



## BOARD OF ADJUSTMENT STAFF REPORT

Hearing Date: 12/14/2016

Case#: BOA-16-03

Hearing Type:

Variance     Administrative Appeal     Residential     Commercial

Address (if applicable):

### CASE INFORMATION

**Applicant:** Daniel Davis

**Requested Action:** The applicant is requesting an 8 feet and 3 inch reduction on the rear setback.

**Supporting Documentation:** **Exhibit A:** Variance Request Application  
**Exhibit B:** Site plan and photo showing conditions on the lot  
**Exhibit C:** Letter from Sea Trail Master Association  
**Exhibit D:** Notice of Violation from the Town of Sunset Beach

**Supporting Documentation:** **Exhibit A:** MR-3 Zoning District Regulations  
**Exhibit B:** Building Footprint Definition

### ORDINANCE REFERENCE(S)

- Article 6, Section 6.06, MR-3 Mainland Multi-Family Residential District (C)(F): Minimum Required Rear Yard.

### BACKGROUND AND SITE INFORMATION

**Background Information:**

- The Planning and Inspections Department was notified of a nonconforming deck at 526 Fairway Drive West.

# Department of Planning and Inspections

- Planning and Inspections staff conducted a site visit and determined that the deck did encroach into the 25' rear setback by 8 feet and 3 inches.
- A notice of violation was sent on September 9, 2016.
- The contractor applied for a permit, after the work had concluded and the Planning and Inspections Department denied the permit application request.

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

**Existing Use:** Single-Family Residence

**Adjacent Zoning and Land Uses:**

- **North:** MR-3 (Single-Family Residence)
- **South:** MR-3 (Single-Family Residence)
- **East:** MR-3 (Single-Family Residence)
- **West:** MR-3 (Golf Course)

### **Building Footprint Definition**

(1) The greatest exterior dimension of the structure, including porches, decks, stairways, eaves, gutters and similar fixtures, when extended to ground level.

(2) Any subsequent alteration to the footprint of a structure may be made providing it does not encroach into any required setback.

(3) In a residential district, temporary ramping to an existing structure needed for handicapped access may be excluded from the footprint with the approval of the Building Inspector.



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

Date Filed: 10-18-16 Case Number: BOA 16-03 Received by: Cindy Nelson

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: Daniel Davis  
 Mailing Address: 526 Fairway Drive West  
 City, State, Zip: Sunset Beach, NC 28468  
 Daytime Telephone: (910) 575-0224 Home Telephone: (910) 575-0224  
 Interest in this Case (please circle one): Owner Adjacent Owner Other

Property Owner(s) [if other than applicant/agent]: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Daytime Telephone: \_\_\_\_\_ Home Telephone: \_\_\_\_\_

Property Address: 526 Fairway Drive West, Sunset Beach, NC 28468  
 Tax Parcel Number: 2420A003 Zoning District: MR-3  
 Subdivision Name (if applicable): Sea Trail - Sugar Sands

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.

October 17, 2016 Daniel Davis  
 Date Property Owner(s)

\_\_\_\_\_  
 Date Applicant/Agent(s)

Variance Application - Form 2  
 Zoning Board of Adjustment  
 Town of Sunset Beach

Date Filed: 10-18-16 Case Number: BOA 16-03 Fee Collected ✓

Has work started on this project? YES X NO  
 If yes, did you obtain a building permit? YES NO X If yes, attach a copy.  
 Have you received a Notice of Violation for this project? YES X NO If yes, attach a copy.

(1) What zoning ordinance section numbers are you seeking a variance from? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement	Variance Request
<i>Example</i>	6.06(A)(C)	50' front yard setback	15' front yard (35' ft. reduction)
A	6.06 (C)(F)	25' rear yard setback	16'9" rear yard setback (8'3" reduction)
C			

(2) Please describe why the variance(s) requested are necessary.

My house was built with a deck in 1986 based on the ordinance in effect at that time. However, after 30 years, the wood was splintering and the deck became unsafe. I decided to replace the deck for public safety. In general, it is in the same building footprint as the prior deck and in close alignment with our neighbors' decks on either side of my home whose houses were built at the same time. As a matter of fact, my deck encroaches less into the rear setback than either of my neighbors. However, the town's planning and inspection official said that the rear setback is now 25 feet, and thus I could have only a 5-foot wide deck. Therefore, I am requesting the above variance. Please note that this variance request was submitted to the Sea Trail Master Association's Architectural Standards Committee and it has been approved. Please see attached letter of approval.

SEA TRAIL  
MASTER ASSOCIATION, INC.

September 27, 2016

Mr. Dan Davis  
526 Fairway Drive West  
Sunset Beach, N.C. 28468

Dear Mr. Davis,

Re: Deck within the 30 ft. setback approved

The Architectural Standards Committee (ASC) has reviewed your hardship regarding your existing deck. The new deck was very well built and looks great. As with the Town, we too have guidelines that must be followed. Very seldom do we approve variances on the golf course and in the setback. That is why you received a fine from the ASC Committee for changing an existing structure without approval.

Per an onsite visit by committee members, your house is right on the line of the 30 ft. setback, therefore causing your existing deck to be in the setbacks.

Mr. Davis, in light of this hardship, the ASC Committee has voted to allow you to keep your deck within our 30 ft. set back. Please in the future, any changes to the outside of your home must be approved by the ASC Committee.

Sincerely,

The Architectural Standards Committee  
Sea Trail Master Association

P.O. Box 7025, Ocean Isle Beach, NC 28469

State facts and arguments in support of each of the following:

(a) Unnecessary hardship would result from the strict application of the ordinance. (Note: It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. It is not sufficient that failure to grant the variance simply makes the property less valuable.)

With a rear setback of 25', the use of a 5 foot deck causes unnecessary hardship for the applicant in its reasonable and functional use of the property.

(b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. (Note: Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the life of the land.)

Since the location of the property borders a golf course hole, the rear lot line is also the out of bounds line for that hole. The variance of 8"3" would not affect play on the golf course and, since there is a golf course at the rear lot line, the variance has no effect on any neighbor. The reduced size of the setback will not impact traffic or public safety. The hardship results from conditions that are peculiar to the property.

(c) The hardship did not result from actions taken by the applicant or the property owner. (Note: The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)

The hardship is not the result of the applicant's own actions because the lot exists as part of a previously

approved and platted subdivision. Regarding the building permit, the contractor erroneously informed me that since he is basically using the same deck footprint as before and the deck aligns with our neighbors' decks, a building permit would not be necessary.

(e) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

(State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the Applicant.)

The requested variance provides substantial justice for the applicant since the variance of 8'3" insures that the applicant's rear deck would then align consistently with the two adjacent properties. Public safety is secured since the rear lot line is adjacent to a golf course hole, and the rear property line is in the out of bounds section of the golf course. The variance request is in harmony with the general purpose, spirit and intent of the ordinance such that public safety is secured and substantial justice is achieved in that it allows for a reasonable and functional use of the property without negatively impacting the neighborhood.

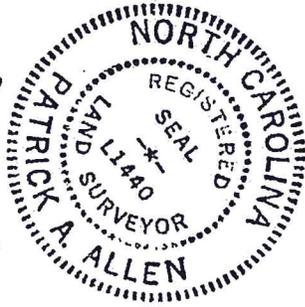




**CONDORCH COUNTY, NORTH CAROLINA**

I, PATRICK A. ALLEN, CERTIFY THAT THIS MAP WAS DRAWN FROM AN ORIGINAL SURVEY MADE BY ME, THAT THE ERROR OF CLOSURE AS CALCULATED BY LATITUDE AND DEPARTURE IS 1. NA THAT IT WAS DRAWN IN ACCORDANCE WITH G.S. 87-20 AS AMENDED, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

WITNESSED BY HAND AND SEAL, THIS 17th DAY OF \_\_\_\_\_, 19\_\_\_\_.  
*Patrick A. Allen* S.L.S.  
PATRICK A. ALLEN, S.L.S.



**CONDORCH COUNTY, NORTH CAROLINA**

I, A NOTARY PUBLIC OF THE COUNTY AND STATE AFORESAID, CERTIFY THAT

A REGISTERED LAND SURVEYOR, PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT.

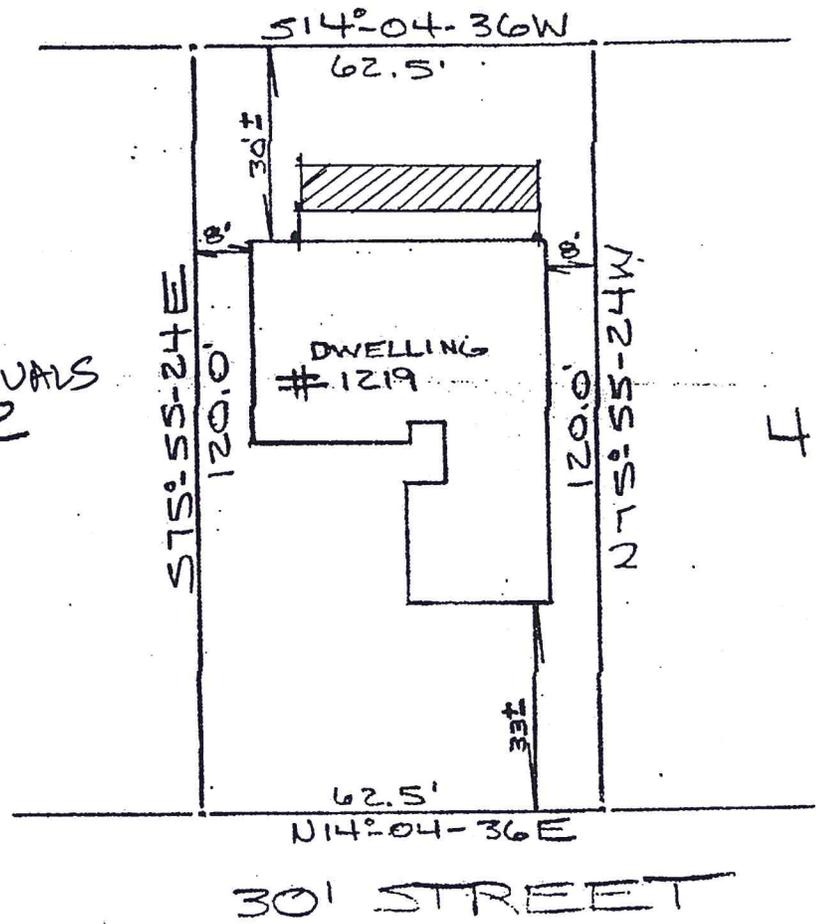
WITNESSED BY HAND AND OFFICIAL STAMP OR SEAL, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_.

BY COMMISSION EXPIRES \_\_\_\_\_

MAPLES GOLF COURSE HOLE # 16



SHADED AREA EQUALS 2 VARIANCE OF 8'3"



F





The Town of Sunset Beach  
700 Sunset Boulevard North ♦ Sunset Beach ♦ NC ♦ 28468  
Phone: (910) 579-0075 or (910) 579-0068 • Fax: (910) 579-1840

## ***Notice of Violation***

9/6/2016

Daniel Davis  
526 Fairway Dr. W.  
Sunset Beach, NC 28468

**SUBJECT:** Decking within the rear setback at:  
526 Fairway Dr. W., Sunset Beach, NC

Dear Sir or Madam:

Please be advised that on 8-30-16, the Planning and Inspections Staff of the Town of Sunset Beach conducted an inspection of the property address as listed above, which is owned by you.

- **Violation of the Section(s) of the Town Code/Unified Development Ordinance were noted:**  
UDO, Section 6.06.
- **Specific Instructions:** Please remove all decking within the setbacks.

We would appreciate your cooperation by bringing your property into compliance with the attached ordinance section **within 30 days of receipt of this letter.**

Please be advised that if you fail to correct the violation(s) within the time specified the Town of Sunset Beach will take the necessary actions to abate the violation. All cost for such abatement will be added as a tax lien against your property and collected as such, if unpaid. In addition to any actions taken by the Town, you may be subject to a fifty dollar (\$50.00) civil penalty per violation per day.

If you are no longer the owner of the above subject property, please notify this office. Thank you for your prompt attention to this matter and if you should have any questions, please contact the Town of Sunset Beach at (910) 579-0068.

Respectfully yours,

Richard Hathcock  
Director of Planning and Inspections