



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

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www.southernshores-nc.gov

8

9 **MEETING MINUTES**

10 **PLANNING BOARD-DECEMBER 19, 2022, 5:00 P.M.**

11 **LOCATION: PITTS CENTER-5377 N VIRGINIA DARE TRAIL, SOUTHERN SHORES, NC 27949**

12

13

14 **I. CALL TO ORDER:**

15 Chairperson Andy Ward called the meeting to order at 5:00 pm. Planning Board Members Ed
16 Lawler, Robert McClendon, Jan Collins (alternate #1), Tony DiBernardo (Vice Chairperson), Andy
17 Ward (Chairperson), Board Attorney Jay Wheless and Deputy Town Manager/Planning Director
18 Wes Haskett were present. Planning Board Member (ETJ) John Finelli was also in attendance.

19

20 **II. PLEDGE OF ALLEGIANCE:**

21 Chairperson Ward led the Pledge of Allegiance.

22

23 **III. APPROVAL OF AGENDA:**

24 Chairperson Ward recommended a change in the agenda order, placing old business ahead of
25 new business. Motion made by Vice Chairperson DiBernardo to approve the agenda with
26 Chairperson Ward's recommendation, Seconded by Planning Board Member Lawler. The motion
27 passed unanimously (5-0).

28

29 **IV. Approval of Minutes – October 5, 2022 Special Meeting (Transcript)**

30 Planning Board Director Haskett stated he found some minor formatting corrections that need
31 revisions for the October 5, 2022 forty-nine page transcript.

32 **Motion** made by Vice Chairperson DiBernardo to approve the minutes of October 5, 2022 with
33 the changes noted, Seconded by Planning Board Member Collins. Motion passed unanimously
34 (5-0).

35

36 **V. PUBLIC COMMENT**

37 None

38

39

40 **VI. New Business**

41 Public Hearing to consider VA-22-02, a Variance application submitted by Kerry and Denise
42 Skinner to seek relief from Town Code Section 36-202(b)(5)c. at the property located at 36
43 Ginguite Trl.

44

45 Chairperson Ward stated the board will now be performing the duties of the Board of
46 Adjustment and called on Board Attorney Jay Wheless for instructions.

47 Attorney Jay Wheless explained hearings before the board of adjustment present an
48 opportunity for an applicant to be heard after review of a zoning official but before having to
49 seek true relief in a court. The board will attempt to follow formal Rules of Evidence, but they
50 are not as strict as in true court. All evidence must be relevant, substantial, and competent. Lay
51 witnesses may give testimony but may not make legal arguments. This hearing is open to the
52 public but not fully a public hearing, not just anyone can offer testimony or examine witnesses;
53 only parties, their chosen witnesses, their counsel, and closely interested parties may
54 participate. A closely interested party is usually a person who is directly and substantially
55 affected by the decision, this is usually an adjoining neighbor. Determinations as to who may
56 qualify as a closely interested party or wish to participate in the hearing are to be made by the
57 chair.

58
59 Attorney Jay Wheless asked the board members if anyone has a conflict of interest in this
60 matter, have they spoken to any of the parties outside this hearing, do they have any financial
61 interests in the outcome of this matter? All Planning Board members stated they did not have a
62 conflict.

63
64 The Town Clerk swore in those wishing to provide testimony.

65
66 The applicant Kerry Skinner addressed the board by stating he has owned the house at 36
67 Ginguite since October of 2020 but finally got a chance to move down here. He would like to
68 build a dock and thought that the Cove that we have would make it easier to get a permit but
69 that is not the case. The current regulations allow for them to be 75 feet and they need a little
70 bit more than that to get to the deeper water. In the end, the dock is still well inside the Cove
71 area, and you won't even see it coming up the main channel until you get past the salt marsh.
72 He is looking for relief from that 75-foot setback.

73
74 Planning Board Member Lawler asked how much more depth will you gain by extending
75 another 75 feet? Mr. Skinner stated there is a sand bar but beyond that the depth should be 4.5
76 feet.

77
78 Applicant Kerry Skinner reviewed aerial views and drawing of the area with the Planning Board
79 members, highlighting the irregular shape of the cove and the shallow water. He provided a
80 sight line in relation to the other docks extending out into the channel and his proposed dock.

81
82 Vice Chairperson DiBernardo asked about the alternate option shown in the drawing. Applicant
83 Kerry Skinner stated this version shows a dock extending approximately 75 feet into the main
84 channel of the canal on the southern end of property. This version would not require a variance
85 but would require the homeowner to build a dock almost 500 feet long. This version would be a
86 dock 125-150 longer than the proposed dock and at a cost of approximately \$20,000 more.

87
88 Chairperson Ward stated the alternate version of a dock would be in compliance but is a
89 greater impact on the property. Applicant Kerry Skinner stated a greater impact to his wallet
90 and a greater impact to the environment.

91
92 Vice Chairperson DiBernardo stated the sandbar is visible in the GIS aerial view and asked the
93 applicant why it was necessary to build the dock approximately 75-90 feet past the sandbar?

94 Applicant Kerry Skinner stated he felt this is where they could get the 4 foot of water depth. He
95 said they measured from the neighbor's dock that would be parallel to the proposed dock and
96 just assumed the water elevation or depth would be the same. That is the depth needed to
97 have a decent boat lift.
98

99 Vice Chairperson DiBernardo stated then the actual depth is not known. Applicant Kerry Skinner
100 stated they didn't do a full-on hydrographic survey of the cove.
101

102 Chairperson Ward asked what are the dimensions of the deck on the end of the dock?
103 Applicant Kerry Skinner stated he would have to refer to the contractor Mr. Lineberger for that
104 information.
105

106 Planning Board Member McClendon stated CAMA will regulate that, there is only so much
107 service area you can put there.
108

109 Chairperson Ward asked if there was going to be a roof on that? Applicant Kerry Skinner stated
110 there will be a roof on a portion of it, but the outermost 125 feet is actually the boat lift itself,
111 most of that will be underwater.
112

113 Applicant Kerry Skinner provided the board with a copy of the dimensions he received from the
114 contractor [exhibit- applicant #2].
115

116 Board Attorney Jay Wheless asked the applicant, at the distance requested would it present any
117 kind of obstruction to navigation more so than any of the neighboring docks? Mr. Skinner
118 replied no.
119

120 Board Attorney Jay Wheless asked the applicant, the compliant version which we saw in
121 another drawing protrudes into the creek further than the variance version, is that right? Mr.
122 Skinner replied yes.
123

124 Board Attorney Jay Wheless stated, and it is the inset of this cove into your property that brings
125 you to ask for this variance? Mr. Skinner replied yes.
126

127 Chairperson Ward hearing no other questions from the board asked Mr. Lineberger (contractor)
128 if he would like to speak.
129

130 Town Clerk Sheila Kane swore in Mr. Lineberger prior to his testimony.
131

132 Mr. Lineberger stated that ordinance is a little loose and where the 75 feet gets measured from
133 and with the irregular shorelines it creates the hardship. The lot is 100 feet wide and there is
134 over 500 feet of shoreline, and it is very irregular, and it just happens to be in a cove instead of
135 sticking straight out. If this was Martin's Point, they would draw a line across trying to average
136 all those wetlands across and we would be able to get out into the creek properly.
137

138 Chairperson Ward asked how long the pier to the north was? Mr. Lineberger stated about 75
139 feet.
140

141 Board Attorney Jay Wheless stated the cost of compliance cannot be the sole factor that the
142 board uses, it can be a minor, but it can't carry the day. When you were seated out
143 there you mentioned a number and we didn't really get that into evidence. Mr. Skinner
144 what's the cost of compliance here in terms of dollars. Mr. Lineberger answered another
145 twenty thousand dollars. He also stated the way we build these things we have to mat
146 excavators through the wetlands, creating a lot bigger environmental footprint.

147
148 Hearing no testimony or questions, Chairperson Ward called on the town for a report.
149 [Clerk's note: Mr. Skinner's neighbor would like to provide an opinion, no testimony. Attorney
150 Jay Wheless will allow this after the town provides testimony.]

151
152 Planning Director Wes Haskett presented the staff report to be entered into the record.

153
154 **Applicant:** Kerry & Denise Skinner

155 36 Ginguite Trl.

156 Southern Shores, NC 27949

157 **Property Owner:** Applicant

158 **Requested Action:** Variance from Town Code Section 36-202(b)(5) c.

159 **PIN #: 986718324427**

160 **Location:** 36 Ginguite Trl.

161 **Zoning:** RS-1, Single-family Residential District

162 **Existing Land Use:** "Residential"

163 **Surrounding Land Use & Zoning:**

164 **North-** Residential; RS-1, Single-family Residential District

165 **South-** Residential; RS-1, Single-family Residential District

166 **East-** Ginguite Creek

167 **West-** Residential; RS-1, Single-family Residential District

168 **Physical Characteristics:** Existing single-family dwelling

169 **Applicable Regulations:** Chapter 36, Zoning Ordinance: Article VII, Schedule of District
170 Regulations and Article XII, Board of Adjustment.

171

172 **ANALYSIS**

173 The applicant is requesting a Variance to seek relief from Town Code Section 36-202(b)(5) c.
174 which establishes a maximum length for piers and docks at 75 ft. Piers and docks are permitted
175 uses in the RS-1 Single-family Residential District provided that they meet the following
176 requirements in Town Code Section 36-202(b)(5):

177 (5) Piers and docks, only when accessory to a building for which a building permit has
178 been obtained.

179 a. Piers and docks must be permitted by all applicable local, state, and federal agencies
180 having jurisdiction.

181 b. The activity associated with the pier or dock must be permitted by the zoning district
182 where the pier or dock is anchored.

183 c. No such permitted dock or pier shall extend into adjacent waters more than 75 feet
184 from an estuarine bulkhead, mean high waterline, or a line connecting the outermost
185 limits of the coastal wetlands on either side of the proposed structure, whichever is
186 nearest the channel.

187 d. Only one pier or dock is permitted per building site.

188 In this case, the maximum length of the pier is measured from a line connecting the outermost
189 limits of the coastal wetland (shoreline) on either side of the proposed structure. The applicant
190 is requesting a Variance to allow a 125 ft. pier due to the irregular shape of the shoreline of the
191 coastal wetland. Section 36-367 of the Town Zoning Ordinance establishes that the Planning
192 Board, when performing the duties of the Town Board of Adjustment, shall vary any of the
193 provisions of the Zoning Ordinance upon a showing of all of the following:
194

195 (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not
196 be necessary to demonstrate that, in the absence of the variance, no reasonable use can be
197 made of the property.

198 • Strict application of Town Code Section 36-202(b)(5) c. would allow a 75 ft. long pier
199 (measured from the shoreline), which the applicant claims is not long enough to reach
200 deeper water. The pier could be located further south to reach deeper water, but it
201 would require an additional 155 ft. of pier at a cost of \$20,500.00.

202 (2) The hardship results from conditions that are peculiar to the property, such as location, size,
203 or topography. Hardships resulting from personal circumstances, as well as hardships resulting
204 from conditions that are common to the neighborhood or the general public, may not be the
205 basis for granting a variance.

206 • The shoreline is irregular when compared to the other lots on Ginguite Trl.

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

210 • The hardship is a result of the irregularity of the shoreline.

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

213 • The intent of the RS-1, Single-family Residential District is to provide for the low-
214 density development of single-family detached dwellings in an environment which
215 preserves sand dunes, coastal forests, wetlands, and other unique natural features of
216 the coastal area. The district is intended to promote stable, permanent neighborhoods
217 characterized by low vehicular traffic flows, abundant open space, and low impact of
218 development on the natural environment and adjacent land uses.

219 • By granting the Variance, a smaller area of coastal wetlands will be disturbed.
220

221 Chairperson Ward called on the board for question for Planning Director Wes Haskett.
222

223 Planning Board Member Lawler stated the third pier north of the applicant appears to be
224 greater than 75 feet. Mr. Haskett stated he did not know.
225

226 Chairperson Ward stated that pier appears to be in a cove as well and the shoreline is irregular.
227

228 Chairperson Ward asked Planning Director Haskett if a roof is allowed on a structure out in
229 Ginguite Creek? Mr. Haskett stated per the town ordinance it is allowed but he did not know if
230 CAMA allows them.
231

232 Planning Board Member Lawler inquired if any of the other docks had roofs. Planning Director
233 Haskett stated he was not sure.
234

235 Chairperson Ward asked Planning Director Haskett if he was aware of a maximum dock size at
236 the end of a pier? Mr. Haskett stated the only requirement is the 75-foot length and the
237 ordinance does not have a maximum square footage of the deck at the end.
238

239 Chairperson Ward asked about a required width of the walkway. Planning Director Haskett
240 stated there is not a required width for a dock walkway on the sound side.
241

242 Hearing no further question from Planning Director Haskett, Chairperson Ward redirected to
243 Mr. Lineberger.
244

245 Chairperson Ward asked Mr. Lineberger if a roof was allowed by CAMA. Mr. Lineberger stated it
246 was allowed by CAMA. The shaded area is regulated, one square foot of coverage for every
247 lineal foot of shoreline. You can have up to a maximum of 800 but no more than 400 can be in
248 one thing. You can't have 800 foot in one chunk, you can have a 20 by 20 and then another 20
249 by 20.
250

251 Chairperson Ward revisited Planning Board Member Lawler's previous question about other
252 piers in that area having covered deck. Mr. Lineberger stated there are several docks with roofs
253 in that area.
254

255 Vice Chairperson DiBernardo asked the square footage of the covered deck. Mr. Lineberger
256 answered 10 x 12 covered area and then it has an 8 x 15 open area.
257

258 Chairperson Ward hearing no further questions for Mr. Lineberger called on any neighbors
259 wishing to speak.
260

261 Town Clerk Sheila Kane swore in Robert Slates of 38 Ginguite Trail. Mr. Slates being the
262 immediate neighbor and most impacted by the variance request spoke in support of the
263 applicant Kerry Skinner's request for a variance.
264

265 Hearing no further testimony, Chairman Ward closed the public portion of the hearing.
266

267 Board Attorney Jay Wheless asked Chairperson ward to confirm acceptance of the following
268 items into evidence:

- 269 1. The town staff report dated December 19, 2022- comprised of two pages.
- 270 2. The applicant's variance package dated November 8, 2022-comprised of the actual
271 application, a letter from Millstone, a survey, and two or three GIS type images
- 272 3. Exhibit number two from applicant.
273

274 Chairperson Ward replied yes to accept the evidence.
275

276 Chairperson Ward asked all board members to turn to the staff report and review numbers 1-4.
277

278 (1) Unnecessary hardship would result from the strict application of the ordinance. It
279 shall not be necessary to demonstrate that, in the absence of the variance, no
280 reasonable use can be made of the property.

281 • Strict application of Town Code Section 36-202(b)(5) c. would allow a 75 ft.
282 long pier (measured from the shoreline), which the applicant claims is not long
283 enough to reach deeper water. The pier could be located further south to reach
284 deeper water, but it would require an additional 155 ft. of pier at a cost of
285 \$20,500.00.

286 Planning Board Member Lawler stated we are basing this off of what we think the depths will
287 be, the issue is deeper water. We do not have hard evidence of the depth.

288 Board Attorney Jay Wheless stated there are two items in evidence and one is from Mr. Slates
289 that the water depth which appears to have been parallel to equal distance to the proposed
290 variance distance would have been deep enough to get a boat in and closer to the sandbar
291 probably not in fact Mr. slates testified that that used to be dry ground.

292 Chairperson Ward stated if the applicant constructs the dock that is already in compliance on
293 the southern end of the property then it will be farther out in the channel, larger environmental
294 impact, and will be a substantially larger cost to the property owner.

295 Vice Chairperson DiBernardo stated we do not know the water depth and how can the length
296 needed for the dock be determined?

297 Planning Board Member McClendon stated the water depth is not the board's problem. The
298 applicant has requested a specific length of the dock and if he builds it and it is not deep
299 enough, it is the applicant's problem. He further stated that the issue of hardship is
300 demonstrated. The issue of \$20,000 to build a dock further out into the channel is unnecessary.

301 Chairperson Ward agreed with Planning Board Member McClendon's opinion that the hardship
302 requirement has been met.

303 Planning Board Member Jan Collins stated there is no harm in the additional 75 feet request.

304 (2) The hardship results from conditions that are peculiar to the property, such as
305 location, size, or topography. Hardships resulting from personal circumstances, as well
306 as hardships resulting from conditions that are common to the neighborhood or the
307 general public, may not be the basis for granting a variance.

308 • The shoreline is irregular when compared to the other lots on Ginguite Trl.

309 Both Planning Board Member McClendon and Vice Chairperson DiBernardo stated the hardship
310 is met.

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

314 • The hardship is a result of the irregularity of the shoreline.

315 Vice Chairperson DiBernardo felt that the hardship did not result from actions taken by the
316 applicant.

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

319 • The intent of the RS-1, Single-family Residential District is to provide for the
320 low-density development of single-family detached dwellings in an environment
321 which preserves sand dunes, coastal forests, wetlands, and other unique natural
322 features of the coastal area. The district is intended to promote stable,
323 permanent neighborhoods characterized by low vehicular traffic flows, abundant
324 open space, and low impact of development on the natural environment and
325 adjacent land uses.

326 • By granting the Variance, a smaller area of coastal wetlands will be disturbed.
327

328 Planning Board Member McClendon stated he thinks that it's consistent and the fact that the
329 dock is not as far out into the channel as the neighboring dock certainly makes it seem
330 consistent with the neighborhood.

331
332 Chairperson Ward stated 5.C of the staff report is exactly what is pictured and in line with.
333 c. No such permitted dock or pier shall extend into adjacent waters more than 75 feet
334 from an estuarine bulkhead, mean high waterline, or a line connecting the outermost
335 limits of the coastal wetlands on either side of the proposed structure, whichever is
336 nearest the channel.

337
338 Chairperson Ward called for a vote of criteria 1-4, by voting for the variance the board believes
339 that:

340 1. Does a strict application of the ordinance result in an unnecessary hardship for the
341 applicant? All members voted yes.

342 Board Attorney Jay Wheless added the board should adopt probably the town's findings and in
343 addition that there isn't a bigger environmental footprint in order to strictly comply and the
344 additional expense of twenty thousand dollars to comply to get to deeper water. Those are in
345 support of an unnecessary hardship.

346
347 2. The hardship results that from conditions that are peculiar to the property? All
348 members voted yes.

349 Board Attorney Jay Wheless added there is an unusual natural cove inset into this property
350 which presents a tremendously long shoreline but also takes it away from the navigable portion
351 of that channel.

352
353 3. Does the hardship result from actions taken by the applicant or the property
354 Owner. Voting yes is for denial of the variance. All members voted no.

355
356 4. The requested variance is consistent with the spirit purpose and intent of the
357 ordinance? All members voted yes.

358 Board Attorney Jay Wheless added, at the distance requested it does not present an
359 obstruction to navigation. It does present a lesser environmental footprint than strict
360 compliance. The compliant version protrudes into the creek further than the variance version
361 thereby potentially adversely affecting navigation and no objection from the immediate
362 neighbor.

363

364 **Motion** made by Vice Chairperson DiBernardo to accept the variance as presented for 36
365 Ginguite Trail concerning the dock being 125 feet, Seconded by Chairperson Ward. Motion
366 passed unanimously (5-0).

367
368 Chairperson Ward stated the board is now acting as the Planning Board moving forward
369 through the agenda.

370

371

372 Board Attorney-Superior Court Appeal Process

373 Board Attorney Jay Wheless addressed the board. When acting as the board of adjustment this
374 board conducts a hearing. A hearing is like a real courtroom trial, you hear witness testimony,
375 you receive exhibits, you rule, or you decide just like you did in this variance. You are tasked to
376 create a record of the entire proceeding and your findings then lead to your decision or your
377 order. The order which the Planning Director and his staff will produce then eventually gets
378 signed at one of the upcoming meetings. If either party believes that a legal error has occurred,
379 then it can appeal to Superior Court, and they need to do that within 30 days of the issuance of
380 the signed order. The superior court singly acts as the court of appeals in this instance, he or
381 she reviews the record, the record is comprised of the minutes of the meeting, the order itself,
382 videos, paper documents, the exhibits that you receive, that is all the evidence that is given to
383 the superior court judge. No new witnesses are questioned. There are some very rare instances
384 when a judge can ask for an affidavit or some support to clarify a point. The superior court
385 judge asks, are the facts found by this board sufficient evidence or is it supported by sufficient
386 evidence in the record. Did you find facts that would support your decision. He doesn't ask was
387 your decision right or wrong, he is merely looking at that evidence to decide whether it is
388 sufficient to present the decision and the order that you eventually gave. The court has several
389 options; to affirm your decision whether he or she
390 believes it's right or wrong, reverse, or remand (means sending it back down to this board to
391 ask for further evidence or for further clarification or for further support for the decision that
392 you made). The town can be an appellate, if for example in granting this variance if the
393 town felt that that was an improper decision after production of the order the town could bring
394 suit and it would be the town versus the town board of adjustment. It is usually the town's
395 attorney or the appellants attorney that hear the arguments, the board is not involved.

396

397 Hearing no questions from the board, Chairperson Ward moved to the next agenda item.

398

399 SUP-22-01: Special Use Permit application submitted by Timmons Group on behalf of Fire
400 Service Real Estate, Inc. to construct a new EMS/Fire Station at 28 E. Dogwood Trl

401

402 Chairperson Ward acknowledged the submitted staff report and called on Applicant's
403 representative Kim Hamby with the Timmons Group to address the special use permit
404 application.

405

406 Addressing the Planning Board was Applicant's representative Kim Hamby with the Timmons
407 Group representing Fire Service Real Estate in Dare County for the replacement of the existing
408 station that is located at the intersection of NC-12 and East Dogwood Trail. She reported it is
409 replacing an existing use in a very similar location. By a small amount they are reducing
410 impervious coverage and they are going to great lengths to try to capture and meet the town's

411 rainwater, inch and a half runoff, and then some based on the town's ordinance. A variance was
412 received for the small portion that we've been unable to capture which is the runoff from the
413 driveway apron once you get past the roof line of the building. They are capturing everything
414 from the roof line either by gutter or trench drain across the front driveway and utilizing some
415 open infiltration areas and an underground storage chamber system that will be located under
416 the concrete apron. She further stated that some pervious concrete has been utilized out in
417 front of the building along Dogwood Trail to provide for parking and some sidewalk for public
418 access without increasing impervious areas there. They have previously received permission
419 back in March or April to move forward with a 10-foot buffer on the North and East sides of the
420 property. That buffer does contain a combination of a privacy fence and required Landscaping.
421 There is a little bit of a jog in the fence around the back corner of the property that has been
422 done to meet septic system regulations to maintain separation between the fence and the
423 septic field. They have alternated the landscaping in those areas so that we can have some on
424 both sides of the fence. There are some minor comments from the planning department that
425 are being addressed.

426

427 Vice Chairperson DiBernardo inquired about the timeframe of the project. Applicant's
428 Representative Kim Hamby estimated a nine-month timeframe.

429

430 Chairperson Ward inquired about the shed that is on the property and that the Planning Board
431 should know if it is being replaced what it will look like and size. Applicant's representative Kim
432 Hamby reported the shed that is currently on the property seems new, but it is being replaced
433 with a free-standing wooden shed.

434

435 Planning Director Wes Haskett stated it is used by Ocean Rescue and not Dare County EMS.

436

437 Chairperson Ward inquired if the temporary construction sign was going to be lit. Applicant's
438 representative Kim Hamby reported it was not.

439

440 Planning Director Haskett stated he has revised the staff report to address the temporary
441 signage as well as the recommended condition that addresses to signage height and the size.
442 Chairperson Ward asked Mr. Haskett to add the shed as well into the conditions.

443

444 Chairperson Ward asked if the septic permit has been approved. Applicant's representative Kim
445 Hamby reported they have received approval from Dare County Health Department.

446

447 Chairperson Ward asked if there would be another fuel tank. Applicant's representative Kim
448 Hamby stated not to her knowledge.

449

450 Chairperson Ward inquired about the existing fence. Applicant's representative Kim Hamby
451 reported it will be replaced with new wood stockade fencing.

452

453 Chairperson Ward inquired about the various forms of concrete on the site. Applicant's
454 representative Kim Hamby stated it will all be cohesive, and the impervious concrete will be
455 framed in to make sure it has a solid containment.

456

457 Chairperson Ward asked Planning Board Member McClendon if he was satisfied with the
458 landscaping design. He replied that he was satisfied and that it was all native.

459

460

461 Chairperson Ward reviewed the conditions recommended in the staff report, highlighting
462 number three-temporary sign conditions.

463

464 The Land Use Plan identifies this area as Residential in the R-1, Low-density Residential Zoning
465 District which is consistent with the improvements proposed in the application. All applicable
466 regulations in the Town Zoning Ordinance and all of Town Staff's concerns that are applicable
467 to this application have been identified or are addressed in the recommended conditions. Town
468 Staff recommends conditional approval of the application and the Town Planning Board
469 recommended conditional approval of the application with the following conditions:

470

471 1.The following permit shall be issued prior to submittal of a Building Permit application:

472

473

474

475

- a. Improvement Permit and Authorization to Construct a new wastewater collection, treatment and disposal system as issued by the Dare County Health Department.

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2.A lighting plan shall be submitted with the Building Permit and Zoning Permit application.

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3.A maximum of two wall signs shall be permitted not to exceed 64 sq. ft. A maximum of five temporary signs, not exceeding 6 sq. ft. and 5 ft. in height each, shall be permitted while the building is under construction. Revised plans shall be submitted with the Building Permit and Zoning Permit application (this recommended condition has been satisfied).

485

486

487

4.The applicant must strictly abide by all requirements of the Town Code and must also strictly comply with all other applicable local, State, and Federal requirements.

488

489

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491

Chairperson Ward stated he would like to know the details of the shed and if coastal standards were being followed. Planning Director Haskett stated the building inspector is very good about making sure all sheds are securely anchored.

492

493

Chairperson Ward stated he would still like to have some type of detail on the shed.

494

495

496

497

498

Chairperson Ward called on Dare County Manager/Attorney Bobby Outten who was wishing to speak on the matter. Mr. Outten informed the board that the shed did not belong to Dare County EMS but in fact belong to the Town's Ocean Rescue and conforms to what the town allows.

499

500

501

502

Chairperson Ward stated the shed should still be on the site plan, so we know what we are getting. Applicant's representative Kim Hamby stated it is likely they will be using the same shed or replaced with another premanufactured.

503

Chairperson Ward asked Planning Director Haskett to note the shed and make sure it complies.

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Hearing no further discussion, Chairperson Ward called for a motion.

Motion made by Planning Board Member Collins to approve SUP-22-01 as submitted by Timmons Group on behalf of Fire Services Inc. to construct the new fire station at 28 East Dogwood Trail with the recommended conditions and to send to Town Council for consideration, Seconded by Vice Chairperson DiBernardo. Motion passed unanimously (5-0).

Discussion of the Town's extraterritorial jurisdiction (ETJ) and possible transfer of the Martin's Point commercial properties to Dare County for Planning and Zoning purposes.

Planning Board Member Finelli (ETJ) addressed the board both my letter and in person.

December 9, 2022

To: Planning Board Members:

From: John Finelli, ETJ Representative

I've asked Wes to place an item on the December Planning Board Agenda pertaining to the Martin's Point commercial properties. And that is a discussion of the possible transfer of these properties from the ETJ to Dare County for planning and zoning purposes.

All of Martin's Point used to be under the planning jurisdiction of Southern Shores, but the residential properties were released in 2000. In my opinion, the commercial properties should have been transferred at the same time, but it didn't happen. But better late than never.

Over the past several months I have had discussions with Wes, Andy, the Town Manager and the Mayor about a possible transfer. We seem to be in general agreement that the interests of the Town and of Martin's Point might be best served if Dare County took over the planning and zoning responsibilities for the 10 properties in the Martin's Point commercial subdivision.

I was asked by the mayor to conduct a survey of the property owners to see if they were in favor of the transfer or if they wanted to remain under Southern Shores for planning and zoning. I'm in the process of doing that. So far, 60% have responded that they are in favor of the move to Dare County and none are opposed. I have informed the remaining property owners that this item will be on the December Agenda if they wish to address the Planning Board during Public Comment.

The Chairman of the Dare County Board of Commissioners and the Dare County Planning Director are aware of my efforts and are supportive. But ultimately, it will be up to the Southern Shores Town Council to approve the transfer.

At the conclusion of our discussion, I would like for a motion in support of the proposal or a motion stating that Planning Board Members have no objections.

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552 Planning Board Member Collins asked to clarify that the ten commercial properties outside of
553 Martin's Point will now be under the jurisdiction of Dare County. Planning Board Member Finelli
554 (ETJ) stated that is correct.
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556 Chairperson Ward asked what control does Southern Shores currently have over the ETJ?
557 Planning Board Member Finelli stated the zoning.
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559 Chairperson Ward asked Planning Director Haskett what the advantage was of having this ETJ,
560 the commercial district?
561
562 Planning Director Haskett stated what he thinks the board is getting at is the question on design
563 standards. The Town does not currently have any design standards, but we are working on that.
564 The difference between what kind of building the county could put up versus what they put up
565 with our requirements is not very different, if it's different if at all.
566
567 Chairperson Ward stated the covenants are held in the Martin's Point commercial District and they are
568 regulated by the ten commercial property owners. They would like to regulate some of the covenants
569 that are already in place. They are probably more restrictive than what we have currently in Southern
570 Shores so from a control standpoint we are not losing anything doing away with the ETJ.
571
572 Chairperson Ward stated it makes sense to turn it over to Martin's Point and allow them to enforce the
573 covenants when it needs to be enforced.
574
575 Vice Chairperson DiBernardo felt it was appropriate.
576
577 Chairperson Ward's only concern was there will be lawyers involved in the separation and question the
578 authority in the creek. Planning Board Member Finelli (ETJ) stated the Town has control over the creek
579 and really has not exerted any authority other than livable boats and the jet ski ordinance.
580
581 Planning Director Haskett stated the Town Attorney would work with the County Attorney to get all the
582 proper paper work completed. The ordinance itself will have to come to the Planning Board for
583 approval.
584
585 Chairperson Ward **moved** by unanimous consent that the Planning Board agrees to recommend this
586 action to be taken and moved up to Council and the Planning Board will review what is needed at a later
587 time, Seconded by Vice Chairperson DiBernardo. Motion passed unanimously.
588
589 E.TCA-22-04: Town Code Amendment application submitted by the Town of Southern Shores to add
590 Town Code Section 1-13, Conflicts of Interest.
591
592 Planning Director Haskett addressed the board. Chapter 160d was a consolidation of County and
593 Municipal planning and zoning and development regulations. This is the latest round that staff is
594 bringing to you. This is coming to the board as a town code amendment not a zoning text amendment
595 because we're amending chapter one. We are proposing to amend chapter one instead of the zoning
596 ordinance. However, it is related to development regulations. Staff feels it is necessary for the planning
597 board to review this before the council reviews it. These are the conflict-of-interest requirements or
598 standards, these are taken verbatim from the from the statute and address quasi-judicial decisions,
599 when objections are raised by board member's participation, and also defines a close familial
600 relationship.

601
602 Hearing no discussion for questions, **Motion** made by Planning Board Member McClendon to
603 recommend TCA-22-04, Seconded by Vice Chairperson DiBernardo. Motion passed unanimously.
604

605 **VII. Old Business Discussion of potential commercial design standards**
606

607 Chairperson Ward briefly reviewed Planning Director Haskett's design standards that were
608 provided to the board.
609

610 11-21-22 Potential Commercial Design Standards Discussion

- 611 •Require a sketch plan review.
 - 612 •Don't allow bright colors and allow earth tone and neutral colors.
 - 613 oLimit color schemes to two.
 - 614 •Screen utilities, HVAC units, and solid waste receptacles.
 - 615 •Buildings should have a residential appearance
 - 616 .•Requirements should apply to renovations.
 - 617 •Glazing of storefronts.
 - 618 •Require covered walkways for multitenant buildings/group developments.
 - 619 o Duck has 2/3 requirement.
 - 620 •Require 8 ft. wide covered walkways for group developments.
 - 621 •Require breaks in facades and rooflines.
 - 622 •Decrease the number of required parking spaces to allow for more landscaping.
 - 623 •Add space requirement for open space/landscaping
- 624

625 Chairperson Ward stated more on the mix use development that was recently passed needs to
626 be added.
627

628 Planning Board Member Collins inquired about the timing of passing standards with the
629 potential submission of the SAGA property. Chairperson Ward stated passing commercial
630 design standards will take some time.
631

632 Planning Director Haskett stated staff could express opinion once a plan is submitted but staff
633 could not enforce without an ordinance passed. Saga is proposing to submit a special use
634 permit in February.
635

636 Chairperson Ward would like Commercial Design Standards added to the January agenda.
637

638 **VIII. Public Comment**

639 Mayor Morey thanked the Planning Board for volunteering and all the work they do.
640

641 **IX. Planning Board Member Comments**

642 Planning Board Member Finelli commented on the various length of piers in the canal. He
643 stated the piers were built when it was all marsh grass, and they would be constructed 75 feet
644 out from the marsh. With the construction of bulkheading the shoreline of marsh grass has
645 disappeared from the backwash of water off the bulkheads. Those piers are now 85-90 feet.
646

647 **X. Announcements**

648 Planning Director Wes Haskett stated the next meeting will be held January 18th and provided
649 the board with a copy of the 2023 meeting schedule.

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651

652 **X. Adjourn**

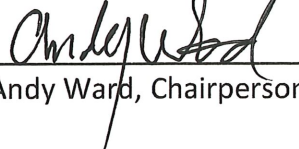
653 Hearing no further business, **motion** made by Vice Chairperson DiBernardo to adjourn,
654 Seconded by Planning Board Member McClendon. Motion passed unanimously. The time was
655 6:47 P.M.

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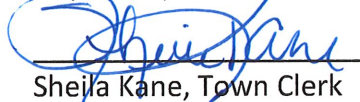
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659 ATTEST:

660 
661 Andy Ward, Chairperson



Respectfully submitted,


Sheila Kane, Town Clerk