

**BOARD OF ADJUSTMENT MINUTES**  
**TOWN OF OCEAN VIEW**  
**October 19, 2023, 3:00pm**

1. Board of Adjustment Chair Susan Kerwin called the meeting to order at 3:00pm with the Pledge of Allegiance. In attendance were Board Members Greg Neuner, John Planchart, Preston Coppels, and Ron Galey. Planning Zoning and Development Director Ken Cimino, Engineer Jim Lober, Solicitor Veronica Faust, Planner Jill Oliver, and Town Clerk Donna Schwartz. The meeting was held at 32 West Avenue.
2. **SWEARING-IN CEREMONY** for Ron Galey by Ms. Faust. He takes the seat of Bob Lawless.
3. **APPROVAL OF THE AGENDA**  
*A motion was made by Mr. Coppels, seconded by Mr. Neuner, to approve the agenda. The motion was carried unanimously 5/0.*
4. **APPROVAL OF THE MINUTES**  
*A motion was made by Mr. Planchart, seconded by Mr. Coppels, to approve the minutes for the July 20, 2023, meeting. The motion was carried unanimously 5/0.*

Ms. Faust 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-449 32 Hudson Avenue (PIDN:099.150/CTM:134-12.00-1544.00)**

Application V-449, submitted by the applicant, WN Builders, Inc., on behalf of the property owner, Jonathan DeCanio, for property zoned R-1 (Single-Family Residential District) located at 32 Hudson Avenue (PIDN: 099.150 / CTM# 134-12.00-1544.00). The property owner is seeking a variance from Article V, §140-28 in order for all existing buildings/structures on the lot to exceed the maximum allowable lot coverage of 35%. Additionally, the property owner seeks a variance from Article XVI, §140-100-D(12)(b)[4] and Article II, §187-10-A in order for an existing driveway to exceed the maximum allowable width of 20 feet through the Right-of-Way.

Mr. Cimino read the answers to the Standards for Relief questionnaire completed by Mr. DeCanio, and made the following comments:

§140-28. R-1 and R-2 Zones

Maximum coverage of lot area (including all buildings and structures) is 35%.

§ 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)[4]. Driveways.

All driveways shall have a minimum width of 10 feet and a maximum width of 20 feet.

Variance #1:

Note one on the approved site plan specifically reads, “This development plan maximizes the allowable lot coverage for this lot. Any future addition of any impervious lot cover will require a variance from the Town of Ocean View Board of Adjustment”. The builder should have applied for this variance prior to construction the sidewalk along the side of the dwelling unit and prior to constructing the driveway wider than 20 feet.

Variance #2:

The builder should have applied for this variance prior to constructing the driveway wider than 20 feet.

Mr. Cimino noted that this lot is a perfect rectangle. There is no hardship based on the size or shape of the lot. The as built survey has the property 5% over in lot coverage. He noted that the last things to be completed are the flatworks – driveway and sidewalks. The builder did not come to the town for a variance.

Ms. Faust swore in Mr. Jonathan DeCanio, applicant. He explained his position to the Board of Adjustment. He applied for a variance because he didn’t have a choice, claiming the contractor overpoured the driveway and added a sidewalk without his knowledge. He noted that no one (his neighbors) has a problem with it.

Mr. Planchart asked Mr. DeCanio who will have to pay for these repairs. Mr. DeCanio replied he thought he would be the one paying. Mr. Coppels asked why, if it was a mistake made by the builder why he should pay. Mr. DeCanio stated it was brought to his attention when he asked for the certificate of occupancy from the town. Mr. Cimino noted that these errors were found during the typical process for a certificate of occupancy. He also commented that there was nothing preapproved for the sidewalk and the driveway, which was found to be too large. Mr. Planchart reiterated that there was no sidewalk and a 19.5’ driveway on the site plan. Mr. Cimino agreed. Mr. Galey asked what percentage they were at on the site plan. Mr. Cimino replied, the house and driveway was at 35% on the site plan. Just at the limit.

Mr. DeCanio said the last thing he wants to do is rip up concrete. He presented eight letters of support. He stated no one has a problem with the driveway.

Mr. Neuner asked Mr. Cimino if we had any authority over the builder. Mr. Cimino stated that the Town Council can revoke the builder’s license. Mr. DeCanio commented that the builder is great, he offered to pay for the variance hearing. Mr. Galey asked Mr. DeCanio if he was aware of the site plan that was submitted for his property. Mr. DeCanio stated that he was not aware of the site plan.

Mr. Galey asked Mr. Cimino how the homeowner would know what the builder should be building. Mr. Cimino stated that the homeowner should know what they are

paying for. Ms. Kerwin asked if Mr. DeCanio checked at any time to see if he needed any variances. Mr. DeCanio replied that he was not aware of any issues until seven days before the closing date. He stated that the only remedy for him was to get a temporary certificate of occupancy and apply for a variance. Mr. Cimino stated that he doesn't like to give temporary certificates of occupancy because it lets the builder off the hook.

Mr. Planchart asked Mr. DeCanio what his reaction to the problems with issuing a certificate of occupancy. He replied he only had one choice, to risk on a variance and go to closing so it didn't cost him \$30,000 in penalties. Mr. Coppels noted that this is the first time he's heard of a builder doing more than required, he said it's usually the other way around.

#### PUBLIC COMMENT

Mr. John DeCanio, 12 Tingle Street spoke to the Board. He stated that he thinks the builder is an artist and was trying to enhance the situation and make the homeowner happy. He asked the Board to look at it and make a decision.

Mr. Michael Moisey, 38 Hudson Avenue, questioned what is happening with the driveway on Tingle Avenue. Ms. Faust stated that the driveway has nothing to do with this driveway.

Ms. Priscilla Shively, 36 Hudson Avenue, stated that the house looks great the way it is and is in favor of the variance.

Ms. Susan Anthony, 12 Tingle Avenue, noted that builders can't self-govern. It's only 4%, which is not a big deal. The Board should be on the homeowner's side.

There were also eight letters submitted to the Board in favor of the variance by Dirk Van Loo, John DeCanio, Velma Kline & Make Moisey, Priscilla Shively, the Pearson's, Thomas Ghigliotty, the Asbill's, and Will Melton.

Mr. Planchart asked if the variances should be decided together or separately. Mr. Neuner stated that he has been on the Board over six years and feels this is a big problem that the homeowner must deal with, and it is very troubling. The builder didn't follow the rules or didn't bother to find out. In my observation there are certain requirements to grant a variance and I'm not seeing any exceptional practical difficulty here.

#### PUBLIC HEARING CLOSED

A motion was made by Mr. Planchart, seconded by Mr. Coppels, to deny lot coverage due to no exceptional practical difficulty and the homeowner and the builder were aware of the coverage issues. The motion was carried unanimously 5/0.

A motion was made by Mr. Planchart, seconded by Mr. Coppels, to deny the variance for the driveway greater than 20', 6.4' larger, due to no exceptional practical difficulty. The motion was carried unanimously 5/0.

6. **ADJOURNMENT**

*A motion was made by Mr. Galey, seconded by Mr. Coppels, to adjourn the meeting at 4:12pm. The motion was carried unanimously 5/0.*

Respectfully submitted,  
Donna M. Schwartz, MMC, Town Clerk