

# BOARD OF ADJUSTMENT STAFF REPORT



Hearing Date: 10-14-15

Case#: BOA-15-05

Hearing Type:

- Variance
- Administrative Appeal
- Special Use Permit

Address (if applicable): 1401 Seaside Rd.

## CASE INFORMATION

**Applicant:** Holly Smith, Agent

**Requested Action:** The applicant is requesting a variance to reduce the minimum lighting standards below the required minimums as specified in Section 9.20 in the Unified Development Ordinance for property located at 1401 Seaside Rd.

**Supporting Documentation (APPLICANT'S EXHIBITS)**

- Exhibit A -** Variance Application
- Exhibit B -** Findings of Fact Supplement Sheet
- Exhibit C -** BEMC's light pole charges sheet
- Exhibit D -** Lighting plan showing required lighting.
- Exhibit E -** Site grading plan
- Exhibit F -** Proposed lighting schematic

**Supporting Documentation (STAFF'S EXHIBITS)**

- Exhibit 1 -** Map of subject property
- Exhibit 2 -** Copy of Unified Development Ordinance Article 9, Section 9.20, Illumination Levels
- Exhibit 3 -** Email from Police Chief Lisa Joyner regarding safety analysis.

**ORDINANCE REFERENCE(S)**

- Article 9, Section 9.20, Part III, Outdoor Lighting; Section (A): Illumination Levels

**BACKGROUND AND SITE INFORMATION**

**Background Information:**

The applicant seeks to request a variance to reduce the minimum lighting requirement of the Town’s UDO for her multifamily project. Specifically, the applicant is requesting to not provide lighting along the ~800 ft. driveway and to reduce the approved lighting at the State Road entrance from two lights to one. The applicant is claiming an economic hardship in ongoing power costs associated with the upkeep and maintenance of the required number of lights for the entrance and driveway of her project.

The UDO does not require a certain number of lights for a project. The UDO does require that a certain level of light brightness and coverage be provided to ensure safe and well-lit developments. This is measured using a “foot-candle” standard along and within the subject property. The minimum standard for lighting lots are in accordance with the following table in the UDO:

- (A) To ensure uniform light distribution, all site lighting shall be designed so that the level of illumination as measured in foot-candles (fc) at any one point meets the standards in the table below with minimum and maximum levels measured on the pavement within the lighted area and average level (the overall generalized ambient light level) measured as a not-to-exceed value calculated using only the area of the site intended to receive illumination.

<b>LIGHT LEVEL (foot-candles)</b>			
<b>Type of Lighting</b>	<b>Minimum</b>	<b>Average</b>	<b>Maximum</b>
Architectural Lighting	0.0	1.0 B 1.5	5.0
<b>Canopy</b> Area Lighting	2.0	10.0 B 20.0	20.0
<b>Multi-family Parking Lot</b>	0.2	1.0 B 1.5	8.0
Nonresidential and <b>multi-family</b> entrances	1.0	2.5 B 5.0	15.0
Nonresidential <b>parking lot</b>	0.2	1.5 B 2.0	10.0

Storage area (security lighting)	0.2	1.0 B 1.5	10.0
Vehicles sales and display	0.2	3.0	15.0
Walkways, landscape, or decorative lighting	0.2	1 B 1.5	5.0

(B) All outdoor lighting shall be designed and located such that maximum illumination measured in foot-candles complies with the following table:

<b>MAXIMUM ILLUMINATION LEVELS (foot-candles)</b>	
<b>Lighting Measured at:</b>	<b>Maximum Illumination (foot-candles)</b>
Street	5.0
Property Line Next to Residential Use or Residential District	0.2
Property Line Next to Commercial Use or Commercial District	0.5

Town staff met with the developer at the beginning of the project prior to subdivision and site plan review and approval of the Planning Board. The applicant indicated that in order to meet her internal goals for financing, signage, regulatory compliance, and to ensure compliance with the Town’s UDO, she would configure the lot be subdivided in a manner resembling the “flag lot” shape. Based upon this configuration, the drive isle from the State road to the parking lot is not considered a road. It is considered a driveway. As such, the entirety of the lot including the entrance, driveway, and parking lot would need to be lit according the above standards.

Town staff, the applicant, and BEMC staff met to discuss the site layout and how to best configure the lighting to comply with the Town’s UDO and the site plan approved by the Planning Board without sacrificing landscaping, parking, or any other approved development standard. The attached lighting plan (applicant’s Exhibit D) represents the minimum standard needed for lighting according the Town’s UDO and BEMC’s lighting standard equipment.

**Applicable Plans or Plans:** Sunset Beach CAMA Land Use Plan

**Existing Use:** Vacant/Currently Under Construction

**Adjacent Zoning and Land Uses:** NA

- **North:** MR-3 (Vacant)
- **South:** County (Single Family)
- **East:** MR-3 (Vacant)

- **West: MR-3 (Vacant)**

**District(s) Intent Statement:**

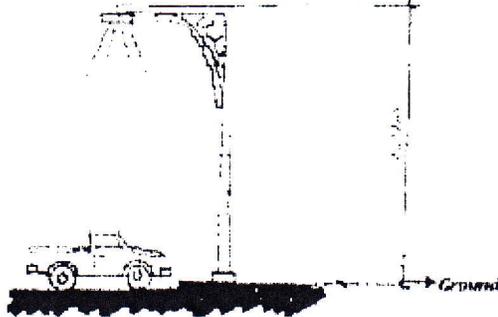
**MR-3:**

“Exclusively for residential *development*, with provisions for single-family and multi-family *development* and customary and secondary uses.”

## ARTICLE 9. PERFORMANCE STANDARDS

(B) *Fixture Height.*

- (1) Lighting fixtures may not exceed forty (40) feet in height and illumination levels shall comply with Section 9.20(B).
- (2) The **UDO Administrator** may allow fixtures above this height to provide internal lighting for stadiums, arenas, and similar facilities.



(C) *Light Source (Lamp).*

- (1) Incandescent, florescent, metal halide, or color corrected high-pressure sodium are preferred. Light Emitting Diodes (LEDs) and fiber optics may be used provided the color emitted is similar to the preferred types. Non-color corrected high pressure sodium lamps are prohibited.
- (2) The same light source type must be used for the same or similar types of lighting on any one (1) site throughout any **development**.

(D) *Mounting.* Fixtures shall be mounted in such a manner that the cone of light is contained on-site and maximum illumination levels off-site do not exceed those found in Section 9.20(B) and not conflict with excessive illumination requirements found in Section 9.21.

(E) *Limit Lighting to Periods of Activity.* The use of sensor technologies, timers, or other means to activate lighting during times when it will be needed may be required by the **UDO Administrator** to conserve energy, provide safety, and promote compatibility between different land uses.

### **SECTION 9.20 ILLUMINATION LEVELS**

- (A) To ensure uniform light distribution, all site lighting shall be designed so that the level of illumination as measured in foot-candles (fc) at any one point meets the standards in the table below with minimum and maximum levels measured on the pavement within the lighted area and average level (the overall generalized ambient light level) measured as a not-to-exceed value calculated using only the area of the site intended to receive illumination.

## ARTICLE 9. PERFORMANCE STANDARDS

<b>LIGHT LEVEL (foot-candles)</b>			
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Property Line Next to Commercial Use or Commercial District	0.5

### **SECTION 9.21 EXCESSIVE ILLUMINATION**

- (A) Lighting within any **lot** that unnecessarily illuminates and substantially interferes with the use or enjoyment of any other property is prohibited. Lighting unnecessarily illuminates another **lot** if it exceeds the requirements of this section.
- (B) Lighting shall not be oriented so as to direct glare or excessive illumination onto streets in a manner that may distract or interfere with the vision of drivers on such streets.



# Office of the Chief of Police

**SUNSET BEACH, NORTH CAROLINA**

Lisa H. Joyner  
Chief of Police

Office 910-579-2151  
Fax 910-575-4104

October 7, 2015

Mr. Forrester,

I have been made aware of the lighting reduction request that has been made on behalf of Sunset Commons at 1401 Seaside Road. It is my recommendation for public safety concerns that no reduction be granted. When lighting is concerned, the law enforcement community will always vote on the side of more rather than less. There is no argument that can justify a need for less lighting than what our Ordinance requires.

Respectfully,

Lisa H. Joyner  
Chief of Police



Hearing Request Application - Form 1  
Zoning Board of Adjustment  
Town of Sunset Beach

RECEIVED  
SEP 23 2015  
BY: CW Check 4016

Date Filed: 9.23.15 Case Number: \_\_\_\_\_ Received by: \_\_\_\_\_

Town-Initiated  Citizen-Initiated

Instructions

This form must be filed out completely. Please attach the appropriate additional form depending on your request type along with required information as outlined in the appropriate checklist. Please type or print legibly. All property owners must sign and consent to this application, attach additional sheets if necessary. If the applicant is not the owner, the owners must sign the Designation of Agent section at the bottom of this form.

The Applicant Hereby (check all that apply):

- Requests a variance from the provisions of the Unified Development Ordinance as stated on Form 2
- Appeals the determination of a Town official as stated on Form 3
- Requests a special use permit as stated on Form 4
- Requests an establishment of vested rights as stated on Form 5

Applicant or Agent's Name: HOLLY L. SMITH of Ilex Properties, LLC

Mailing Address: 265 Creek View Drive

City, State, Zip: Sunset Beach, NC 28468

cell/work: Daytime Telephone: 919-673-5547 Home Telephone: 910-575-4418

Interest in this Case (please circle one): Owner Adjacent Owner Other

Property Owner(s) [if other than applicant/agent]: Sunset Commons Apts, LLC

Mailing Address: 265 Creek View Drive

City, State, Zip: Sunset Beach, NC 28468

cell/work: Daytime Telephone: 919-673-5547 Home Telephone: 910-575-4418

Property Address: 1401 Seaside Road, Sunset Beach, NC 28468

Tax Parcel Number: 2420000502 Zoning District: MR-3

Subdivision Name (if applicable): N/A

Applicant Certification and Designation of Agent

I (we) certify that the information in this application, the attached form(s) and documents submitted by me (us) as part of this application are true and correct. In the event any information given is found to be false, any decision rendered may be revoked at any time. I (we) hereby appoint the person named above as my (our) agent to represent me (us) in this application and all proceedings related to it. I (we) further certify to have received, read and acknowledged the information and requirements outlined in this packet.

9.23.2015 \_\_\_\_\_  
Date Property Owner(s) Holly L. Smith, Managing Member,

\_\_\_\_\_ Sunset Commons Apts,  
Date Applicant/Agent(s) LLC



SB-MR-3

Sunset Beach ETJ

904

Site  
Sunset Beach City

CO-SBR-6000

CO-R-7500

SB-RI-1

SB-MB-1

SEASIDE RD SW

NEPTUNE CT SW

JASARDEAX CT SW

MINION CT SW

PEAK ST SW

GATE ONE ST SW

GATE TWO ST SW

GATE THREE ST SW

COBBLESTONE DR SW



**Date:** September 25, 2015

**To:** Members of the Board of Adjustment for Sunset Beach

**From:** Holly Smith, Managing Member of Sunset Commons Apts, LLC

**Subject:** Request for a Variance to reduce Site Lighting at Sunset Creek Commons

The following summarizes the Variance Request, which includes two options for the Board to consider. Both meet all of the Findings of Fact, as required for Approval by the Board of Adjustment.

**REQUEST:** The Sunset Beach-approved, “LED” lighting plan (attachment 1) includes two light fixtures at the entrance and six lights along the driveway to the parking lot, which is situated in front of the residential building. It also includes three, double lights in the parking lot and two decorative lights at the building’s entrance—a total of 16 lights. One light at the entrance is sufficient, according to the BEMC lighting expert, and applying the parking lot light-requirements to the driveway, which has no pedestrian access, is not needed since our Senior residents will not likely be walking, at night, down to a State Road (SR 904) which is neither lit nor has a sidewalk (since the UDO does not specify a separate requirement illuminating the driveway, the UDO Administrator has applied the lighting requirements for the parking lot, to the driveway). Unfortunately, there are no comparisons for multifamily developments in Sunset Beach—none provide driveway lighting. Regardless, eliminating the extra light at SCC’s entrance and the six pole lights along the driveway will reduce the Site Lighting cost to the project, which will enable us to provide services originally intended for our seniors before the BEMC site lighting costs so negatively impacted the development’s operating budget. The request here is to reduce the lighting along the entrance & driveway, not for the parking lot. As such, **the requested variance is consistent with the spirit, purpose, and intent of the ordinance**—to provide a well-lit parking area which insures the safety of our senior residents, at night, as they walk to and from their autos to their apartment homes.

**Unnecessary hardship would result from the strict application of the ordinance:** Sunset Creek Commons (“SCC”) is an affordable rental complex for senior citizens, with rents regulated by the North Carolina Housing Finance Agency and the IRS. Rents cannot be increased to cover unanticipated operating costs, including BEMC’s annual light pole rental cost of \$5,586 per year. SCC represents my ninth affordable housing development, and never have I experienced the level of illumination required by Sunset Beach, NOR the high cost per lighting fixture charged by BEMC. SCC’s site lighting budget was based on six lights rented at \$24/month/year, which is typical of my eight other properties, including one serviced by an Electric Co-op (“Electricities”). Since rents cannot be increased to cover the unexpected lighting cost, services which (actually) benefit SCC’s senior residents, including full time management / maintenance personnel and transportation to stores and doctors, will have to be reduced or eliminated, in order to pay for unnecessary driveway lighting.



**The hardship is a result from conditions that are peculiar to the property, such as location, size, or topography and did not result from actions taken by the applicant or property owner.** SCC's

apartment building is situated on a flag lot, with the driveway connecting to SR 904 (Seaside Road), about 960 linear feet back. The frontage property was not available for purchase as it was the Owner's intent to develop it for commercial and retail uses. However, the original flag lot configuration showed the building set approximately 550 linear feet from SR 904. Unfortunately, the 1.1 acres of existing wetlands prevented us from meeting DENR's storm water retention requirements (DENR determined that the site bordered tidal waters—the Calabash becomes tidal 3 miles downstream). Attachment # 2 shows the adjacent wetlands on the original site, and the existing site with storm water design, encompassing 20% of the "flag" portion of the property. Moving the site farther from SR 904 elongated the driveway, adding lights per the SB UDO. Therefore, **the hardship did not result from actions taken by the applicant or property owner**—DENR extended the length of the driveway by requiring more land to be dedicated to storm water retention.

The Town-approved site lighting plan requires that the "non-pedestrian access, no-parking" driveway meet the same lighting thresholds as in the parking lot, where folks will be walking to, and from, the apartment building. **If the driveway was a public street, no lights would be required.** AND, the driveway has all characteristics of a public street—26' wide and built to State Road standards, Recorded easements which assure vehicular access and utilities to the rest of the 64 acre tract, and asphalt stub-outs and crosswalk for future connectivity. However, if the driveway is publicly dedicated, we lose signage at the site's entrance, and the building cannot be seen from SR 904 due to the thick tree line there. Having signage at the entrance is a must—we can't rent the apartments if no one knows they are there! **However, I will gladly dedicate the driveway to the Town of Sunset Beach for a public street, if the Town allows for a permanent sign at SR 904—this is the second option for the Board to consider.**

The most expensive lights in the BEMC plan are those in the parking lot—2 lights per pole. I am currently working with a professional lighting engineer, Mark Ciarrocca, P.E., of Cheatham & Associates, for a more efficient lighting design, which also meets the Ordinance requirements for the parking lot. Mark has found single-light fixtures (1 light per pole) which meet the UDO's foot candle minimums, averages, and max/min ratios (see attachment # 3), and are consistent with the BEMC-proposed LED fixtures at the site entrance and with those at the front of the building. The alternate fixtures, for the three poles in the parking lot islands, are being reviewed for consideration by BEMC, and hopefully will result in savings to the project. Thank you for considering my request!

Summary of attachments:

1. Current, approved Site lighting plan, with BEMC fixtures and their costs;
2. Current civil/site plan showing storm water management design, including wetlands on the original site closer to SR 904;
3. Alternate Lighting Plan for the parking lot, by Cheatham & Associates, showing footcandle requirements per the Ordinance.

**Sunset Creek Commons--BEMC light pole charges**

<b>Light Description per BEMC'S 4/6/15 Plan:</b>	<b>proposed # fixtures:</b>	<b>BEMC Cost/ea/month:</b>	<b>Total Cost/mo:</b>
A. LED Array for driveway proper w/ <b>73</b> kilowatts, each: Cat.# ATB0 20BLED	6	20.55	123.30
B. LED at entrance w/ <b>142.35</b> Kwatts, each: Cat # ATB2 40B LED E10;	2	49.70	99.40
C. LED, DSX1 LED 60C 1000 with <b>418</b> Kwatts, total; and,	3, double lights	58.70	176.10
D. Specialty Holophane LED 80K <b>79.6</b> kwatts, each	2	33.35	66.70
		Total per month:	465.50
<b>Total per YEAR:</b>			<b>\$ 5,586.00</b>
<b>= 27% increase in electricity budget</b>			

Sunset Creek Commons' Electricity budget for interior common areas (8,275 nsf) and area lighting : \$20,880  
 including this annual amount for area lighting: \$ 1,728

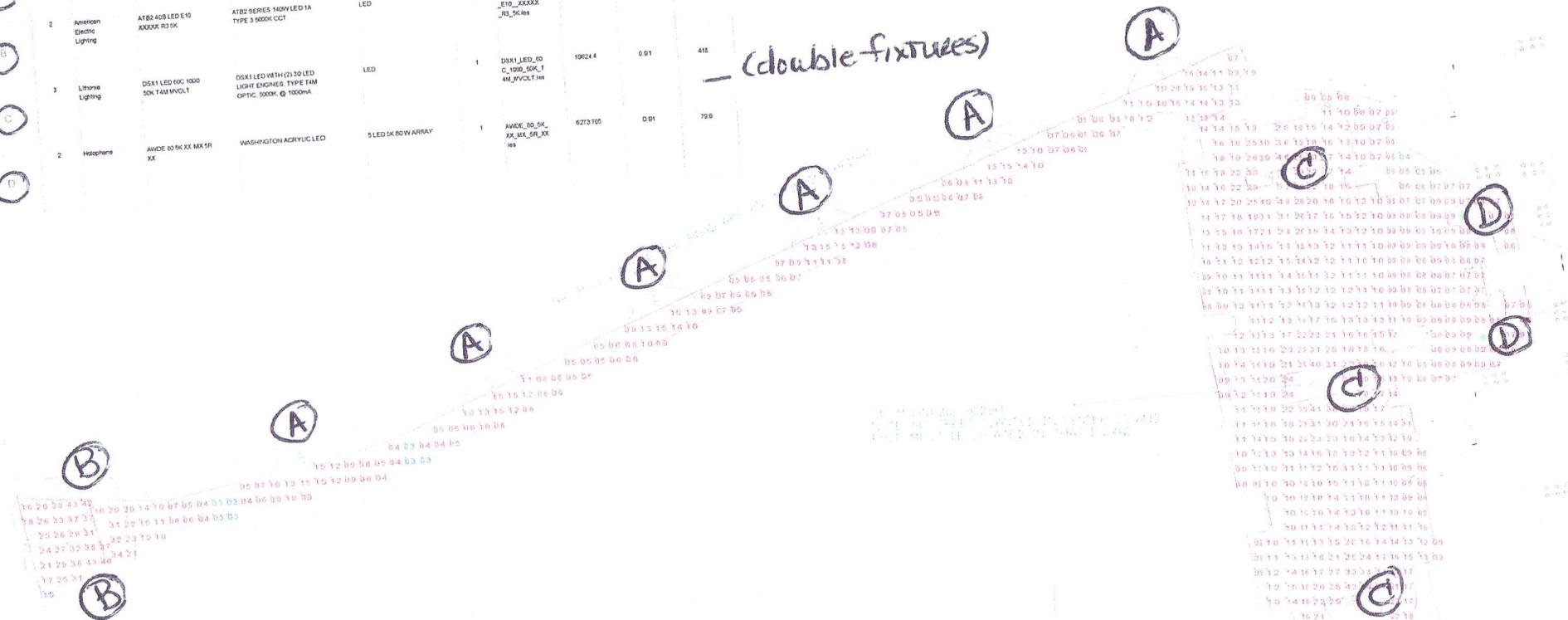
**SO THE PROPOSED BEMC LIGHT POLE RENTALS AND SUNSET BEACH'S UDO REQUIREMENT MEANS A 27% INCREASE  
 IN THE OVERALL ELECTRICITY BUDGET AND A 223% INCREASE IN THE SITE LIGHTING BUDGET**

# Original BEMC Site Lighting + 1111

## 16 Light fixtures @ \$5,586.00/year R

Quantity	Manufacturer	Catalog Number	Description	Lamp	Lens	Number Lenses	File Name	Lumens Per Lamp	Light Loss Factor	Weight
2	American Electric Lighting	AT80 20LEDE10 XXXXX R3 5K	AT80 SERIES 20V LED 1000MA TYPE 3 5000K CCT	LED Array	AT80_20LEDE10_XXXXX_R3_5Kies	1		6361.327	0.91	73
2	American Electric Lighting	AT82 40B LED E10 XXXXX R3 5K	AT82 SERIES 100V LED 1A TYPE 3 5000K CCT	LED	AT82_40B_LED_E10_XXXXX_R3_5Kies	1		13515.75	0.91	142.35
3	Lithonia Lighting	DSX1 LED 60C 1000 50K 14M MVOLT	DSX1 LED WITH (2) 30 LED LIGHT ENGINE TYPE T4M OPTIC 5000K @ 1000mA	LED	DSX1_LED_00_C_1000_50K_14M_MVOLTies	1		19024.4	0.91	418
2	Hazopara	AWCE 80 HX 30 MX SR XX	WASHINGTON ACRYLIC LED	5 LED 1K 80 WARRAY	AWCE_80_5K_XX_MX_SR_XXies	1		6273.705	0.91	798

(double fixtures)



Statistics	Symb	Avg	Max	Min	Max/Mi	Avg/Mi	Avg/Ma
Description	ol				n	n	x
ENTRANCE		3.0 fc	4.3 fc	1.0 fc	4.3:1	3.0:1	0.7:1
* ENTRANCE DRIVE		1.0 fc	3.6 fc	0.3 fc	12.0:1	3.3:1	0.3:1
PARKING LOT		1.4 fc	5.2 fc	0.4 fc	13.0:1	3.5:1	0.3:1

2.5-5.0    1.0  
1.0-1.5    .2  
1.0-1.5    .2

SB UDO: Entrance  
 \* UDO Admin: \* DRIVE  
 Parking lot

Plan View  
 Scale: 1" = 40'

\* No requirements listed in SB UDO for Roadway - UDO Administrator has, as applied lighting requirements for parking lot to non-pedestrian-access roadway