



Town of Sunset Beach  
Board of Adjustment

**Meeting Minutes of January 10, 2018**

**DRAFT**

**Members Present:** Chairperson Peter Scott, Leon August, Larry Hershoff, Bruce Hovermale, Veronika White

**Members Absent:** None

**Staff Present:** Hiram J. Marziano II; Planner, Cindy Nelson; Board of Adjustment Secretary, Amber Stickland; Intern

Chairperson Peter Scott called the meeting to order at 9:00 am and established that a quorum was present. At this time Chairperson Scott explained how 4/5<sup>th</sup>'s of the vote is needed for an approval or denial of a variance. He further stated that Bruce Hovermale is an alternate member and therefore not a voting member, and that there are four regular members present to vote.

**Amend or Approve Agenda:** CHAIRPERSON PETER SCOTT ENTERTAINED A MOTION TO APPROVE THE AGENDA. MOTION MOVED BY LEON AUGUST WITH A SECOND MADE BY VERONIKA WHITE. MOTION WAS CARRIED UNANIMOUSLY.

The Pledge of Allegiance was recited by all in attendance.

**Postponement or Withdrawal Requests:** None

**Consideration of Approval of Minutes:** Consideration of approval of minutes from the November 8, 2017 Meeting.

CHAIRPERSON SCOTT ENTERTAINED A MOTION TO APPROVE THE MINUTES. MOTION MOVED BY VERONIKA WHITE. SECOND WAS MADE BY LEON AUGUST. MOTION CARRIED UNANIMOUSLY. LARRY HERSHOFF ABSTAINED FROM VOTING AS HE WAS NOT PRESENT AT THE NOVEMBER 8<sup>TH</sup> MEETING.

**Old Business:** None

**New Business:**

**Variance Request for Applicant Mr. Robert Scott McCall of 9105 Forest Drive to Seek Relief of the Setbacks Per UDO Section 6.06 to Allow for the Installation of a Swimming Pool.**

Chairperson Scott explained that the meeting today is a legal proceeding and all those who wish to testify must be sworn in. At that time the following persons in attendance were sworn in:

Applicant Scott and Kathleen McCall, Carol Santivicca, Hiram Marziano, Kevin Scott, Barbara Ware. (Applicant is referred to as Scott and not Robert as per the application).

The Town Planner Hiram Marziano proceeded to provide the Board of Adjustment with an overview of the case before them. The applicant is seeking relief from the ordinance which states that swimming pools must be built within the buildable portion of the lot. Per ordinance 7.14, Swimming pools are permitted and are considered an accessory structure, accessory structures can be five feet (5') off a property line, however, swimming pools must be within the buildable portion of the lot. The size of the applicant's pool is 15' x 35' and would be installed into the rear setbacks of the property. The attached Staff Report gives further details. The setbacks for the MR-2 Zoning District are fifty feet (50') front, ten percent (10%) side, twenty-five (25') rear. For this case, using the site plans provided, it would be twenty feet (20') front and twenty feet (20') rear setbacks. Detailed site plans were not provided until a few days ago and I drew the pool to scale with the measurements on the site plan for you. Chairperson Scott labeled the site plan as "Exhibit A".

Chairperson Scott: The entire pool is located outside the buildable area?

Hiram: Based on where they want to locate the pool, yes. Even with the current setbacks, a pool still could be installed behind the house if they removed the hot tub that is currently there, a 24' x 17' pool could then fit; and although the pool deck could encroach up to four inches (4") to the property line, with the pool being in the buildable lot area.

Chairperson Scott: What about a fence, is there one now?

Hiram: A fence is permitted up to the property line. The applicant interjected that there is a six foot (6') high wood fence there now.

Larry Hershoff: There will be no additional impervious coverage?

Hiram: Even with the proposed pool deck, he would still be at twenty-seven percent (27%) impervious coverage, which is below the Town standard of thirty percent (30%) coverage, so he is fine there.

Chairperson Scott then invited the applicant Scott McCall to give testimony.

Mr. McCall described his case:

- Second page drawing shows the layout of the pool.
- Sells pools for a local pool company, and was given a 15' x 35' pool for great sales last year. So, I am trying to get this pool on the property and still have enough room for pool decking, this will also keep the pool and pool deck edges away from my existing deck off the back of the house.
- This is the most logical placement of the pool.

Chairperson Scott: What is behind the house?

Scott McCall: There is a vacant lot. I have two neighbors on either side of my house.

Veronika: How wide is the existing deck?

Scott McCall: It is eight inches (8').

Veronika: What is the distance from the existing deck to the pool deck?

Scott McCall: Approximately nine feet (9').

Leon: What is the size of the proposed shed?

Scott McCall: 10' x 10'.

Hiram: The shed is not included in the impervious calculation.

Larry: The shed is not a part of the variance hearing.

Chairperson Scott: Shed is not a part of the variance request for the record.

Larry: Is there any complaints from the neighbors regarding this pool?

Scott McCall: No.

Chairperson Scott: What makes this property unique as per other properties there, all the lots seem like regular lots.

Scott McCall: I have two children, the pool will be used for recreation and exercise. The house sits far back from the road, and I have a great front yard. Nothing in the backyard has changed since I purchased the home in 2009, except the fence, which I had installed.

Larry: It would be unusual, however, there is adequate room in front of the house to put the pool if you should want to use the pool you got for free. This is not unique as this is the size pool you want to have. You could use a smaller size pool.

Hiram: Based on our ordinance, accessory structures are not allowed in the front yard, unless it was made a condition of the variance. Or, if a hardship of the land was present and he could not make reasonable use of his rear yard. I made a site visit and there is nothing that would make his rear yard unique.

Leon: Have you considered moving the hot tub to fit the pool in that area?

Scott McCall: No, it has not been considered, and it could be moved, it is free standing. Still, the pool would be at the edge of the rear deck, which could cause unsafe conditions.

Chairperson Scott: A 15' x 35' pool would not fit regardless of where the hot tub is.

Chairperson Scott then invited others to speak on Scott McCall's behalf.

Barbara Ware of 9107 Forest Drive, who was sworn in earlier stepped up to speak. Scott is a good citizen, good neighbor. He is a professional who installs pools, so I know that he will properly install and maintain this pool.

Carol Santavicca of 9109 Forest Drive, who was also sworn in commented: My question is to the code requiring accessory structures having to be built within the buildable portion of the lot. There are several pools at various homes on our street, and I can assure you that almost all of them are not within the buildable portion of the lot. They did not have to seek a variance. Also, Barbara Ware has a pool in her rear yard and it is not in the buildable portion of the lot.

Larry: The code may have changed. Hiram responded that the new code was adopted in 2012 and this is the code we follow today. Also, every zoning district has different setbacks.

Carol Santavicca: Then every shed, free standing garage would be non-conforming and have to be moved.

Hiram: Basically, swimming pools are treated differently than other accessory structures as per Section 7.14. Other accessory structures such as sheds, etc. are able to be five feet (5') from the property line. But, pools specifically are to be within the buildable portion of the lot.

Carol Santavicca: This topic will come up again. This is not going to serve the people of our community. I support Mr. McCall being able to have his pool. The POA president is also here and he is in support of the pool.

WITH NO MORE QUESTIONS OR TESTIMONY; CHAIRPERSON SCOTT ASKED FOR A MOTION TO OPEN THE PUBLIC HEARING. MOTION WAS MOVED BY LEON AUGUST. SECOND MADE BY VERONIKA WHITE.

NO PUBLIC INPUT WAS GIVEN. CHAIRPERSON SCOTT ASKED FOR A MOTION TO CLOSE THE PUBLIC HEARING PORTION OF THE MEETING. MOTION WAS MOVED BY LARRY HERSHOFF. SECOND MADE BY LEON AUGUST.

CHAIRPERSON SCOTT SOLICITED A MOTION TO DISCUSS APPROVING OR DENYING THE VARIANCE. MOTION WAS MOVED BY LARRY HERSHOFF. SECOND WAS MADE BY LEON AUGUST.

ALL MOTIONS WERE CARRIED UNANIMOUSLY.

Deliberation began:

Larry: Hardship seemingly was created by this terrific pool which the applicant has been given and he would like to find a way to put it on his property. Options for him would be to sell the larger pool and install a smaller pool. He could move the existing deck and hot tub, but would that cause safety concerns? Hiram responded, a building inspector could speak on the matter of safety. Hiram offered to bring the inspector into the meeting. Larry declined the need for it.

Leon: I am not favor of setting a precedent with setbacks with the proposed pool location. If the empty lot behind the Mr. McCall's house wanted to put a pool in like this, we would have to approve their variance request. There are other options. Install a smaller pool or move the deck and the hot tub.

Chairperson Scott: The hardship is that you already have a pool that will not fit. That is not a hardship that is unique to the property itself. Mr. McCall could get another size pool to fit. Hardship is not peculiar to the property. This is not any different than any other property in the area. If a variance is granted, we are then setting a precedent against the 2012 UDO. Chairperson Scott expressed sympathy to the applicant but he also stated that it was the duty of the Board of Adjustment to administer the strict letter of the ordinance.

Veronika: I can certainly understand why you would want to fit this pool in on the property. However, the pool clearly is out of the set back.

Discussion ensued on other ways to place the pool on the property and still work within the UDO.

Chairperson Scott: There is nothing unique here. We cannot change the ordinance.

Bruce Hovermale: I do not see a case here for unnecessary hardship or a unique hardship peculiar to this property where it cannot meet the requirements of the UDO, and there is not a unique hardship to the strict letter of the ordinance. Only Town Council can change this.

The Board in unison stated they were sympathetic to the situation at hand, however, this is not a unique hardship in any way and that the applicant created his own hardship by gaining a pool this size. Larry interjected that the applicant could install a smaller pool like a 10' x 20', or he could move the deck and/or hot tub.

The Board of Adjustment read the Findings of Fact:

1. Unnecessary hardship would result from the strict application of the ordinance:

CHAIRPERSON SCOTT ASKED FOR A MOTION AS TO WHETHER OR NOT THIS IS OR IS NOT AN UNNECESSARY HARDSHIP. LARRY MOVED THAT IT IS NOT AN UNNECESSARY HARDSHIP AS THIS WAS CREATED BY THE INDIVIDUAL DUE TO THE SIZE OF THE POOL. SECOND BY VERONIKA WHITE. MOTION CARRIED UNANIMOUSLY.

2. The hardship is a result from the conditions that are peculiar to the property, such as location, size or topography:

CHAIRPERSON SCOTT ASKED FOR A MOTION ON THESE CRITERIA. LEON MADE A MOTION THAT IT IS NOT PARTICULAR TO THE PROPERTY, LOCATION, SIZE OR TOPOGRAPHY. SECOND BY LARRY HERSHOFF. MOTION CARRIED UNANIMOUSLY.

3. The hardship is not the result from actions taken by the applicant:

CHAIRPERSON SCOTT ASKED FOR A MOTION. LARRY MOVED THAT THE RESULTS ARE FROM ACTIONS TAKEN BY THE APPLICANT. SECOND MADE BY LEON AUGUST. MOTION CARRIED UNANIMOUSLY.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance:

CHAIRPERSON SCOTT ASKED FOR A MOTION. LARRY MOVED THAT IT IS NOT CONSISTENT WITH THE ORDINANCE AS WRITTEN, THE PROPOSED POOL SUBSTANTIALLY ENCROACHES INTO THE SETBACKS AND THERE IS NOT A REASONABLE ALTERNATIVE TO PLACE THAT PARTICULAR POOL WITHOUT CREATING SET BACK ISSUES. SECOND MADE BY LEON AUGUST. MOTION CARRIED UNANIMOUSLY.

**4/5 TH'S OF THE BOARD OF ADJUSTMENT MEMBERS VOTED TO DENY THE VARIANCE REQUEST.**

At this time, Chairperson Scott made apology to the applicant and he further explained there was no way to make this work. Scott McCall challenged the Board asking if there was no type of concession or adjustment for even a fifteen foot (15') foot setback? And then I have to come back here again and get denied again? Hiram responded; the solution to your problem is not to ask for a variance, the Board cannot legally approve this variance. As I explained in our meeting a couple months ago, you need to start with a text amendment as it is the ordinance that needs to be changed. Scott McCall said that could take months.

Discussion between Hiram, Scott McCall and the Board ensued.

8. Administrative Items:

Hiram introduced Amber Strickland, Intern who will be working in the Town until April 1<sup>st</sup>. Her assignments will be working on different projects and learning about Public Administration.

a. Director and Staff Comments-None

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

**Adjournment:** 10:00 AM. CHAIRPERSON SCOTT SOLICITED A MOTION TO ADJOURN. MOTION MOVED BY LARRY HERSHOFF. SECOND WAS MADE BY LEON AUGUST. MOTION CARRIED UNANIMOUSLY.

Town of Sunset Beach  
Board of Adjustment

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*Chairperson Peter Scott*

Submitted by:

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*Cynthia Nelson, Board of Adjustment Secretary*

\*\*\*Minutes from the November 8, 2017 meeting were approved at the January 10, 2018 meeting.