zoning that, for this reason, we do not oppose the granting of this variance request.

SINCE 1889



TOWN OF OCEAN VIEW

201 Central Avenue – 2nd Floor

Ocean View, DE 19970

Land Use • Permitting • Licensing • Code Enforcement • Public Works

302 539-1208 (office) • 302 537-5306 (fax)

kcimino@oceanviewde.gov / www.oceanviewde.gov

SINCE 1889



July 3, 2023

Medina, James W. & Andrea J.
13 Luzerne Dr.
Ocean View, DE 19970

413.001

TOWN OF OCEAN VIEW PUBLIC NOTICE **BOARD OF ADJUSTMENT HEARINGS**

Silver Woods Mixed-Use Planned Community – Proposed Townhouse District

(PIDNs: 413.200, 413.300, & 413.400

CTMs# 134-16.00-914.00, 134-16.00-951.00, 134-16.00-45.00)

NOTICE IS HEREBY GIVEN BY the Board of Adjustment of the Town of Ocean View that public hearings will be held on the following variance applications associated with the proposed Townhouse District of the Silver Woods community:

V-447: a request for a variance from Article II, § 187-11-B of the Streets and Sidewalks chapter of the Town Code which requires that all curbing shall be DelDOT PCC Type 1 Vertical Face with eight-inch reveal. This variance seeks to permit Type 2 Integral Curb & Gutter (“Rolled Curb”) in the proposed Townhouse District as opposed to the Type 1 Vertical Face with eight-inch reveal required by Article II, § 187-11-B.

V-448: a request for a variance from Article II, §187-10-A and Article XVI, §140-100-D(12)(b) of the Town Code. Article II, §187-10-A states: “Driveways shall not be placed within five (5) feet of a property line.” Article XVI, §140-100-D(12)(b) states that “driveways shall be a minimum of five (5) feet from any property line.” The developer proposes to construct driveways on 161 townhouse lots that will be installed less than five (5) feet from a property line. The applicant requests a reduction of the 5-foot driveway setback to 1.5 feet.

The applications are submitted by the property owner/developer, Mr. Robert Thornton, Silverstock WP, LLC. Silver Woods is zoned as a Mixed-Use Planned Community (MXPC) and located along Beaver Dam Road.

The Town will hold these hearings on **Thursday, July 20, 2023 at 3:00pm** or as soon as possible thereafter in the Ocean View Community Center located at 32 West Avenue, adjacent to John West Park. All interested parties are welcome to attend. Please note that the meeting agenda is subject to change. For more information, please visit www.oceanviewde.gov.

The material may be examined by interested parties on the second floor of the Wallace A. Melson Municipal Building located at 201 Central Avenue between 8:30 a.m. and 12:00 p.m. and 1:00 p.m. through 4:00 p.m., Monday through Friday. For additional information, please contact Kenneth L. Cimino, Director of Planning, Zoning & Development, at (302) 539-1208 or via email at kcimino@oceanviewde.gov.

PIDN	CTM#	PL#	Property Location Street	Owner	OMA #	OMA Street	OMA City	OMA State	OMA Zip
413.001	134-16.00-849.00	13	Luzerne Drive	Medina, James W. & Andrea J.	13	Luzerne Dr.	Ocean View	DE	19970
413.002	134-16.00-850.00	15	Luzerne Drive	Marques, Carlos S. & Norma A.	15	Luzerne Dr.	Ocean View	DE	19970
413.003	134-16.00-851.00	17	Luzerne Drive	Milner, Kenneth E. & Marie B.	17	Luzerne Dr.	Ocean View	DE	19970
413.004	134-16.00-852.00	19	Luzerne Drive	Walters, Jeffery A. & Laura J.	38	Impalia Dr.	Dillsburg	PA	17019-1351
413.005	134-16.00-853.00	21	Luzerne Drive	Kramer, Gayle A.	21	Luzerne Dr.	Ocean View	DE	19970
413.006	134-16.00-854.00	23	Luzerne Drive	Wroblewski, Joseph A.	23	Luzerne Dr.	Ocean View	DE	19970
413.007	134-16.00-855.00	25	Luzerne Drive	Chew, Curtis S. & Margaret T.	25	Luzerne Dr.	Ocean View	DE	19970
413.008	134-16.00-856.00	27	Luzerne Drive	McDermott, Daniel J. & Judith E.	27	Luzerne Dr.	Ocean View	DE	19970
413.009	134-16.00-857.00	29	Luzerne Drive	Goesser, Monika H. & McGraw, Constance	31	Rose Tree Village	Media	PA	19063
413.010	134-16.00-858.00	31	Luzerne Drive	Van Winter, Carl B. & Pamela J.	31	Luzerne Dr.	Ocean View	DE	19970
413.011	134-16.00-859.00	33	Luzerne Drive	Flick, Daniel J. & Caroline P.	33	Luzerne Dr.	Ocean View	DE	19970
413.012	134-16.00-860.00	35	Luzerne Drive	Newson, Maria L. & Ricky D.	738	Cronin Dr.	Aberdeen	MD	21001
413.013	134-16.00-861.00	39	Luzerne Drive	Carr, Mark E. & Scott H.	8038	Flora Ln.	Pasadena	MD	21122
413.014	134-16.00-862.00	41	Luzerne Drive	Sanders, Matthew B. & Cindy L.	41	Luzerne Dr.	Ocean View	DE	19970
413.015	134-16.00-863.00	45	Luzerne Drive	Schoenbeck, Douglas & Connie	45	Luzerne Dr.	Ocean View	DE	19970
413.016	134-16.00-864.00 *	47 *	Luzerne Drive *	Volk, Mary J.	47	Luzerne Dr.	Ocean View	DE	19970
413.044	134-16.00-892.00	50	Luzerne Drive	Magera, Sandra G.	50	Luzerne Dr.	Ocean View	DE	19970
413.045	134-16.00-893.00	48	Luzerne Drive	Williams, Richard W. J. & Jane E.	48	Luzerne Dr.	Ocean View	DE	19970
413.046	134-16.00-894.00	46	Luzerne Drive	Williams, Janice M. & Richard W.	46	Luzerne Dr.	Ocean View	DE	19970
413.047	134-16.00-895.00	44	Luzerne Drive	Miller, Andrew S. & Juliet H.	44	Luzerne Dr.	Ocean View	DE	19970
413.048	134-16.00-896.00	40	Luzerne Drive	Loney, James & Carole	563	Fairmount Rd.	Linthicum	MD	21090
413.049	134-16.00-897.00	38	Luzerne Drive	Warren, Calvin E.	1950	E. 84th St.	Cleveland	OH	44103
413.050	134-16.00-898.00	36	Luzerne Drive	Durrivage, Edward & Frances	36	Luzerne Dr.	Ocean View	DE	19970
413.051	134-16.00-899.00	32	Luzerne Drive	Merski, Joy L.	32	Luzerne Dr.	Ocean View	DE	19970
413.052	134-16.00-900.00	30	Luzerne Drive	Sarmast, Manijeh & Sadeghi, Seyed	12820	Pinecrest Rd.	Herndon	VA	20171
413.053	134-16.00-901.00	28	Luzerne Drive	Rose, Bruce & Rosemary	25381	Lisa Ter.	Aldie	VA	20105
413.054	134-16.00-902.00	26	Luzerne Drive	Davids, Ruck G. & Robin D.	26	Luzerne Dr.	Ocean View	DE	19970
413.055	134-16.00-903.00	24	Luzerne Drive	Kelly, Edward J. & Doreen A.	1829	Danforth St.	Philadelphia	PA	19152
413.056	134-16.00-904.00	22	Luzerne Drive	Scott, Douglas & Patricia	22	Luzerne Dr.	Ocean View	DE	19970
413.057	134-16.00-905.00 *	20 *	Luzerne Drive	Bognar, Marcos & Barbara A.	20	Luzerne Dr.	Ocean View	DE	19970
413.064	134-16.00-912.00	16	Luzerne Drive	Stein, Margaret M. & Kenneth	16	Luzerne Dr.	Ocean View	DE	19970
413.065	134-16.00-913.00	14	Luzerne Drive	Granruth, Brian S. & Elena	6229	Longleaf Pine Rd.	Sykesville	MD	21784-4917
413.086	134-16.00-935.00 *	2 *	Luzerne Drive *	Warren, Roy C. & Leida A. H.	2	Luzerne Dr.	Ocean View	DE	19970
413.087	134-16.00-936.00	4	Luzerne Drive	Sevier, John B. & Teresa L.	4	Luzerne Dr.	Ocean View	DE	19970
413.088	134-16.00-937.00 *	6 *	Luzerne Drive *	Timmons, William J. & Zell, Tracy L.	6	Luzerne Dr.	Ocean View	DE	19970
413.089	134-16.00-938.00	65	Old Forge Drive	Leman, Lance & Jessica	1701	W. Street Rd	West Chester	PA	19382
413.090	134-16.00-939.00	63	Old Forge Drive	Marks, David B. & Karen L.	7068	Melstone Valley Way	Martinsville	MD	21104
413.091	134-16.00-940.00	61	Old Forge Drive	Burrows, David & Sharon	61	Old Forge Dr.	Ocean View	DE	19970
413.092	134-16.00-941.00	59	Old Forge Drive	Mauro, Michael S. & Besack, Lisa A.	59	Old Forge Dr.	Ocean View	DE	19970
413.093	134-16.00-942.00	57	Old Forge Drive	Fritz, Wayne R. & Papazian, Susie D.	57	Old Forge Dr.	Ocean View	DE	20715
413.094	134-16.00-943.00	55	Old Forge Drive	Casey, Jennifer	55	Old Forge Dr.	Ocean View	DE	19970
413.095	134-16.00-944.00	53	Old Forge Drive	Lilly, James M.	838	Thomas St.	Stroudsburg	PA	18360
413.077	134-16.00-926.00	24	Old Forge Drive	Kandt, David R. & Eileen A.	24	Old Forge Dr.	Ocean View	DE	19970
413.078	134-16.00-927.00	22	Old Forge Drive	Corte, Leandro & Rosangela	4966	Cloister Dr.	Rockville	MD	20852
413.079	134-16.00-928.00	20	Old Forge Drive	Lackaye Familt Trust C/O Lackaye, Donald & Karen	20	Old Forge Dr.	Ocean View	DE	19970

413.080	134-16.00-929.00	18	Old Forge Drive	Ford, Walter K. & Lisa M.	18	Old Forge Dr.	Ocean View	DE	19970
413.081	134-16.00-930.00	16	Old Forge Drive	Crowell, Barbara A.	5927	Brookview Drive	Alexandria	VA	22310
413.082	134-16.00-931.00	14	Old Forge Drive	Bruneau, Steven M., Colleen E. & Kelsey M.	14	Old Forge Dr.	Ocean View	DE	19970
413.083	134-16.00-932.00	12	Old Forge Drive	Marley, James F. & Jessica J.	1016	Gordon Rd.	Rotterdam	NY	12306
413.084	134-16.00-933.00	10	Old Forge Drive	Overton, Laura & Obie, John	10	Old Forge Dr.	Ocean View	DE	19970
413.085	134-16.00-934.00	8	Old Forge Drive	Coad, Noel k. Claudia S.	8	Old Forge Dr.	Ocean View	DE	19970
413.105	134-16.00-955.00	17	Old Forge Drive	DePrince, Steven F. & Jayne L.	17	Old Forge Dr.	Ocean View	DE	19970
413.106	134-16.00-956.00	15	Old Forge Drive	Oseredzuk, Rosemarie S.	15	Old Forge Dr.	Ocean View	DE	19970
413.107	134-16.00-957.00	13	Old Forge Drive	Boesman, John A. & Christina M.	7315	Longbranch Dr.	New Carrollton	MD	20784
413.108	134-16.00-958.00	11	Old Forge Drive	Esgro, Carmen A. & Elizabeth L.	11	Old Forge Dr.	Ocean View	DE	19970
413.109	134-16.00-959.00	9	Old Forge Drive	D'Elia, Anthony & Christine R.	9	Old Forge Dr.	Ocean View	DE	19970
413.110	134-16.00-960.00	7	Old Forge Drive	Valencia, Maria E. & Julio	8214	Ironclad Ct.	Gaithersburg	MD	20877
413.111	134-16.00-961.00	5	Old Forge Drive	Vance, Daniel L. & Judy E.	1543	Helmsdale Rd.	Bel Air	MD	21015
413.112	134-16.00-43.03	6	Old Forge Drive	Sussex County		P.O. Box 589	Georgetown	DE	19947
413.113	134-16.00-43.02	7	Luzerne Drive	Thornton, Robert L.		P.O. Box 449	Bethany Beach	DE	19930
n/a	134-16.00-46.00		Taylor parcel	Taylor, Wesley O.	32445	Blackwater Dr.	Frankford	DE	19945

