



Town of Sunset Beach  
Board of Adjustment

**Meeting Minutes October 14, 2015**

**9:05 am**

**DRAFT**

**Members Present:** Chairperson; Robert Forrester, Gene Allen, Leon August, Peter Larkin, Peter Scott, Jim Strandquist, and Lawrence Sweeney.

**Members Absent:** None

**Staff Present:** Rawls Howard, Director of Planning and Inspections; Town Attorney Grady Richardson; 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:** None

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

Chairperson Forrester informed the Board that a written request was submitted for a continuance to the next meeting as the applicant is in the process of obtaining more information that will assist her case.

Rawls interjected the next scheduled meeting is on November 11<sup>th</sup>; however that is Veteran's Day and Town Hall will be closed. Staff is requesting to change the meeting to November 18<sup>th</sup>.

After a quick poll, Chairperson Forrester stated that one regular member (Peter Larkin) and one alternate member (Larry Sweeney) would not be present on November 18<sup>th</sup> and verified that a quorum would still be present.

CHAIRPERSON FORRESTER ASKED FOR A MOTION TO CHANGE THE MEETING DATE FROM NOVEMBER 11<sup>TH</sup> TO NOVEMBER 18<sup>TH</sup>. MOTION MOVED BY LEON AUGUST. SECOND WAS MADE BY PETER SCOTT. MOTION CARRIED UNANIMOUSLY.

CHAIRPERSON FORRESTER ENTERTAINED A MOTION TO CARRY THE APPLICATION BOA-15-05 FROM TODAY'S DATE TO NOVEMBER 18<sup>TH</sup> WITHOUT FURTHER NOTIFICATION TO THE PUBLIC. MOTION MOVED BY PETER SCOTT. A SECOND WAS MADE AND THE MOTION WAS CARRIED UNANIMOUSLY BY ROLL CALL:

*Jim Strandquist-Yes*

*Peter Scott-Yes*

*Peter Larkin-Yes*

*Gene Allen-Yes*

*Leon August-Yes*

*Chairman Forrester-Yes*

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

Rawls began with a power point presentation. The presentation demonstrated an overhead view of the Riverside subdivision. Applicant/agent Chris Stanley, the property owner, and other persons associated with the subdivision were present and spoke on behalf of the variance request.

#### Case Facts:

- Subdivision is ready to be built upon with single family homes. Infrastructure is in place for streets, stormwater, water and sewer lines.
- 68 platted lots.
- BR-2 zoning district.
- Setbacks are a 25' front, 5' setback front and rear, building footprint is 1000 square feet.
- Subdivision platted in 1976 which predates Sunset Beach's subdivision ordinance.
- Does not predate CAMA, but does predate CAMA buffer requirements.
- Request is to reduce front setback from a 25' to a 10' front yard setback.

Rawls stated there is a 35' easement from the street side which has a paved access road and runs across all 68 lots. This is from where the setback line is proposed to be measured. Then, there is a 30' CAMA buffer from Jinks Creek. By following these setback requirements or measurement locations there would only be a substandard buildable area remaining and the ordinance requires a 1000 sq.ft. minimum buildable area. The applicant could request a setback deviation from CAMA, however, CAMA requires all other options to be exhausted on a local level before requesting a CAMA variance.

In addition, there is a 10' utility easement which would serve as a set back and bring the homes closer to the street expanding the buildable footprint to approximately 1200 sq. ft. for the majority of lots.

Discussion:

Chairperson Forrester informed the Board members that there was litigation in regard to this subdivision which resulted in an Administrative Order from an administrative law judge in 2005. The Order determined the location of the road, bulkhead, utility installation, and grading. The infrastructure that exists now was installed where required by the Administrative Order.

Holley Snider of CAMA was sworn in.

Ms. Snider stated there was a reduced buffer allowance within the CAMA regulations that would allow a 20% reduction in the 30' CAMA setback for some of the smaller lots if they were platted prior to 1999. With the strict application of the 25' setback this would allow each individual lot owner to apply for a CAMA minor permit and apply the rule to the buffer reduction. In some cases this will bring a home as close as 20' to the bulkhead along the feeder canal. A reduction in the front yard setback as was being requested by the applicant, which would reduce that need and be more favorable according to Ms. Snider.

Peter Larkin-Is the 20% measured on the 30' CAMA setback or the lot dimension?

Holley Snider-It is based upon when the lots were platted. Lots platted before 1999 are allowed this exception.

Chairperson Forrester-The lots were re-platted in 2015.

Rawls-I approved the re-plat as one lot was removed. Originally there were 69 lots and they made 68 lots, one lot was lost due to erosion. Since the number of lots did not increase, I believed the re-plat request to be a recombination as defined by the UDO and exempt from formal subdivision procedures.

Peter Larkin-Is Staff aware that not every lot in the subdivision would need this variance.

Rawls-Yes, this is true; however this is the cleanest solution to maintain uniformity within the subdivision.

Jim Strandquist-There has been some erosion into the property over the last 30 years. Why build now?

Chris Stanley; Applicant/agent was sworn in.

Mr. Stanley stated that public sewer was now available to the subdivision so it made sense to proceed with building. Mr. Stanley was asked who owned the Riverside subdivision property. Discussion then ensued in regard to property ownership. Town Attorney Grady Richardson interjected that the applicant was available to defend his application for a variance and that property ownership information was irrelevant. Absent is clear evidence to the contrary by virtue

of a binding Court order or similar information. Also, erosion of the property was not of concern to the case.

Chris Stanley further offered that the subdivision was re-platted as one lot was lost due to erosion. In doing this, the re-plat had to be brought up to current standards for surveying rules and regulations.

Chairperson Forrester-Each lot is permitted a 2250 sq.ft. of built upon area?

Chris Stanley-That is correct. This is the allowable impervious coverage to meet stormwater requirements. However, not all lots will have that much square footage.

Chris Stanley started to read his statement for Burden of Proof to the Board; he requested that this be read into the minutes. Attorney Grady Richardson advised Mr. Stanley that his Burden of Proof was already submitted to the Board as a part of the record and that he could just highlight the pertinent points.

Chris Stanley then proceeded to read the highlights of the Burden of Proof submitted in the application packet as **Appendix Page 1**. Our intent is to push the homes as close to the road and as far from Jinks Creek canal as possible.

Peter Scott-How can we be sure a private owner would not try to get a reduction from the 30' CAMA buffer if this variance is granted?

Holley Snider-The rule reads that if a lot exceeds a 1200 sq.ft. buildable portion then a reduced CAMA buffer allowance would not be permitted. The reduction to the front yard setback would provide more than 1200 sq.ft. buildable area.

Discussion ensued in regard to the lots not being re-platted to accommodate building.

Peter Scott-How many lots are buildable without a variance?

Chris Stanley-There are several, however, the exact number is not certain.

The Board reviewed the subdivision map and attempted to determine which lots would and/or would not require a variance.

Chairperson Forrester stated for the record:

- The original subdivision map for lot 40 B D F was recorded September 13, 1976.
- Sunset Beach zoning ordinance and subdivision ordinance was adopted in 1980 and 1982 respectively.
- The CAMA 30' rear yard buffer requirement became effective in 2000.
- CAMA permit issued March 31, 2005, authorizing development of roadways, utilities, and bulkhead. The building of homes and septic tanks would require additional permits.
- The Third Party Petition was filed April 18, 2005.
- The Administrative Order referred to earlier in the meeting was on October 18, 2005 and expired in 2008.
- Stormwater permit issued February 10, 2005.

- Sunset Beach Unified Development Ordinance (UDO) was adopted on December 3, 2012.
- UDO amendments affecting this zoning district were June 2, 2014 and October 6, 2014.
- Recombination and re-plat of the subdivision for lot 40E was June 23, 2015.
- Recording of recombination and re-plat was June 25, 2015.

Peter Scott challenged the variance request by asking about hypothetically granting a 10' reduction instead of a 15' reduction? Could a structure still be built in the 1000 sq.ft. building area? Rawls noted this would be in the Board's discretion. Holley Snider added that a 1200 sq.ft. buildable requirement is needed to avoid applying for a reduction to the 30' CAMA buffer.

Grady Richardson said it would be difficult to have CAMA reduce their requirements. Restrictive covenants could be imposed so that future applicants and/or owners in this development could not be prohibited from taking any action to seek to reduce the 30' CAMA buffer.

Peter Larkin-Ms. Snider, is the 30' buffer measured from the bulkhead?

Holley Snider-There are wetlands present on the south side. The buffer is measured from the mean high water line. On the north side, the 30' buffer will not be impacted, although that is still being researched per the 2005 CAMA permit.

Peter Larkin-The "common driveway" is not an appropriate buffer per CAMA, even though the buildable lot maybe within the 30' buffer, but the 14' to 18' driveway is.

Holley Snider-The driveway houses the stormwater collection system which was put in place by the Administrative Order.

Discussion ensued on the possibility of recalculating the lot sizes, what type of restricted covenants could be developed, and whether there are other CAMA rules that might apply to this development.

Applicant Chris Stanley rested his case.

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

Jan Harris of 206 North Shore was sworn in to testify.

Her case was presented that Riverside Drive was owned by the state and not by a private owner. She submitted a notebook to the Board, tracking ownership of Riverside Drive. Chairperson Forrester accepted the notebook into evidence as item **P1 (P for Public)**. After Ms. Harris' testimony Town Attorney Grady Richardson stated that "the only person who can verify legal ownership is a North Carolina Superior Court Judge. This determination is not within the jurisdiction of the Board of Adjustment. You are relying on the truthfulness of the applicant."

Linda Rudick; 1008 Park Road-Jan, were you able to find a legal title anywhere?

Jan Harris's response: No

Jan Harris-Mr. Varnam was supposed to have removed lots 64 thru 68 in 2007. Discussion between Holley Snider, Jan Harris and the Board continued along the line of what was included in the CAMA permit of 2007.

Chairperson Forrester offered into evidence the **DENR Notice of Violation dated 7/18/2006 permit as P2**. Town Attorney Grady Richardson said the only way the permit could be entered into evidence is if the hearing were continued to another date and a copy of the permit was obtained. Chairperson Forrester said he will rely on Holley Snider's testimony. **P2 was tendered but not received as evidence.**

Rawls Howard reminded the Board they were here today to grant or deny a variance for setbacks.

David Eastburn; 424 32<sup>nd</sup> Street was sworn in: Mr. Eastburn presented written comments of which he submitted to the Secretary and the Board and was accepted into evidence as **P3**.

11:30 am: The Secretary was asked to assist in the outer lobby and removed herself from the meeting. The recorder remained running in her absence as Mr. Eastburn presented his case.

11:45-The meeting was recessed until 12:00 pm. The recorder remained in operation.

Proceedings reconvened at 12:00 pm.

At the conclusion of Mr. Eastburn's testimony, Chairperson Forrester asked the public if there were any questions or comments, being none the Chairperson called upon the next person to give testimony.

Greg Weiss; 507 North Shore Drive E was sworn in: Mr. Weiss presented his case which was submitted into evidence as **P4**. His house is located at the junction of North Shore Drive E and 6<sup>th</sup> Street which abuts the entrance to Riverside Drive. He highlighted the points of concern from the handout he submitted. At the Chairpersons invitation, there was no additional public comment in regard to Mr. Weiss's testimony.

Sammy Varnam; 1574 Monster Buck Estates-The intent of this request is to not allow the homes to encroach into the 30' CAMA buffer or to be staggered inside the buffer. People want to be closer to the water and not pushed 100' away from it so the homes will most likely be constructed closer to the bulkhead.

Linda Rudick-Mr. Varnam, how many of these lots would require a variance for the size home that could be constructed.

Sammy Varnam-We want to avoid asking CAMA for any house to encroach into the 30' buffer.

**WITH NO MORE TESTIMONY OR COMMENTS, CHAIRPERSON FORRESTER ENTERTAINED A MOTION TO CLOSE THE PUBLIC HEARING. MOTION MOVED BY PETER SCOTT. SECOND WAS MADE BY GENE ALLEN. MOTION CARRIED UNANIMOUSLY.**

CHAIRPERSON FORRESTER ENTERTAINED A MOTION AND A SECOND TO APPROVE OR DENY THE VARIANCE REQUEST, WITH COMMENTS ON THE MOTION. PETER SCOTT MOVED TO DENY THE VARIANCE AS REQUESTED AS THERE ARE OTHER ALTERATIONS THAT COULD BE MADE. SECOND WAS MADE BY LEON AUGUST.

Comments on the Motion:

Peter Scott-The Board is being asked to grant more relief than is needed to meet UDO requirements. Several lots would not need a variance. A reasonable size home could be constructed if the setback is based from the road line. Protecting the CAMA buffer from individual requests is paramount. The uniformity of the street is also a concern as some properties will be affected and others will not.

Peter Larkin-There is not sufficient evidence to grant the request. Some lots will need the variance and some will not. Variances should be granted on an individual basis and not for a whole subdivision.

Larry Sweeney-How is the 30' CAMA buffer protected if the variance is denied?

Town Attorney Grady Richardson-A variance request would only be for the lots that need it and the individual property owner could go through the variance and building processes.

Rawls Howard-The hearing could be continued so the applicant could do more research on the lots that need a variance.

Chairperson Forrester-There is nothing that would prohibit an applicant from complying with the current UDO. The lots could have been reconfigured to meet standards when this was re-platted in 2015. The subdivision could have been rezoned but rezoning is not within the authority of the Board of Adjustment.

Applicant Chris Stanley asked for a continuance until the next meeting.

**The Board of Adjustment made a request of the applicant to show the number of lots that would need a variance and to use the private road as the setback line.**

MOTION TO DENY THE VARIANCE WAS TABLED. THE MOTION TO CARRY THE MATTER UNTIL THE NOVEMBER 18<sup>TH</sup> MEETING WITHOUT FURTHER NOTIFICATION TO THE PUBLIC WAS MOVED BY PETER SCOTT. SECOND WAS MADE BY LEON AUGUST. MOTION CARRIED UNANIMOUSLY BY ROLE CALL:

*Jim Strandquist-Yes*

*Peter Scott-Yes*

*Peter Larkin-Yes*

*Gene Allen-Yes*

*Leon August-Yes*

*Chairperson Forrester-Yes*

**Administrative Items:**

A. Director and Staff Comments-None

B. Board Member Comments and Request for Future Agenda Items-None

**Adjournment-** 1:00 pm. CHAIRPERSON FORRESTER MOTIONED TO ADJOURN.  
MOTION CARRIED BY JIM STRANDQUEST. SECOND WAS MADE BY GENE ALLEN.  
MOTION CARRIED UNANIMOUSLY.

Town of Sunset Beach  
Board of Adjustment

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*Chairperson Robert Forrester*

Submitted by:

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*Cindy Nelson Board of Adjustment Secretary*

\*\*\*No minutes were available for approval at this meeting.