

TEXT AMENDMENT STAFF REPORT



Hearing Date: 12-13-15

[UPDATED: 2-4-16, 4-7-16, 5-5-16]

Case File #: TA-15-13

General Description: Amend Article 2, General Regulations in the UDO to provide development standards for the use of fill on lots.

Town Initiated

Citizen Initiated

Applicant(s): Town of Sunset Beach

APPLICATION OVERVIEW:

The Sunset Beach Planning & Inspections Department has initiated an application to amend Article 2 in the UDO to provide development standards for placing fill on lots within the Town’s planning and zoning jurisdiction. This application is being initiated by Town staff at the direction of the Planning Board. The concern from the Planning Board was centered on the apparent omission of this former Town Code standard in the UDO at the time of its adoption. The Board expressed a need to place this or a derivation of this standard back into the current code.

STAFF COMMENTARY

Staff has reviewed the UDO for the appropriate section to incorporate this language in the current code. Staff believes the most appropriate location for this language given the difference in Town Code structure versus the UDO format is to place the standard in Article 2, General Regulations.

At the request of the Planning Board to place the previous Town Code language back into the UDO, staff has provided the following previous language for consideration for the Board and at their request:

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SECTION 2.18 Filling, Grading, and Excavation

(A) The amount of fill added to a lot will not be greater than one foot above the crown of the road except fill that is necessary to meet Health Department or State Storm water requirements for a permit. The fill will also be limited by the height of the adjacent side lot that has been developed and cannot exceed the developed lot in height by greater than one foot. In the case of two lots back to back or adjacent, any differential in fill greater than one foot at the common line of the two lots, the higher lot must construct a wall, bulkhead, or a satisfactory containment device to prevent the fill and surface water from running on the lower lot.

(B) In lowering the level of a lot by grading or removing sand, the higher limit will not exceed one foot above the crown of the road when finished and stabilized. Sand will not be taken from the island; and sand used to fill low lots will be stabilized to prevent wind erosion.

(C) A silt fence must be erected around that portion of a lot being disturbed that causes erosion onto adjacent property and street right of ways. Exception: Only the portion of a lot adjoining golf course greens or fairways or a portion of a lot for construction access is exempt.

(D) No lot, parcel or tract of land may be disturbed by grading, filling, excavation, and removal of trees or removal of stumps without obtaining a Fill and Grade permit.

After review, staff believes the previous Town Code language needs to be clarified to address some concerns relative to the following:

1. Staff took the approach of looking at lots as either being below the crown of the road or higher than the crown of the road. By only allowing one height maximum for either scenario, there is potential for creating or exacerbating existing storm water problems with existing lots that do not meet the required height maximum.
2. The “crown of the road” measurement does not account for corner lots or which road to use.
3. By disallowing sand to be removed from the island, sand that is removed from an island lot has to be deposited somewhere else on the island. Staff foresees this as a problem if there is no suitable location identified or available.
4. Staff believes the older language does not have a clear basis for measuring where heights should be measured from.

Based upon these observations, staff recommends the following amendment for Planning Board consideration:

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(A) The established grade when adding fill to any **lot** or portion thereof, shall be no greater than one foot above the crown of the adjacent road measured at the center of the front property line of the **lot** on which a structure is to be constructed. Exception: fill that is necessary to meet Health Department or State Storm water requirements for a permit.

(B) All fill shall be established at a slope not to exceed 3:1 (three feet horizontal run for every one foot vertical rise) and shall be stabilized to prevent erosion. Alternatively, construction of a retaining wall, bulkhead, or other ~~satisfactory~~ **engineered** containment device to prevent fill and surface water from running onto adjacent lots may be permitted.

(C) Where a proposed building site has an average natural elevation higher than the crown of the adjacent road, the established grade of the building site shall be established no higher than the average adjacent grade of the first 15 feet of all adjoining properties.

(D) The builder and/or owner shall be responsible for grading the **lot** in such a manner as to absorb surface runoff or other catchment system.

(E) A silt fence must be erected around that portion of a **lot** being disturbed that causes erosion onto adjacent property and street right of ways. Exception: Only the portion of the **lot** adjoining golf course greens or fairways or a portion of a **lot** for construction access is exempt.

(F) No **lot**, parcel or tract of land may be disturbed by grading, filling, excavation, and removal of trees or removal of stumps without a Town Fill and Grade permit.

(G) This section does not alleviate any property owner from adhering to nor from obtaining required permits and from any County or State authority.

PLANNING BOARD COMMENTS WERE DENOTED IN BLUE ABOVE.

UPDATE (2-4-16): IN RESPONSE TO COMMENTS FROM THE PLANNING BOARD AT THE 1-21-2016 MEETING, STAFF CONDUCTED RESEARCH INTO OTHER BEST PRACTICES AND MAKES THE FOLLOWING RECOMMENDATION FOR BOARD DISCUSSION AND CONSIDERATION:

(A) Establishment of **Finished Ground Level**:

- a. The established, **finished ground level** of any **lot**, shall be no greater than one foot above the crown of the adjacent road; measured at the center of the front property line adjacent to the road to the center line of the proposed **building footprint** fronting the road.
- b. Measured at the center of the front property line adjacent to the road, where the proposed **building footprint** on an unfilled **lot** has an average elevation higher than one foot above the adjacent road or higher elevations are needed to match adjacent property, **finished ground level** shall be determined by measuring the average elevation of the ground located at the two points where the projection

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of any portion of the proposed **building footprint** adjacent to the road is 10 feet past each side lot line.

- c. Exception: Fill that is necessary to meet County or State requirements for a Health or Storm Water permit.

- (B) All fill shall be established at a slope not to exceed 3:1 (three feet horizontal run for every one-foot vertical rise) and shall be stabilized to prevent erosion. Alternatively, construction of a retaining wall, bulkhead, or other engineered containment device to prevent fill and surface water from running onto adjacent lots may be permitted.

- (C) The builder and/or owner shall be responsible for grading the **lot** in such a manner as to absorb surface runoff or other catchment system.

- (D) A silt fence must be erected around that portion of a **lot** being disturbed that causes erosion onto adjacent property and street right of ways. Exception: Only the portion of the **lot** adjoining golf course greens or fairways or a portion of a **lot** for construction access is exempt.

- (E) No **lot**, parcel or tract of land may be disturbed by grading, filling, excavation, and removal of trees or removal of stumps without a Town Fill and Grade permit.

- (F) This section does not alleviate any property owner from adhering to nor from obtaining required permits from any County, State or Federal authority.

Based upon discussion at the 1-21-16 Board meeting, staff would propose an overall standard that contemplates a grade calculation based upon the building footprint or pad rather than the "whole lot" solution. In addition, staff believes that a more practical, "real-world" approach would be to focus on establishing grade based upon surrounding properties to alleviate potential storm water problems.

UPDATE (4-7-16, 5-5-16): IN RESPONSE TO COMMENTS FROM THE PLANNING BOARD AT THE 2-18-2016 MEETING, BOARD MEMBERS MET WITH STAFF TO CONDUCT FIELD VISITS FOR CASE STUDIES. BASED UPON BOARD MEMBER FEEDBACK, IT WAS DETERMINED THAT THE BEST COURSE OF ACTION WAS TO HAVE TWO SEPARATE STANDARDS; ONE FOR THE ISLAND AND ONE FOR THE MAINLAND. IN ADDITION, IT WAS DETERMINED THAT HAVE TWO SEPARATE STANDARDS FOR FILLING AND GRADING WOULD BE BENEFICIAL. AS SUCH, STAFF PROPOSES THE FOLLOWING LANGUAGE FOR CONSIDERATION:

- (A) Establishment of **Finished Ground Level**:
 - a. For **lots** on the island:
 - i. For **lots** where only one adjacent side **lot** is developed and fill is required to raise a **lot** whose average grade is below the adjacent road, the established, **finished ground level** shall be no greater than the **finished ground level** of the adjacent, developed lot.

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- ii. For **lots** where both adjacent side **lots** (front and rear for corner **lots**) are developed and fill is required to raise a **lot** whose average grade is below the adjacent road, the established, **finished ground level** of any **lot** shall be determined by measuring the average elevation of the ground located at the two points where the projection of any portion of the proposed **building footprint** adjacent to the road is 10 feet past each adjacent **lot** line.
 - iii. For **lots** where both adjacent side **lots** (front and rear for corner lots) are not developed and fill is required to raise a **lot** whose average grade is below the adjacent road, the established, **finished ground level** shall be no greater than one foot above the crown of the adjacent to the road.
 - iv. For **lots** where grading is required to lower a **lot** whose average grade is above the adjacent road, the established, **finished ground level** of any **lot** shall be determined by measuring the average elevation of the ground located at the two points where the projection of any portion of the proposed **building footprint** adjacent to the road is 10 feet past each adjacent **lot** line.
- b. For **lots** on the mainland:
- i. Where grading or filling of a lot is proposed or natural grade can't be utilized, the established, **finished ground level** of any **lot** shall be determined by measuring the average elevation of the ground located at the two points where the projection of any portion of the proposed **building footprint** adjacent to the road is 10 feet past each adjacent **lot** line.
- c. In instances whereby the **finished ground level** cannot be obtained as specified herein due to natural topography, existing development adjacent to the **lot**, or other factors relative to site conditions, the **Planning Board** shall determine the **finished ground level** upon review and approval of a proposed grading plan.
- d. Exceptions to this section:
- i. Filling up to 4 inches or grading to level and construct on existing grade.
 - ii. Fill that is necessary to meet any County or State requirements for a Health or Storm Water permit. In which case, fill shall only be allowed to the minimum extent necessary to obtain a permit.
- (B) All fill shall be established at a slope not to exceed 3:1 (three feet horizontal run for every one-foot vertical rise) and shall be stabilized to prevent erosion. Alternatively, construction of a retaining wall, bulkhead, or other engineered containment device to prevent fill and surface water from running onto adjacent **lots** may be permitted.
- (C) The builder and/or owner shall be responsible for grading the **lot** in such a manner as to absorb surface runoff or other catchment system.

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- (D) A silt fence must be erected around that portion of a **lot** being disturbed that causes erosion onto adjacent property and street right of ways. Exception: Only the portion of the **lot** adjoining golf course greens or fairways or a portion of a **lot** for construction access is exempt.
- (E) No **lot**, parcel or tract of land may be disturbed by grading, filling, excavation, and removal of trees or removal of stumps without a Town Fill and Grade permit.
- (F) This section does not alleviate any property owner from adhering to nor from obtaining required permits from any County, State or Federal authority.

UPDATE (5-19-16): IN RESPONSE TO COMMENTS FROM THE PLANNING BOARD AT THE 5-5-2016 MEETING, STAFF INSERTED FORMER LANGUAGE RELATIVE TO SAND REMOVAL FROM THE ISLAND. STAFF ALSO HAS INCLUDED GRAPHICS IN THE UDO TO HELP RELAY CONCEPTS. STAFF HAS ATTACHED THE NEW ORDINANCE LANGUAGE WITH THE NEW INSERTIONS AS "ATTACHMENT A".

PROPOSAL

Staff recommends consideration and/or approval of the proposed language in Attachment A.

PLANNING BOARD SUMMARY

Action:

The Planning Board finds that the proposed amendments to Unified Development Ordinance X is is not consistent with the Sunset Beach Comprehensive Land Use Plan.

Passed X Denied (For 5 Against Abstained)

Commentary: The Planning Board passed the Amendment found in "Attachment A" as recommended by Staff.