



TOWN OF SUNSET BEACH

BOARD OF ADJUSTMENT

MASTER APPLICATIONS AND PROCEDURES PACKET

Planning and Inspections Department

As of 7-17-2015

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Types of Requests

There are four primary types of requests handled by Planning and Inspections staff and the Zoning Board of Adjustment as authorized by Town's Unified Development Ordinance (UDO). Below, please find a brief description of each request type.

1. Variance Request – (Complete Forms 1 and 2 only)

This is a request to vary the standards of the Zoning Ordinance. One common variance request is for an applicant to seek relief from a front setback or side/rear yard requirement.

Example: An applicant requests to allow their house to be located 15 feet from their front property line rather than 50 feet as required by the UDO Section 6.06 (A)(C) for an MR-1 zoning district.

Requirements (all four must be true):

- a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. 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; and
- c. The hardship did not result from actions taken by the applicant or the property owner. 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; and
- d. 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.

2. Administrative Appeal Request – (Complete Forms 1 and 3 only)

This type of request is initiated when an applicant feels that the UDO Administrator, Enforcement Officer or other Town Official has made an error in applying the standards of the UDO. One common appeal results from a disagreement between an applicant and enforcement officer when a Notice of Violation has been issued for an alleged violation of the zoning ordinance.

Example: An applicant receives a Notice of Violation for running a business in a residential zoning district, however, the applicant claims that the business is grandfathered because it was established prior to the adoption of the zoning ordinance and has been in continuous operation since its establishment.

Requirements: An error in the application of the ordinance must be found in order to reverse the decision of the UDO Administrator, enforcement officer or Town official.

3. Special Use Permit Request – (Complete Forms 1 and 4 only)

Section 4.05 of the UDO authorizes the Board of Adjustment to review and authorize Special Use Permits (SUP) for specific uses. These are typically uses that are generally deemed to be in harmony within the applicable zoning district, but would require some additional review to ensure ordinance compliance.

Example: An applicant requests permission to construct a swimming pool in the Beach Business (BB1) zoning district. An SUP is required for construction.

Requirement: The Board of Adjustment shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

- a. The use requested is listed among the special uses in the district for which application is made and the use meets all required conditions and specifications.
- b. The requested use will be in harmony with the area in which it is located, and in general conformity with the character of the surrounding or adjoining districts, and will not adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property if developed according to the submitted plans.
- c. The use will not substantially injure the value of adjoining or abutting property.
- d. The requested use will be in conformity with the current land use plan.
- e. Adequate utilities, access roads, drainage, sanitation, and other necessary facilities have been or are being provided.
- f. Adequate measures have been or will be taken to provide ingress and egress designed so as to minimize traffic congestion in the public streets.
- g. The special use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

4. Establishment of Vested Rights Request – (Complete Forms 1 and 5 only)

This type of request is initiated when an applicant feels that there is a need to protect initial investments of pre-planning a project against possible changes in the UDO that might add substantial cost or change the project when construction begins.

Example: An applicant has spent considerable time and expense in planning, engineering, and pre-development costs for shopping center. Due to internal circumstances, the project is not planned to begin for over a year after plans are approved. To ensure development certainty, vested rights are sought to ensure that the shopping center can develop under the zoning codes that were in place when the initial planning took place.

Requirements: A site-specific development plan submitted that shows with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

Application Procedures and Instructions

The following is the general instructions for filing for a variance, administrative appeal, special use permit, or vested rights. Instructions for completing and submitting an application are included in this packet.

Submission of Application Forms

a. **Pre-meeting Requirement.** A pre-meeting with staff is **required** prior to the submission of any type of application. Please contact 910-579-0068 or 579-0075 to set up an appointment.

b. **Application Deadlines.** Applications must be submitted in accordance with the Meeting Calendar at the end of this packet. Please note that a request for an appeal of the Board of Adjustment must be filed within 30 days of the date the decision was rendered from the administrative official.

c. Application Types

i. **For a variance request,** please complete forms 1 and 2 and submit with the required materials indicated on the Variance Request Checklist on page 17.

ii. **For an administrative appeal request,** please complete forms 1 and 3 and submit with the required materials indicated on the Administrative Appeal Request Checklist on page 21.

iii. **For a special use permit request,** please complete forms 1 and 4 and submit with the required materials indicated on the Special Use Permit Request Checklist on page 25.

iv. **For an establishment of vested rights request,** please complete forms 1 and 5 and submit with the required materials indicated on the Vested Rights Application Checklist on page 33.

d. **Fees.** All applications must be filed with the non-refundable fee as outlined in the Schedule of Fees on file with the Planning and Inspections Department.

e. **Application Filing.** All applications must be filed in person at the Planning and Inspections Department office. Our office is located at 700 Sunset Blvd. North, Sunset Beach, NC.

f. **Signature Required.** Make sure each form is properly signed. Unsigned applications cannot be accepted.

g. **Completeness Requirement.** Illegible and incomplete applications cannot be accepted. Applicants are strongly encouraged to type their applications.

h. Application Copies. 10 copies including original of your application and all required materials (per the applicable checklist) must be submitted for your application to be considered complete. Please fold larger maps and other materials to 8 ½ x 11 inch size.

Application Processing by Staff

The following describes how staff handles your application once submitted:

Staff Processing

- a. **Check for Completeness.** Staff will ensure that the application is complete, applicable fees are paid, and signed by the appropriate parties.
- b. **Schedule the Case.** Staff will assign a case number and hearing date.
- c. **Alternatives Analysis.** Staff will review your application and the ordinance to determine if any alternatives exist during your pre-application meeting.
- d. **Site Visit.** Staff may visit the site and take photographs for use at the hearing.
- e. **Adjacent Property Owner Notification.** Staff will prepare and mail hearing notices to adjoining property owners, the applicant and/or agent according to State and Town ordinance requirements.
- f. **Packets Sent to Board Members.** Meeting agendas and application packets are mailed to Board of Adjustment members approximately 18 days prior to the hearing date.
- g. **Staff Report.** Staff will prepare a staff report on the request and publish it for public consumption. Staff generally will not make a recommendation on any quasi-judicial hearing. However, staff will provide relevant, factual information when requested by the Board of Adjustment.
- h. **Public Hearing.** A public hearing is held for all cases that require Board of Adjustment action. Meeting dates and times are outlined in the Meeting Calendar at the last page of this packet.

Hearing Procedures

The following describes how the Board of Adjustment conducts appeal and variance hearings:

1. Order for each Board of Adjustment Agenda Item:

- a. The chairman will ask all those wishing to speak on an item to stand and be sworn in. All testimony must be given under oath.
- b. The UDO Administrator or Town official will give a brief explanation of the case and background information.
- c. The Board may question the staff member, and then the Applicant may question the staff member.
- d. The Applicant presents his testimony for this case.
- e. The Board may question the Applicant, and the staff member may question the Applicant.
- f. The Applicant may present sworn witnesses. They will be subject to questioning.
- g. Other parties wishing to speak, pro or con, will be given reasonable time to present sworn testimony.
- h. At the Board's direction, the staff and then the Applicant will be given an opportunity for rebuttal and final comments.

2. **Sworn Testimony.** The Board is acting in a quasi-judicial capacity for purposes of this hearing and can accept only sworn testimony. While the Board will not specifically exclude hearsay evidence, it is only given limited weight.

3. **Legal Representation.** If you choose, an attorney may represent you at the hearing at your expense.

4. **Speaker Registration.** All parties who plan to give testimony, pro or con, must come to the podium and give their name and address for the record.

3. **Board Decision.** After hearing all cases, the Board will review each case and render a decision.

- a. You may remain present during the deliberations, or
- b. You may call the Zoning staff after the session to receive the decision of the Board.

4. **Exhibits.** All exhibits must remain with the Board. A copy must be given to the Secretary for record keeping purposes and shall not be returned. At the hearing, first hand copies of exhibits to the secretary. You may then proceed to present the exhibit to the Board.

5. **Conflict of Interest.** If you feel there is a conflict of interest of any Member of the Board or an association that would prejudice your case, please let it be known at the start of your case.

6. **Appeals.** Appeal from this Board is to the Brunswick County Superior Court. You have thirty (30) days from the date of the Board's written decision to appeal, in accordance with NCGS 160A-388e.

7. Please turn off your cell phone, pager and PDA.

8. Help the Board run an efficient meeting:

- a. Keep testimony to the relevant facts of the case. Board members review your application packet prior to the meeting so they will be familiar with your request.
- b. Do not repeat testimony.
- c. Hearsay evidence can be given only limited weight. Applicants and witnesses should have first-hand knowledge of the situation.

The Town of Sunset Beach will comply with the American with Disabilities Act (ADA), which prohibits discrimination on the basis of disability. If you need special accommodations to attend and participate in the meeting, please contact Planning and Inspections staff at 910-579-0068/0075 at least 72 hours prior to the meeting.

Variance Request Checklist and Instructions

Limitations

1. The Board of Adjustment is prohibited from granting use variances. A use variance is a request that would allow the establishment of a use not otherwise permitted in a particular zoning district.

Instructions

1. **Fill out the form completely.** Because the board must find evidence to support each of the questions/statements, the answer “not applicable” is generally not acceptable and will delay your request. Incomplete applications cannot be accepted.

2. In order for the Board to grant a variance, **a land hardship must be demonstrated.** Per the UDO, only the following conditions shall constitute a hardship (all four must be met):

a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and

b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. 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; and

c. The hardship did not result from actions taken by the applicant or the property owner. 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; and

d. 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.

Checklist

- 10 copies** of your signed application (includes one original) and all required materials (per the applicable checklist) must be submitted for your application to be considered complete. Please fold larger maps and other materials to 8 ½ x 11 inch size.
- Fee Remitted with the Application in the amount indicated on the Town’s Fee Schedule
- If applicable, attach a copy of your permit or plan review comments if this variance resulted from a permit or plan denial.
- A survey or to-scale site plan must be included. The survey or site plan should include:
 - all existing buildings and structures on the property
 - all easements for streets, utilities, driveways and others
 - all proposed improvements should be drawn on the survey or site plan to scale
 - shade in the map to highlight the portion of the improvements that are subject to the requested variance (i.e. for a setback variance, the portion of the structure beyond the setback line)

□ Architectural drawings, if applicable, are strongly encouraged to assist the Board in determining if the request is in harmony with the surrounding neighborhood.

Additional Information

1. If construction has started, no further work shall be done on those portions of the project in violation of the zoning ordinance.

2. If this variance request is a result of a Notice of Violation, no further enforcement action shall be taken by the Town until the Board of Adjustment makes a decision regarding your case. However, a stop work order may be issued until the case is resolved.

3. Per Section 4.6 of the UDO, once a case has been heard, the Board may not hear the same case may unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself. The Board of Adjustment shall make the determination as to whether a rehearing is warranted in instances where a revised application is submitted.



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

Date Filed: _____ **Case Number:** _____ **Fee Collected** _____

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

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

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.)

(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.)

(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.)

(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.)

Administrative Appeal Request Checklist and Instructions

Limitations

1. The Board of Adjustment may only reverse an order or finding of a staff member if they find that an ordinance provision was applied in error.

2. This application must be filed within thirty (30) days of a Notice of Violation or the interpretation/decision of the UDO Administrator or other City zoning staff member. Applications filed more than 30 days after a written decision or violation notice cannot be accepted.

Instructions

Fill out the form completely. Because the board must find evidence to support each of the questions/statements, the answer “not applicable” is generally not acceptable and will delay your request. Incomplete applications cannot be accepted.

Checklist

- 10 copies** of your signed application (includes one original) and all required materials (per the applicable checklist) must be submitted for your application to be considered complete. Please fold larger maps and other materials to 8 ½ x 11 inch size.

- Fee Remitted with the Application in the amount indicated on the Town’s Fee Schedule

- If applicable, attach a copy of your permit or plan review comments if this appeal resulted from a permit or plan denial. In addition, submit a copy of your submitted site plan and highlight those areas that are subject to this appeal.

- If applicable, attach a copy of your Notice of Violation if this appeal resulted from an alleged violation of the zoning ordinance.

Additional Information

1. If construction has started, no further work shall be done on those portions of the project in violation of the zoning ordinance.

2. If this appeal request is a result of a Notice of Violation, no further enforcement action shall be taken by the Town until the UDO Administrator makes a decision regarding your request. However, a stop work order may be issued to ensure no further work is completed until the Board has made a decision.

3. Per Section 4.6 of the UDO, once a case has been heard, the Board may not hear the same case may unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself. The Board of Adjustment shall make the determination as to whether a rehearing is warranted in instances where a revised application is submitted.



Administrative Appeal Application - Form 3
Zoning Board of Adjustment
Town of Sunset Beach

Date Filed: _____ **Case Number:** _____ **Fee Collected** _____

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

(1) What zoning ordinance section numbers do you allege were applied in error? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement
<i>Example</i>	6.06 (A)(C)	50' front yard setback
A		
B		
C		

(2) Please describe why you feel the code sections listed above where applied in error. Tell the Board what you feel is the appropriate application of each code section.

(a) Code Section _____.

(b) Code Section _____.

(c) Code Section _____.

(d) Code Section _____.

Special Use Permit Request Checklist and Instructions

Limitations

1. All SUP applications shall be reviewed and have recommendations made by the Technical Review Committee (TRC) before being presented to the Board for review.

1. The Board of Adjustment shall grant an SUP only after ensuring specific findings are met. The Board may place conditions on the permit approval to ensure the spirit and intent of the findings are being applied.

2. Some form of survey or site plan is required drawn to the specifications of Section 5.03(C) of the UDO to help the Board review your request.

Instructions

1. Fill out the form completely. Because the Board must find evidence to support each of the questions/statements, the answer “not applicable” is generally not acceptable and will delay your request. Incomplete applications cannot be accepted.

Checklist

10 copies of your signed application (includes one original) and all required materials (per the applicable checklist) must be submitted for your application to be considered complete. Please fold larger maps and other materials to 8 ½ x 11 inch size.

Any applicable maps, GIS printouts, or surveys.

List of Adjacent Properties and Property Owner Addresses. A form for this purpose is attached.

Fee Remitted with the Application in the amount indicated on the Town’s Fee Schedule

If applicable, attach a copy of your Notice of Violation if this application resulted from an alleged violation of the zoning ordinance.

Additional Information

1. If construction has started, no further work shall be done on those portions of the project in violation of the zoning ordinance.

2. If this request is a result of a Notice of Violation, no further enforcement action shall be taken by the Town until the UDO Administrator makes a decision regarding your request.

3. Per Section 4.6 of the UDO, once a case has been heard, the Board may not hear the same case unless a substantial change has been made. The Board shall make the determination for whether a rehearing is warranted or if the application is substantially changed.



Special Use Permit Application - Form 4
Zoning Board of Adjustment
Town of Sunset Beach

Date Filed: _____ **Case Number:** _____ **Fee Collected** _____

A. Proposed Special Use (Please Print):

B. The following questions are required questions that will be asked by the Board of Adjustments during the hearing. By stating the facts and providing them to the Board of Adjustment will help the Board better understand your request.

(1) Is the use requested listed among the special uses in the district for which application is made and does the use meets all required conditions and specifications?

(2) Is the requested use in harmony with the area in which it is located, and in general conformity with the character of the surrounding or adjoining districts? Will it adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property if developed according to the submitted plans?

(3) Will the use substantially injure the value of adjoining or abutting property?

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(4) Is the requested use in conformity with the current land use plan?

(5) Are adequate utilities, access roads, drainage, sanitation, and other necessary facilities provided?

(6) Have adequate measures have or will be taken to provide ingress and egress designed so as to minimize traffic congestion in the public streets?

(7) Will the special use, in all respects, conform to the applicable regulations of the district in which it is located?

- This list should be submitted with complete accuracy. If the correct information is not submitted, it could delay the request.
- Adjacent property owners are to include parcels located directly abutting the property on all sides or across the street in a diagonal or direct line.

Vested Rights Request Checklist and Instructions

Limitations

1. The Board of Adjustment must approve a plat or site specific development plan to claim vested rights. The Board must be able to tell with “reasonable certainty” what you as the applicant intend to do with the property or project.
2. Application for vested rights must be filed in accordance with the submittal deadlines as established by the Planning and Inspections Department.
3. Vested rights are deemed to be granted at the time of Board approval.

Instructions

1. Fill out the form completely. In addition, because the Board may apply conditions to the approval, it is important to place as much information on the plan or plat that will be clear and easily discernable as to what you wish to do with you property or preoject.

Checklist

- 10 copies** of your site-specific development plan or plat in accordance with UDO requirements. Please fold larger maps and other materials to 8 ½ x 11 inch size.
- Application form, including paying any required fees.

Additional Information

1. Approval of a site-specific development plan **only** confers to the applicant the right to develop according to applicable development ordinances at the time of approval.
2. Approval of site-specific development plan **does not** constitute approval of a major site plan for the purposes of development. Approval does not override requirements of obtaining variances or other approvals, if required by the UDO.
3. Approval of site-specific development plan is not a personal right, but a right that runs with the land.



Vested Rights Application - Form 5
Zoning Board of Adjustment
Town of Sunset Beach

Date Filed: _____ Case Number: _____ Fee Collected _____

Identify land use approval or permit being sought:

I hereby certify that I am also seeking to acquire a vested right pursuant to G.S. 160A-385.1 and Section 4.02 of the Town's Unified Development Ordinance.

I have attached a site specific development plan describing with reasonable certainty the type and intensity of use for the property.

I understand a vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval of a site specific development plan or a phased development plan or a subdivision plat, following notice and public hearing by the Sunset Beach Board of Adjustment.

A site specific development plan or a phase development plan or Subdivision plat shall be deemed approved upon the effective date of the Town's action.

I also understand that a right which has been vested as provided for shall remain vested for a period of two years.

(Date)

(Property Owner)



Town of Sunset Beach

Board of Adjustment 2016 Meeting Calendar

The Board of Adjustment for the Town of Sunset Beach meets on the 2nd Wednesday of each month beginning at 9:00 am in the Town Council Chambers.

An application for the Board of Adjustment must be given to the Planning & Inspections Director by 5:00 pm as per the schedule listed below. Applications that are not submitted as per this schedule will be placed on the agenda for the next scheduled Board of Adjustment meeting.

Month	Board of Adjustment Wednesday Meeting Date	Latest Date to Submit an Application for Board of Adjustment.
January	13 th	Thursday 12/10/15
February	10 th	Monday January 11
March	9 th	Tuesday February 9
April	13 th	Friday March 11
May	11 th	Monday April 11
June	8 th	Friday May 6
July	13 th	Friday June 10
August	10 th	Monday July 11
September	14 th	Friday August 12
October	12 th	Monday September 12
November	9 th	Monday October 10
December	14 th	Thursday November 10

All meetings are open to the public and the public is encouraged to attend.

Meeting agendas can be obtained on the Town's website at www.sunsetbeachnc.gov or by visiting Town Hall. You can also sign up on the Town's website to receive email notifications of meetings (with agendas and related information) and/or meeting cancellation notifications.