

**BOARD OF ADJUSTMENT MINUTES**  
**ZOOM TELECONFERENCE**  
**TOWN OF OCEAN VIEW**  
**March 18, 2021**

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, Larry Klimovitz, and Preston Coppels. Planning & Zoning Director Ken Cimino, Solicitor Dennis Schrader, and Town Clerk Donna Schwartz. The meeting was held by ZOOM Teleconference.

2. **SWEARING-IN OF NEW BOARD MEMBER**

Mr. Larry Klimovitz, new member to the Board of Adjustment, was sworn-in by Mr. Schrader.

Mr. Schrader gave all an overall summary of the Conduct for Hearings to the audience.

3. **APPROVAL OF THE AGENDA**

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

4. **APPROVAL OF THE MINUTES**

*A motion was made by Mr. Coppels, seconded by Mr. Brendel, to approve the minutes for the February 18, 2021 meeting. The motion carried unanimously 4/0.* Mr. Klimovitz recused himself.

Mr. Schrader swore-in Mr. Ken Cimino and Ms. Donna Schwartz. Ms. Schwartz confirmed that the applications had been advertised, noticed, and posted in accordance with the rules of the hearing.

5. **NEW BUSINESS**

- A. **V-408 45 Old Forge Drive (PIDN: 413.098/CTM#:134-16.00-947.00)**

Application V-408, submitted by the property owners, Gary Reinhold and Jennifer Rosier, 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 Silverwoods as a Mixed-Use Planned Community (MXPC) with a maximum lot coverage of 45% in accordance with Article VI, §140-28 and §140-29 of the Town Code.

The property owners wish to construct a paver patio and walkway that would exceed the maximum lot coverage on property zoned MXPC (Mixed-Use Planned Community), located at 45 Old Forge Drive (PIDN: 413.098 / CTM# 134-16.00-947.00).

The property owners wish to construct a paver patio which will exceed the maximum allowable lot covered of 45%. This proposed improvement would increase the lot coverage to 47.4%, resulting in an overage of 2.4% or 180 square feet.

The lot is constrained by a 20-foot common area that is adjacent to the property. Many existing homes in this community have paver patios and walkways. While this improvement is slightly over the maximum allowable lot coverage, attempts by the contractor/designer to lessen the proposed footprint of this improvement to remain code compliant resulted in an unusable improvement. Numerous designs were reviewed by this office and this proposed design appears to be the only functional solution.

Mr. Schrader asked Ms. Schwartz if the application was advertised, noticed, and posted. She replied yes. Mr. Schrader swore-in Mr. Gary Reinhold. He offered many reasons, such as his wife's health as to why he needs a walkway from the front to the hardscape patio. He said this was the most minimal request he could make. Mr. Reinhold offered three letters of support for his variance request.

Mr. Klimovitz stated the reasons for the request were well documented in the application.

There were no public comments for or against the variance.

***A motion was made by Mr. Neuner, seconded by Mr. Brendel, to approve the application for a variance. The motion carried unanimously 5/0.***

**B. V-411 38 Luzerne Drive (PIDN: 413.049/CTM#: 134-16.00-897.00)**

Application V-411, submitted by the property owner, Calvin E. Warren, 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 Silverwoods as a Mixed-Use Planned Community (MXPC) with a maximum lot coverage of 45% in accordance with Article VI, §140-28 and §140-29 of the Town Code.

The property owner wishes to construct a paver patio and walkway that would exceed the maximum lot coverage on property zoned MXPC (Mixed-Use Planned Community), located at 38 Luzerne Drive (PIDN: 413.049 / CTM# 134-16.00-897.00).

The property owners wish to construct a paver patio which will exceed the maximum allowable lot covered of 45%. This proposed improvement would increase the lot coverage to 50.2%, resulting in an overage of 5.2% or 390 square feet.

This improvement commenced without a permit or approval from the Office of Planning, Zoning and Development. It is my understanding that there was a miscommunication between the homeowner and contractor as to who would apply for or if there was a need for a building permit. Had a building permit been applied for this office would have caught the overage of the maximum allowable lot coverage and worked with the property owner on an alternative design to attempt to construct an improvement that was code compliant.

Construction of this paver patio and walkway will not adversely impact the surrounding properties as many homes in this community have paver patios and walkways.

Mr. Schrader asked Ms. Schwartz if the application was advertised, noticed, and posted. She replied yes. He swore-in Dr. Warren the property owner. He said there would be no fire pits or walls. Mr. Schrader asked if he had HOA approval. Dr. Warren replied yes. Mr. Neuner asked if the project was complete? Dr. Warren replied no. Mr. Schrader asked if a cease-and-desist order was issued for this project. Mr. Cimino replied no. Mr. Klimovitz asked what the difficulty is with the patio. Dr. Warren replied that his lot is narrow, and he could not add a patio without a variance.

Ms. Carol Loney, 40 Luzerne Drive, was sworn-in by Mr. Schrader. She commented that she was Dr. Warren's next-door neighbor, and she was in favor of the variance.

***A motion was made by Mr. Brendel, seconded by Mr. Klimovitz, to approve the variance application. The motion carried unanimously 5/0.***

**C. V-412 63 Atlantic Avenue (PIDN: 201.120/CTM#: 134-12.00-1227.00)**

Application V-412, submitted by the applicant Tupps Signs, Inc. on behalf of the property owner Atlantic Realty Partners, LLC, requesting a variance from Article X, §140-65 of the Town Code. The property owner wishes to install a freestanding sign for a multiple-business site that will be placed less than the required 20 feet from the side property line on a parcel zoned GB-1 (General Business District 1), located at 63 Atlantic Avenue (PIDN: 201.120 / Sussex CTM#: 134-12.00-1227.00).

The property owners wish to install a freestanding sign for a multiple-business site that will be placed less than the required 20 feet from the side property line. This parcel is an older existing property located at 63 Atlantic Avenue that was recently purchased and is currently being renovated and receiving many upgrades. This lot was developed under old Town Code and the recent widening of Route 26 by the Delaware Department of Transportation resulted in a significant loss of frontage along Route 26.

The installation of this sign would not alter the character of the business district and would be another improvement to this parcel along with the other ongoing renovations.

Mr. Schrader swore-in Rick Knodel. He explained that it is a multi-tenant sign for three tenants and would create an obstacle to put it where the old code says. He is asking for a 7' variance. Mr. Schrader questioned the effect on neighboring properties. Mr. Knodel said it would not create a problem. The sign was built so cars can see around it. Mr. Schrader asked if this is the least intrusive placement. Mr. Knodel said yes. Mike Kemp and Mike Kemp Jr. were sworn-in, they said they are the new owners of the property. The Kemp's said they are improving the property and are concerned

about the sign and want a level of safety with its installation. There were no public comments.

***A motion was made by Mr. Klimovitz, seconded by Mr. Brendel, to approve the variance for the sign. The motion carried unanimously 5/0.***

**D. V-413 7 Sussex Avenue (PIDN: 036.190/CTM#: 134-12.00-476.00)**

Application V-413, submitted by the property owners James and Diane Farley, requesting a variance from Article V, §140-32 of the Town Code, which requires attached accessory structures to maintain the same rear setback as the principal structure.

The property owners wish to construct an attached accessory structure (screened porch) that would encroach into the required 30-foot rear yard setback on a parcel zoned R-1 (Single Family Residential District), located 7 Sussex Avenue (PIDN: 036.190 / CTM# 134-12.00-476.00).

This office has reviewed the request for a Variance submitted on February 15, 2021 seeking a variance from Article V, §140-32 of the Town Code, which requires attached accessory structures to maintain the same rear setback as the principal structure.

A variance is defined as “relief from the strict application of the provisions of this chapter when, owing to special conditions or exceptional situations, a literal interpretation of this chapter will result in exceptional practical difficulties to the property owner.”

After a complete and thorough review of the property survey, application and a visit to the site and adjacent properties in this community, we do not agree that there are conditions on this lot that create an exceptional practical difficulty. This is a vacant lot on which the applicant has chosen to construct a dwelling with dimensional features of their own choosing.

Mr. Cimino finished his overview. Mr. Schrader asked Ms. Schwartz if the application was advertised, noticed, and posted. She replied yes. Mr. Schrader asked him what the problem is. Mr. Cimino stated that the lot is 100 x 100 in an older community called Mitchell Estates. Mr. Schrader asked if there was an HOA. Mr. Cimino stated he did not believe so. Mr. Coppels asked if the homeowners could change the house plans to be in compliance with the Town code. Mr. Cimino stated that more than half of the screen porch would be in the setback.

Mr. Schrader swore-in James and Diane Farley. He asked Mr. Farley if Mitchell Estates had an HOA. Mr. Farley replied not to his knowledge. Mr. Farley further explained the situation to the Board. He said the home is a single-story home, not oversized, which they would like a variance for the screened porch at the rear of the house. Mr. Farley said that the 100 x 100 lot creates a problem for the placement of the screened porch. Mr. Neuner asked about the trees on the property. Mr. Farley

stated the trees and fence are Mr. Pavic's. Mr. Klimovitz asked about the space on right-hand side of the dwelling. Mr. Farley replied that there is a driveway there. Mr. Farley noted that they want to put the screened porch in the back for privacy. Mr. Coppels asked how this is different from others that have been approved. Mr. Cimino explained how he saw the situation with the bump-out. He believes it should not matter if it is an open deck or a closed porch. Mr. Farley stated that the bump-out was a small 5' front porch.

In public comment, Vince Pavic, 8 Scanlon Avenue, stated that many excellent points had been made. He said that he is in favor of the application. It is a square lot which creates difficulty. His house is 52' feet away and there will be trees and fencing on his yard between the houses.

Daniel Veith, 10 Scanlon Avenue, stated he was in favor of the screened porch at the rear of the house.

***A motion was made by Mr. Neuner, seconded by Mr. Coppels, to grant the variance application. The motion carried unanimously 5/0.***

**6. ADJOURNMENT**

***A motion was made by Mr. Brendel, seconded by Mr. Klimovitz, to adjourn the meeting at 7:13pm. The motion carried unanimously 5/0.***

Respectfully submitted,  
Donna M. Schwartz, CMC