

**BOARD OF ADJUSTMENT MINUTES**  
**ZOOM TELECONFERENCE**  
**TOWN OF OCEAN VIEW**  
**October 21, 2021**

1. Board of Adjustment Chair Susan Kerwin called the meeting to order at 7:00 pm with the Pledge of Allegiance. In attendance were Board Members Gene Brendel, Greg Neuner, Preston Coppels and Bob Lawless. Planning Zoning and Development Director Ken Cimino, Engineer James Lober, Solicitor Dennis Schrader, and Town Clerk Donna Schwartz. The meeting was held at 32 West Avenue.
2. **SWEARING IN OF BOB LAWLESS** by Mr. Schrader
3. **APPROVAL OF THE AGENDA**  
*A motion was made by Mr. Brendel, seconded by Mr. Lawless, to approve the agenda. The motion carried unanimously 5/0.*
4. **APPROVAL OF THE MINUTES**  
*A motion was made by Mr. Neuner, seconded by Mr. Coppels, to approve the minutes for the July 15, 2021, meeting. The motion carried unanimously 5/0.*

Mr. Schrader read the rules of the meeting. He swore in Mr. James Lober, 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-422 9 Seabrook Lane (PIDN:094.130/CTM#:134-12.00-2065.00)**

Application V-422, submitted by the property owners, Paul & Rebecca Donahue, for property zoned R-1 (Single-Family Residential District) located at 9 Seabrook Rd. (PIDN: 094.130 / CTM# 134-12.00-2065.00). The property owners request variances from the following Town Code requirements:

1. Article V, §140-32 to permit an existing detached accessory structure (shed) to project into the required 15' side yard setback and the required 10' rear yard setback.
2. Article V, §140-32 in order to maintain an attached accessory structure (outdoor shower) that encroaches into the required 30' rear yard setback.
3. Article I, §116-5D(5) in order to maintain an existing electric meter that is installed below the level of base flood elevation plus 2.0 feet.

Mr. Cimino finished reading the overview and read the following town comments:

1. The existing shed extends .2 feet into the rear yard setback and 2.8 feet into the side yard setback.
2. The existing outdoor shower enclosure extends 3.5 feet into the rear yard setback. The shower enclosure was originally proposed to be on the side of the dwelling unit which would have been compliant.
3. According to a survey and Federal Emergency Management Agency (FEMA) Elevation Certificate completed by Pennoni Associates, Inc. and submitted

by the homeowner in support of their application, the lowest elevation of machinery or equipment servicing the building is 8.8 feet. According to the FEMA Flood Insurance Rate Map (FIRM) number 100050511K, the base flood elevation at this location is 7.0. which would place the electric meter 1.8 feet above the base flood elevation, or 0.2 ft. less than the 2.0 ft. above the base flood elevation required by the code.

§116-7 Paragraph A stipulates that the Board of Adjustment shall have the power to authorize, in specific cases, such variances from the requirements of this article, not inconsistent with federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of this article would result in unnecessary hardship.

§116-7 Paragraph C states that when considering variances from the requirements of this article, the Board of Adjustment shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of this article, and the following factors:

- (1) The danger that materials may be swept onto other lands to the injury of others.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
- (4) The importance of the services provided by the proposed development to the community.
- (5) The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.
- (6) The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.
- (7) The compatibility of the proposed use with existing and anticipated development.
- (8) The relationship of the proposed use to the comprehensive plan for that area.
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

§ 116-7 Paragraph D states that an affirmative decision on a variance request shall only be issued upon:

- (1) A showing of good and sufficient cause. A "good and sufficient" cause is one that deals solely with the physical characteristics of the property and cannot be based on the character of the planned construction or substantial improvement, the personal characteristics of the owner or inhabitants, or local provisions that regulate standards other than health and public safety standards.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property.
- (3) Increased cost or inconvenience of meeting the requirements of this article does not constitute an exceptional hardship to the applicant.
- (4) A determination that the granting of a variance for development within any designated floodway, or special flood hazard area with base flood elevations but no floodway, will not result in increased flood heights beyond that which is allowed in this article.
- (5) A determination that the granting of a variance will not result in additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
- (6) A determination that the structure or other development is protected by methods to minimize flood damages.
- (7) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (8) Upon consideration of the individual circumstances, the limitations and conditions, and the purposes of this article, the Board of Adjustment may attach such conditions to variances as it deems necessary to further the purposes of this article.
- (9) The Board of Adjustment shall notify, in writing, any applicant to whom a variance is granted for a building or structure with a lowest floor elevation below the base flood elevation that the variance is to the floodplain management requirements of this article only, and that the cost of federal flood insurance will be commensurate with the increased risk.

Mr. Ryan Class, of Bethany Beach, was sworn-in by Mr. Schrader and noted he was authorized by the applicant to speak on their behalf. First, he said the shed was placed by the manufacturer in the wrong location. The builder and homeowner were not aware until the final survey was done. He stated that the hardship was created by the manufacturer of the shed. Mr. Class noted that although it was anchored to the ground it could be moved if necessary.

Secondly, they were told by the HOA that the exterior shower had to be in the rear of the dwelling. They had requested to put it on the side of the house and were denied by HOA. Mr. Class said it is an enclosed shower and there was nowhere else to put the shower.

Thirdly, Mr. Class noted that the electric meter is a couple of inches below the Town elevation requirement. This creates a significant cost to move.

Mr. Schrader asked Mr. Class if these were the minimum variances he could seek. Mr. Class agreed. Mr. Schrader asked Mr. Class if these variances would have a negative effect on the neighborhood. Mr. Class replied, no.

Mr. Lawless questioned who placed the stakes for the shed. Mr. Class stated the onsite contractor, although he may have measured from the edge of the fireplace instead of the house.

Public Comment:

Baptist Damiano, Port Royal Road, was sworn-in by Mr. Schrader. He spoke in favor of the application saying the homeowners have been harassed by the HOA. Mr. Damiano offered a copy of the architectural review committee's report. Mr. Neuner questioned the reason for the harassment. Mr. Damiano replied it was the size of the lot and the way the house is set.

Cindy Hall, Seabrook Road, was sworn-in by Mr. Schrader. She spoke against the application saying that the Town confirmed the more restrictive regulation was the guiding factor, in this case should be following the HOA. She said she was concerned about the variances requested by the homeowner and deemed it a self-created hardship. Mr. Neuner questioned if sheds and showers were allowed by the HOA. Ms. Hall replied that they were. She stated that a shower can be on the side of the house. Mr. Brendel asked if she would be happy if the shed was moved. Ms. Hall replied yes.

Mr. James Nabb, Seabrook Road, was sworn-in by Mr. Schrader. He said he was the HOA President for the Cottages. He stated he felt there was no justification for not following the rules, he felt the builder should correct the problems. Mr. Schrader questioned if there were any showers on the side of the house in the Cottages. Mr. Nabb said that there were some. He noted that the HOA prefers them in the rear of the house, but it is not a law.

Mr. James Lober, Engineer for the Town of Ocean View, noted that the position of the electric meter will not interfere with getting flood insurance or create any problem because of its location. He stated that the height of the electric panel was a mistake, however it is within the FEMA elevation requirements, just not the Town's.

***A motion was made by Mr. Neuner, seconded by Mr. Lawless, to deny the variance for the shed. The motion carried 4/1 with Mr. Brendel voting for the variance.***

***A motion was made by Mr. Brendel, seconded by Mr. Coppels, to grant the variance on the shower. The motion carried 5/0.***

*A motion was made by Mr. Lawless, seconded by Mr. Coppels, to grant the variance on the electric meter. The motion carried 5/0.*

**B. V-423 8 Sussex Drive (PIDN:321.500/CTM#:134-12.00-1748.00)**

Application V-423, submitted by the property owners, Kenneth & Angela Nittoly, for property zoned R-1 (Single-Family Residential District) located at 8 Sussex Drive (PIDN: 321.500 / CTM# 134-12.00-1748.00). The property owners request variances from the following Town Code requirements:

1. Article XVI, §140-100-D (12)(b)[4] & Article III, §187-10-A in order to maintain an existing driveway which is placed closer than five (5) feet to the property line.
2. Article V, §140-32 in order to maintain a detached accessory structure (garage) that exceeds the maximum allowable height of 14 feet from grade.
3. Article V, §140-28 in order for all existing and proposed buildings/structures on the lot to exceed the maximum allowable 35% lot coverage

Mr. Cimino made the following comments on the three variances:

1. The existing driveway is approximately 2.5 feet from the neighboring property lines. The driveway was constructed as approved in accordance with old code requirements. The Office of Planning and Development views this as an existing non-conformity.
2. The existing detached accessory structure (garage) was constructed as approved in accordance with old town code. The Office of Planning and Development views this as an existing non-conformity.
3. Existing lot coverage is 40.06% or 4,702 SQ. FT. The applicant wishes to construct an in-ground pool with concrete decking that will increase the impervious lot coverage to 50.70% or 5,950 SQ. FT. This will result in 15.70% more impervious coverage than the maximum allowable 35% lot coverage.

Mr. Kenneth Nittoly was sworn-in by Mr. Schrader. He stated they purchased the property in 2001 and built the house two years later. He noted they have been working on this pool project for some time. Mr. Schrader asked if this was the minimum variance he could request. Mr. Nittoly replied yes. Mr. Schrader pointed out that the lot is an irregular shape. Mr. Nittoly agreed. Mr. Schrader questioned whether this approval would have a negative effect on property values. Mr. Nittoly replied, it would have no negative effect on property values.

No public comment was heard. One written letter was read in support.

Mr. Coppels questioned if the pool would be built behind the house. Mr. Nittoly replied yes. Mrs. Kerwin asked about the width of the driveway. Mr. Nittoly said it was built with the house.

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

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

*A motion was made by Mr. Lawless, seconded by Mr. Coppels, to grant the variance for the lot coverage. The motion carried unanimously 5/0.*

**C. V-424 NW/Elliott Ave, E. DeMarie Drive (PIDN:135.004/CTM#:134-12.00-327.00**

Application V-424 has been submitted by the property owners, Jeffery A. & Stephanie A. Wilkinson, seeking a variance from Part II, Chapter 140, Article V §140-28 of the Town Code, which requires a minimum lot width of 75 feet for R-1 zoned single family residential lots.

The variance seeks to allow the applicant to create two R-1 zoned single family residential lots that are narrower than the required 75 feet when measured in accordance with the requirements of the code. The two lots in question are part of a larger subdivision totaling 4 lots.

Mr. James Lober read his town comments to the Board of Adjustment.

Part II, Chapter 140, Article V §140-28 of the Town Code requires a minimum lot width of 75 feet for R-1 zoned single family residential lots. Part II, Chapter 140, Article XXI §140-152 defines lot width as being measured across the rear of the required front yard. For R-1 zoned single family residential lots the required front yard is 25 feet as measured from the front lot line.

The proposed lots in question are lots 2 and 3 of the proposed 4 lot subdivision. Lot 2 measures 40.8 feet wide and lot 3 measures 40.9 feet wide across the rear of the required front yard, or 25 feet from the front lot line.

The lots front on a proposed cul-de-sac and are configured with radial lot lines. As such, the lots widen as they get deeper. Lot 2 provides at least the minimum lot width of 75 feet when measured at 50.15 feet from the front lot line and maintains that width for approximately 229 feet. Lot 3 provides at least the minimum lot width of 75 feet when measured at 53.39 feet from the front lot line and maintains that width for approximately 170 feet.

Chapter 140, Article XVII, §140-108, paragraph A defines a variance 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.”

Chapter 140, Article XVII, §140-108, paragraph G states that the Board of Adjustment, pursuant to Title 22, Section 327 of the Delaware Code and applicable law, shall determine whether each variance application meets the following criteria:

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.

Mr. Schrader questioned the width of lots at the front and the rear are different.

Mr. Tom Ford was sworn-in by Mr. Schrader. He said the owners (Wilkinson's) are planning to build on lot #2 and plan to sell all other lots. They would create a new cul-de-sac and four good size lots of over 1900+ square feet. Lots #2 and #3 are narrower at the front than the rear of the lot.

Mr. Schrader asked Mr. Ford about the uniqueness of the property. Mr. Ford replied yes there is uniqueness. Mr. Schrader asked if this was the minimum variance he could request. Mr. Ford replied yes.

Mr. Tom Fowler, OV Marina, stated he was in support of the application.

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

**6. ADJOURNMENT**

***A motion was made by Mr. Brendel, seconded by Mr. Lawless, to adjourn the meeting at 7:33pm. The motion carried unanimously 5/0.***

Respectfully submitted,  
Donna M. Schwartz, CMC  
Town Clerk