Town of Sunset Beach
Board of Adjustment

Meeting Minutes November 18, 2015
9:10 am

Members Present: Chairperson; Robert Forrester, Gene Allen, Leon August, Peter Scott, Jim Strandquist.

Members Absent: Peter Larkin, Lawrence Sweeney

Staff Present: Rawls Howard, Director of Planning and Inspections; Town Attorney Grady Richardson; Chief of Police, Lisa Joyner; Cindy Nelson, Secretary

Chairperson Robert Forrester called the meeting to order, established that a quorum was present, and read a prepared welcome statement. The Pledge of Allegiance was recited by all in attendance.

Consideration of Approval of Minutes: CONSIDERATION OF APPROVAL OF MINUTES FROM THE SEPTEMBER 9, 2015 MEETING. CHAIRPERSON FORRESTER ENTERTAINED A MOTION TO APPROVE THE MINUTES. MOTION MOVED BY PETER SCOTT. SECOND WAS MADE BY GENE ALLEN. MOTION CARRIED UNANIMOUSLY.

Swearing in of Staff: Rawls Howard, Director of Planning and Inspections and Lisa Joyner, Chief of Police was sworn in.

Continuances or Withdrawal's-None

Old Business: None

New Business:

a. BOA-15-05; Holly Smith, Agent; seeks 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.

Rawls gave an overview of the variance request:

- This is a flag shaped lot which is allowed per the UDO.
- Applicant planned to have a sign at 904 which is the entrance to the property. The only way to allow a sign would be to have a flag shaped lot. The sign would be considered an off premise sign which are not permitted per the UDO.
- Lighting is required for the lot per UDO.

- Plat was created and construction on the apartment project has begun. Applicant had concerns with lighting requirements per Brunswick Electric, in that seven light poles had to be installed as opposed the three she had planned to install.
- Access to the development is not a road but a driveway and there is no lighting standard for driveways.
- Foot candles are measured by size and placement and not the amount of light they give.
- Applicant is claiming hardship due to the expense of long term maintenance of the number light poles required.
- Applicant is proposing to install one light at the entrance, one light along the access way and five lights on the building site; versus the seven she is being asked to install along the access way into the development.

Discussion:

Peter Scott: What is surrounding the access way?

Rawls: It is all wooded area.

Leon August: What is the height of the poles?

Rawls: Approximately 25' to 30' high.

Jim Strandquist: With the exception of the light at the road, the driveway would be very dark without foot candles along it.

Rawls: The police chief can testify to the effects of that.

Chairperson Forrester asked the applicant for her testimony.

Attorney Matt Nichols; 214 Market Street Wilmington, NC was sworn in.
Mr. Nichols introduced his Paralegal Secretary Nicole Copper, applicant Holly Smith, and Jim Fish; CEO of Brunswick Count Senior Resources.

Mr. Nichols began testimony stating the overhead map view of the driveway is different than that what is actually there; it looks much longer on the map, when in fact it is 700' long. Holly Smith is asking for a reduction in the amount lighting required through a variance.

Ms. Smith is proposing to install one light at the road entrance instead of two. One light in the middle of the driveway and one light at the parking lot entrance. We feel this would be sufficient. The reduced lighting would add to a more cost effective project which is affordable housing for seniors. Budget constraints are critical to a project like this one.
A proposed rendering of the finished building was submitted into evidence as A1.

Holly Smith-Applicant/owner-265 Creekview Lane Sunset Beach was sworn in.

Ms. Smith stated that she chose where she could place the building on the parcel of land, but that changed. She did not choose a flag lot. The property owners told her that the building would have to sit back on the parcel as the front lots would be reserved for commercial and retail development. Ms. Smith continued that the original entrance was to be off Leak Street which would only have an entrance way of 400 feet. She was informed that Leak Street was a public

street, when in fact it was a private street with its own homeowners association, and now Leak Street would not be an option for an entranceway to the development. Also there is a creek there with an acre of wetlands. A large storm water collection had to be designed. Ultimately all these factors created the flag lot situation as the entranceway had to be relocated off 904/Seaside Rd.

Ms. Smith continued: The driveway does not have a sidewalk, nor does Seaside Road. There should be no cause for someone to use the driveway as a walking path. On the building site and around the building there will be a walking trail. The building will mostly support women over the age of 70. It's highly unlikely they will be walking out at night time.

Cost of the light poles will be approximately $5,600.00 annually. This expense will have an impact on the budget which will affect the programs, services, and activities provided to the senior residents.

Peter Scott: What is the cost savings for the poles you do not want to install?

Ms. Smith: Savings would be $1,800.00 annually.

Chairperson Forrester listed the items to be admitted into evidence:

- A1-Rendering of finished building.
- A2-Grading Plan.
- A3-Original BEMC site schematic with 16 light fixtures.
- A4-Revised BEMC lighting plan which shows a foot candle at the road, one in the middle of the driveway, one at the entrance to the parking lot, and five lights on building site.

Leon August: The lights are positioned so that it appears that there is approximately 250' between each light.

Ms. Smith: The Town of Sunset Beach as a whole is a dark town with little lighting and there are many seniors living here. The driveway site does not look as long in person as what is depicted on the overhead view. There are no trees on the right side of the property and there is a row of trees along the left side.

Grady Richardson asked Ms. Smith what the curved areas of the driveway were.
Ms. Smith answered they were stub outs along the driveway that Rawls required to have installed for future development.

Discussion ensued.

Ms. Smith mentioned that she asked BEMC if she could purchase the light poles outright or go through a third party and BEMC does not allow those options.

Gene Allen: How much is Brunswick Electric charging you for each pole?

Ms. Smith: The underground conduit installation is $50,000.00 and then they charge $100.00 per the installation of each light pole, regardless of how many poles are installed.

Chairperson Forrester admitted into evidence as A5, the Sunset Creek Commons-BEMC Light Pole Changes which breakdowns the costs.

Jim Fish-CEO of Brunswick Senior Resources-3620 Express Drive Shallotte, NC:

Administers services to seniors over 55 years of age, and, runs the Senior Center as well as Meals on Wheels. Mr. Fish stated he has been involved with the apartment project since the beginning. Mr. Fish explained the benefits that can be provided to the residents of a project this. He compared the cost of the number of meals that can be provided to the $1,800.00 a year expense of the additional light poles, which is paid to the electric company. This expense is then passed onto the residents who will be living on a fixed income.

Additional discussion ensued regarding the income requirements of the residents, audits, and state requirements for this type of project.

Gene Allen: Based on Brunswick Electric drawings you could add two more lights on either side of the center light on the driveway access with only an additional charge of $500.00 a year.

Ms. Smith: There is no lighting definition for driveways in your UDO. However, there are for typical parking lots and not a 700' driveway.

Matt Nichols: Article 9 in the UDO does not reference lighting for driveways only parking lots. Parking lot standards are being applied to this driveway, Appendix A from the UDO states "an area or plat of land used for the temporary parking of vehicles." The driveway does not meet the requirements of a parking lot. Vehicles will not be parked along this driveway.

Chairperson Forrester called for testimony from Lisa Joyner, Chief of Police.

Chief Joyner testified that well-lit areas are encouraged. She maintained concern that traffic from 904, which is a main road, could come into the driveway area. There is potential for criminal activity as it would be a very dark area. Ms. Joyner recommended that one light be added to each side of the center light and one light at the entranceway at the road.

Chief Joyner was briefly questioned by Attorney Matt Nichols.

CHAIRPERSON FORRESTER ENTERTAINED A MOTION TO OPEN THE PUBLIC HEARING. MOTION MOVED BY PETER SCOTT. SECOND WAS MADE BY LEON AUGUST. MOTION CARRIED UNANIMOUSLY.

Katie Hovermale, 1429 Bay Street: A lot of streets in Sunset Beach are very dark with limited lighting, including my street.

Carol Santavicca, 9109 Forest Drive: Offsite signage is not permitted per the UDO. If it were, this could be a road and not a driveway. Eventually other commercial structures will be built on this tract of land and will sit back off the road; again off premise signs are not permitted. The driveway could serve as access to future commercial projects, this is a large tract of land and signs will be needed along Seaside Road as this property is developed. The UDO needs to be updated to allow for certain off premise signage.

Discussion on this matter ensued between Ms. Santavicca and the Board of Adjustment.

Holly Smith-DOT will not allow multiple driveway entrances. DOT regulates this driveway. Regulations required the apartment building to be located 400 feet from Leak Street.

Charlie Nern, 647 Oyster Bay Drive: Supports the project. There are other areas in the Town where there is much less lighting. Criminal activity could take place in those areas as well. Consider not requiring more lighting than is needed for this project.

With no other public comment:

CHAIRPERSON FORRESTER ASKED FOR A MOTION TO CLOSE THE PUBLIC HEARING. MOTION MOVED BY PETER SCOTT. SECOND MADE BY LEON AUGUST. MOTION CARRIED UNANIMOUSLY.

10:40 AM: Meeting recessed at the request of the applicants' attorney Matt Nichols.
11:05 AM: Meeting reconvened.

Attorney Matt Nichols proposed a modification to the original plan. On behalf of his client they proposed that 4 lights line the driveway. One at the road entrance, two along the driveway, and one at the entrance to the buildings' parking lot. He presented a new schematic showing where the lights would be located. Chairman Forrester entered this schematic into evidence as A6. Mr. Nichols continued this is a unique situation in which hardship is incurred. The flag shaped lot is not the action of the developer. This is consistent and within the spirit and intent of the UDO. Conditions could be placed on the variance if needed. Please consider the new proposal.

CHAIRPERSON FORRESTER ENTERTAINED A MOTION TO APPROVE OR DISAPPROVE THE AMENDED VARIANCE APPLICATION PER THE CHANGE AS ON EVIDENCE A6. JAMES STRANDQUIST MOVED THE MOTION TO APPROVE THE VARIANCE PER A6. SECOND WAS MADE BY GENE ALLEN.

Discussion:

Peter Scott: I have sympathy for the project; however, economic hardship is not an appropriate factor to consider.

Chairperson Forrester: I am in agreement that economic factors should not be a consideration for a variance. Factors to consider come from the unique shape of the lot and not through the applicants own actions. Add to the motion one condition-the applicant must consult with Brunswick Electric and get an approval for the new schematic. Have Brunswick Electric approve the revised plan A6 to show that this will be adequate light coverage.

Board of Adjustment members stated agreement for the condition.

This is not a road or a parking lot. A variance would provide more lighting than a roadway.

Peter Scott: In favor of the the motion, unique property that does not seem to fit the UDO.

Leon August: My calculations show there would be adequate lighting with four light poles per the applicants newly revised plan as evidence in A6.

Chairperson Forrester stated that the variance will be granted to have four lights; one at the roadway, two along the driveway, and one at the corner of the parking lot.

The variance was granted by 4/5'ths of the vote by roll call:

Jim Strandquist: Yes
Peter Scott-Yes
Gene Allen-Yes
Leon August-Yes
Chairperson Forrester-Yes

Chairperson Forrester read the Findings of Fact.

11:30 AM
Meeting Continued to the next agenda item:

b. BOA-15-06; Chris Stanley, Agent, seeks a variance to reduce the required 25 ft front yard setback for the Br-2 zoning district by 15 ft. for all lots within the Riverside North subdivision.

Chairperson Forrester asked for a roll call of those present: Jim Strandquist, Peter Scott, Gene Allen, Leon August, Chairperson Robert Forrester, all of whom participated in the prior meeting for this variance request.

Chairperson Forrester said they have received a request for a motion to reopen the public hearing and to amend the variance application. The applicant submitted additional evidence which will be presented at this meeting.

Rawls: Yesterday we received an amended application of which has been posted on the Town's website. Holley Snider of CAMA is present for additional questions.

Mark Hamlet of Hamlet and Associates 5215 Junction Park Circle #202, Wilmington; attorney for applicant was present along with the applicant and the developer Sammy Varnam. Mr. Hamlet said he filed a motion yesterday to reopen the hearing to amend the variance application by submitting additional evidence. Mr. Hamlet submitted a new map that was made in accordance with the Board's request from the last meeting.

Grady Richardson: Mr. Chairman, there needs to be a decision on whether or not you're going to grant the motion.

Mark Hamlet: I am making a motion to reopen the hearing for the purpose of supplying a new map showing additional details that were requested at the last hearing. There is a reduction in the total of number of lots that will need a variance, that being 68 lots to 32.

Jim Strandquist spoke on behalf of the Board in that the copies of the maps they received were not legible, the measurements and lines were difficult to read.

Chairperson Forrester called for a motion to reopen the hearing by roll call with the stipulation that the changes made to the map are readable.

Jim Strandquist-Yes
Peter Scott-Yes
Gene Allen-Yes
Leon August-Yes
Chairperson Forrester-Yes

The public portion of the hearing was reopened. Rawls and Mr. Hamlet proceeded to set up a computer with slide projections for the wall screen to allow a better view of the measurements on the survey map.

Mr. Hamlet gave an overview of the case; he further stated that he was the attorney who litigated the Administrative Law Proceeding which upheld the CAMA permit case in 2006. He further said that the purpose of the hearing today is for a variance for 32 lots. The variance was applied

for at the Town's request. Ownership of the land has already been determined as well as the location of the infrastructure and the road.

The applicant adhered to the direction of the Town which is to seek a blanket variance for all 68 individual lots in the subdivision. At the last hearing the applicant agreed with the Boards decision to come back with a new map of only the lots that would require a variance as measured with a setback distance from the southern edge of the pavement. The southern edge of the pavement is a fixed point of which exact distance can be measured.

Chairperson Forrester said the setback line should not be taken from the pavement as the pavement is subject to change. It should be measured from the easement right of way.

Peter Scott: I disagree; we did not formally decide that, there was support to measure from the road.

Mr. Hamlet presented the new map for consideration and asked the applicant Chris Stanley to explain the changes.

Chairperson Forrester asked questions in regard to whether or not the applicant had equitable interest in the property and he further questioned who the property owners were.

Discussion ensued on the identities of the property owners.
Chairperson Forrester challenged the subdivision replat that was recorded in August 2015 and further questioned property ownership. Chris Stanley said there are two different entities with the same owners. Some lots are owned by one entity and some are owned by another. That is why both names are on the map.

Chairperson Forrester continued to ask further who Mr. Stanley contracted with and were there any dealings with anyone else who may have had holdings in the subdivision. Dialog ensued between the Chairperson and Mr. Stanley regarding property ownership.

Mr. Stanley said in order to maintain a more uniform setback line we measured by the southern edge of the actual street. Chairperson Forrester said the referenced map has already been submitted as A3 and is attached to the motion.

Mr. Stanley demonstrated the new lot lines. Discussion ensued.

After some time, Peter Scott said the CAMA buffer should be protected no matter where the setback line is measured from.

Sammy Varnam was sworn in.
Sammy Varnam; 1574 Monster Buck Estates Supply NC: The asphalt has had an as built survey done. We cannot change what has been permitted and approved. Any alterations would be going against the stormwater permit.

Grady Richardson: There has to be a determination of whether we are going to go from the ROW line or the asphalt.

Peter Scott: Mr. Stanley, did you make an alternative line? If not, would you be willing to do that?

Discussion ensued.

Grady Richardson: The cleanest way for the applicant to proceed would be to redo the map from the Right of Way line.

Mark Hamlet: We could produce a new map that shifts the right of way line.

Discussion ensued.

Sammy Varnam: At the October 18th hearing we were told to measure from the southern edge of the pavement and we measured the 25' setback from the easement. It reduces the variance request from 44 lots to 32 lots. The pavement is surveyed on the ground and cannot change. We have shown consistency and reduced the number of lots that need a variance.

Considerable discussion ensued.

Mark Hamlet stated for the record that the variance request was to keep any building out of the 30' CAMA buffer, and to maintain uniformity of building thought out the development.
Mr. Hamlet asked to recess for lunch or to continue the meeting to another date so that his client, the applicant can reconfigure the map to show the setback measurement from the right of way line. We would be asking for a variance for 44 lots to measure the setback line from the right of way line.

Peter Scott: I understand the reason for the request that some of the lots would not meet the buildable space of 1000 square feet.

Holley Snider of CAMA was sworn in.
She stated that the exclusion would apply for the relief to the buffer if the property was platted prior to 1999, then the 1200 foot buildable area could be considered for a variance. However, all requests for a variance must be sought for at the local level before applying to CAMA.

Discussion ensued.

1:00 PM

PETER SCOTT MOTIONED TO ADJOURN FOR A PERIOD OF TIME TO ALLOW THE APPLICANT TO PRODUCE A NEW MAP AND COME BACK AT 3:00 PM, SUBJECT TO THE AVAILABLITY OF TOWN ATTORNEY GRADY RICHARDSON. MOTION WAS MOVED. SECOND WAS MADE BY JIM STRANDQUIST. MOTION CARRIED UNANIMOULSY.

3:00 PM

Meeting reconvened, quorum was present. Public hearing portion of the meeting was still open.

Applicant Chris Stanley presented a new map to each Board member. Chairperson Forrester admitted the new map into evidence as A4.

Map included:

- Green colored lots, a total of 24, would not need a variance and are buildable as is.
- Yellow colored lots would need a 10' variance and 19 of the lots would not meet the 1200 square foot minimum without the variance.
- Red colored lots would need a 15' variance and 17 of the lots would not meet the 1200 square foot minimum without the variance.

- Orange colored lots, 3 lots would need at 5' variance.
- Out of 68 lots, 39 would be out of the 1200 square foot building envelope.

Discussion ensued.

CHAIRPERSON ASKED FOR A MOTION TO OPEN THE PUBLIC HEARING PORTION OF THE MEETING FOR THE AMENDED APPLICATION. MOTION MOVED BY JIM STRANDQUIST. SECOND MADE BY LEON AUGUST. MOTION CARRIED UNANIMOULSY.

NO PUBLIC COMMENTS MADE.

CHAIRPERSON FORRESTER MOTIONED TO CLOSE THE PUBLIC HEARING. MOTION MOVED BY PETER SCOTT. SECOND WAS MADE BY LEON AUGUST. MOTION CARRIED UNANMIOULSY.

Grady Richardson stated for the record the variance application as presented in exhibit A4 will use the right of way of line. The Board approved and Mr. Richardson asked Mr. Hamlet to stipulate to this fact. Mr. Hamlet so stipulated.

Mark Hamlet made his closing statements for the record.

- Asking for a variance in accordance with exhibit A4; a map reflecting the distances from the edge of the Right of Way. The variance includes 39 lots that would not allow for construction the 1200 square foot building requirement, and to protect the 30' CAMA buffer area, the development will provide uniformity and the development is in the best interest of the Town.
- Criteria described on page one, appendix of the application. The application states that an unnecessary hardship exists in that these lots could not be developed while preserving the 30' CAMA buffer requirement. The hardship is result of conditions peculiar to the property with the location and sizes of the lots. It is the depth of the lots that is the issue in that the developer is trying to preserve the 30' CAMA buffer.
- Hardship did not result in actions by the developer, erosion has occurred over time as the original plat was recorded in 1976 and predates the Town's UDO.
- The variance is consistent and within the spirit, purpose, and intent of the ordinance. The intent of the ordinance is to create an environment consistent with what is here in Sunset Beach.

Chairperson Forrester stated that the following lot numbers as listed on exhibit A4 for a total of 44 lots, regardless of the color code on the map would need a variance:
Lots 37 thru 72, then lots 76, 77, 78, 83, 84, and lots 92, 93, 94. Rawls said that he would defer to the map when building permits are applied for to determine for sure what properties would need a variance.

With no further comments the Board deliberated further:

Chairperson Forrester stated that two of the requirements <u>have not</u> been met for the findings of fact:

1. Does not result in conditions that are not peculiar to the property. There are 324 lots in the same BR-2 zoning district similarly situated that face water. All are subject to CAMA buffer requirements and town bulkhead requirements.
2. We are being asked to grant variances in effect to "defacto" zoning. A decision of this size is the jurisdiction of the Town Council and not the Board of Adjustment. It is not a variance decision it is "defacto" zoning and not in our authority to approve. In addition-my personal feeling is some of the hardship is the action of the owners and not related to erosion. The replat done in August 2015 could have addressed these issues with CAMA permits and erosion.
3. The hardship on which the applicant relies results from actions taken by the property owner. A map combination/replat establishing these 68 lots was filed and recorded in June of 2015. The limitation of the buildable area was created by the design of the replat long after the CAMA limitation had become effective.

Peter Scott: This properly is not similarly situated to other property in the area.

Jim Strandquist: Why didn't they request a variance when they put in the infrastructure?

Rawls: Development was already complete; there were issues when the developer came in for approvals.

Mark Hamlet: This is an approved subdivision and there was an order by an Administrative Law Judge. Until recently the lots would not have been buildable without public sewer and water.

Chairperson Forrester requested that the Administrative Order be submitted into the minutes. He further said that he does not believe lot lines were a part of the Administrative Order. And the lots replatted in 2015 are different than the lots platted in 1976.

Lengthy discussion and argument on the matter ensued.

Jim Strandquist said the applicant has worked hard to satisfy our requests and it is clear that there will now be buildable lots. There is nothing to stop them from moving ahead. Gene Allen and Peter Scott were in agreement.

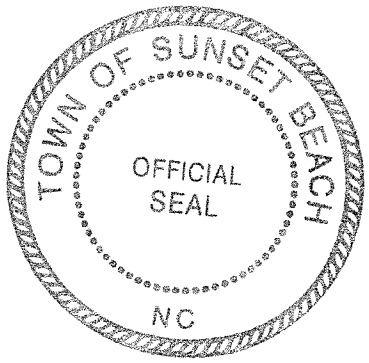
PETER SCOTT MADE A MOTION TO APPROVE THE VARIANCE AS DEPICTED ON EXHIBIT A4. MOTION WAS MOVED BY GENE ALLEN. SECOND WAS MADE BY JIM STRANDQUIST. MOTION WAS APPROVED BY ROLL CALL:

Jim Strandquist-Yes
Peter Scott-Yes
Gene Allen-Yes
Leon August-Yes
Chairperson Forrester-No. Chairperson informed Rawls that he would not participate in the findings of fact. Grady Richardson proposed to draft the language for the findings of fact for the Board.

Administrative Items:

A. Director and Staff Comments-The next meeting is December 9th.
B. Board Member Comments and Request for Future Agenda Items-None

Adjournment- 4:30 PM. CHAIRPERSON FORRESTER ASKED FOR A MOTION TO ADJOURN. MOTION WAS MOVED. SECOND WAS MADE BY GENE ALLEN. MOTION CARRIED UNANIMOUSLY.



Town of Sunset Beach
Board of Adjustment

Chairperson Robert Forrester

Submitted by:

Cindy Nelson Board of Adjustment Secretary

***Minutes from the September 9, 2015 meeting were approved at the November 18, 2015 meeting.