



TOWN OF SOUTHERN SHORES
PLANNING BOARD REGULAR MEETING

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

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

PITTS CENTER

Monday, February 21, 2024 at 5:00 PM

MINUTES

1 **Call Meeting to Order**

2 Pledge of Allegiance

3

4 **Present**

5 Vice Chairperson Tony DiBernardo

6 Planning Board Member Collins

7 Planning Board Member Lawler

8 Planning Board Member McClendon

9 Planning Board Member (alternate) Michael Zehner

10

11 **Approval of Agenda**

12 Vice Chairperson DiBernardo requested to amend the agenda and include approval of Written Decision

13 VA-23-02, amendment approved by consensus.

14

15 **Motion** to approve the agenda made by Planning Board Member Collins, Seconded by Planning Board

16 Member Lawler. The motion passed unanimously.

17

18 **Motion** to approve Written Order VA-23-02 made by Council Member Lawler, Seconded by Vice

19 Chairperson DiBernardo. The motion passed unanimously.

20

21 **Approval of Minutes – November 20, 2023**

22 **Motion** made by Planning Board Member Collins to approve the minutes of November 20, 2023 as

23 amended, Seconded by Planning Board Member Zehner. The motion passed unanimously.

24

25 **Public Comment**

26 Richard Filling-131 Crooked Back Loop-action item #6 replace “encourage” with “require” and be more

27 proactive. No need to clear cut lots. Landscaping should be a requirement of the site development plan.

28

29 Matt Huband-110 Landing Trail- thanked the town staff for being thorough and coming up with the

30 changes in this ZTA for the betterment of Southern Shores. Hopeful that it will pass unanimously.

31

32 **Old Business**

33 None

34

35

36

37 **New Business**

38 ZTA-24-01, a Zoning Text Amendment application submitted by the Town of Southern Shores to amend
39 the Southern Shores Town Code by amending Town Code Section 36-171 to require a lot
40 disturbance/stormwater management permit to remove trees greater than 6 inches in diameter,
41 measured at 4.5 feet above the ground on any unimproved lot; Sections 36-207(b)(4) and 36-207(c) to
42 establish multifamily dwellings as a special use in the C, general commercial zoning district with a
43 maximum lot coverage of 30 percent; Sections 36-207(c)(1)b., 36-207(c)(1.5)b., 36-207(c)(11)., 36-
44 207(c)(11)k., 36-207(d)(7), and 36-207(d)(8) to establish a 50 ft. setback requirement for restaurants
45 from planned unit developments, a 50 ft. setback requirement for drive-through facilities or
46 establishments (small) from residential districts and planned unit developments, a 50 ft. setback
47 requirement for mixed use group developments from planned unit developments and residential
48 districts, a 50 ft. setback requirement for commercial buildings and facilities from planned unit
49 developments, a 20 ft. buffer requirement where a mixed use group development abuts a residential
50 district or planned unit development, and a 20 ft. buffer requirement where a commercial use or zone
51 abuts a residential district or planned unit development; 36-209 to amend the Town's prohibited uses;
52 36-297 to amend the Town's time limitations for building permits, zoning permits, and site plans;
53 Section 36-299 to amend the Town's requirements for building permits, zoning permits, and site plans;
54 36-300 to amend the Town's requirements for special use permit applications; and 36-304 to amend
55 the Town's current vested right requirements

56

57 The staff report read as, at the February 6, 2024 Town Council meeting, the Town Council directed Town
58 Staff to draft Town Code amendments to modernize the Town Code. As a result, Town Staff has drafted
59 ZTA-24-01 which includes amendments to one Section in Chapter 24, Planning and several Sections in
60 Chapter 36, Zoning. If approved, the proposed amendments would do the following:

61

62 Part I, Section 24-27, Powers, and Duties:

- 63 • Removes the previous statutory reference that grants authority for Planning Boards and
64 replaces it with the new reference (160D-301).
- 65 • Replaces the powers and duties of the Planning Board so that they are consistent with
66 G.S. 160D-301(b).

67

68 Part II, Section 36-171, Lot Disturbance and Stormwater Management:

- 69 • Establishes that a Lot Disturbance/Stormwater Management Permit is required for the
70 removal of trees greater than 6 inches in diameter, measured at 4.5 feet above the ground on
71 any unimproved lot.
- 72 • Establishes that trees greater than 6 inches in diameter, measured at 4.5 feet above the
73 ground on any unimproved lot must be shown on survey/site plan for a Lot
74 Disturbance/Stormwater Management Permit.

75

76 Part III, Section 36-207, C General Commercial District:

- 77 • Removes multifamily dwellings from the list of Permitted Uses (use by right).
- 78 • Establishes a 50 ft. setback requirement for restaurants from Planned Unit Developments
79 (PUDs).
- 80 • Establishes a 50 ft. setback requirement for drive-through facilities or establishments (small)
81 from PUDs.
- 82 • Establishes a 50 ft. setback requirement for mixed use group developments from residential
83 districts and PUDs.
- 84 • Establishes a 20 ft. buffer requirement where a mixed-use group development abuts a
85 residential district or PUD

- 86 • Establishes multifamily dwellings according to the density and dimensional requirements of
- 87 the RS-8 multifamily residential district as a Special Use.
- 88 • Establishes a 50 ft. setback requirement for commercial buildings and facilities from PUDs.
- 89
- 90 • Establishes a 20 ft. buffer requirement where a commercial use or zone abuts a residential
- 91 district or PUD.
- 92

93 Part IV, Section 36-209, Prohibited Uses in all Districts:

- 94 • Establishes miniature golf courses, storage units, warehouses, and wind farms as prohibited
- 95 uses in all zoning districts.
- 96

97 Part V, Section 36-297, Building and Zoning Permits Required; Time Limitations for Site Plans, Building

98 Permits and Zoning Permits:

- 99 • Establishes that approved site plans expire if a building permit and zoning permit are not
- 100 issued within one year of approval.
- 101 • Establishes that only building permits expire if construction has not commenced within 180
- 102 days of issuance of a building permit and zoning permit.
- 103 • Establishes that building permits, zoning permits, and site plan approvals expire if work is
- 104 discontinued for one year.
- 105 • Establishes that if an application made in accordance with approved regulation is submitted
- 106 for a development approval and a development regulation change between the time the
- 107 application was submitted and a decision is made, the applicant may choose which version of
- 108 the development regulation will apply to the application. If the development permit applicant
- 109 chooses the version of the rule or ordinance applicable at the time of the permit application, the
- 110 development permit applicant shall not be required to await the outcome of the amendment to
- 111 the rule, map, or ordinance prior to acting on the development permit.
- 112

113 Part VI, Section 36-299, Application for Building Permits, Zoning Permits and Site Plan Requirements:

- 114 • Requires showing the anticipated final appearance of the front, sides, rear, and rooflines of
- 115 proposed structures shown on site plans.
- 116 • Requires a rendering showing the anticipated front, sides, and rear appearances of structures
- 117 shown on site plans relative to the proposed landscaping.
- 118 • Requires showing the number of bedrooms and/or occupants.
- 119 • Establishes that improvements that require a new wastewater treatment facility, or
- 120 connection to an existing wastewater treatment facility, documentation from the North Carolina
- 121 Utilities Commission certifying that the owner of the wastewater treatment facility is an
- 122 approved public utility, and the franchise holder must be submitted with the site plan
- 123 application.
- 124 • Establishes that improvements that require connection to an existing wastewater treatment
- 125 facility, documentation from the North Carolina Department of Environmental Quality certifying
- 126 that the wastewater treatment facility is in compliance with all applicable requirements must be
- 127 submitted with the site plan application, including adherence to permit conditions issued by the
- 128 North Carolina Department of Environmental Quality.
- 129

130 Part VII, Section 36-300, Application for Permit for Special Uses:

- 131 • Establishes that no Special Use Permit application shall be deemed complete unless it is
- 132 accompanied by a site plan drawn to scale which complies with the site plan requirements
- 133 contained in section 36-299.

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- Establishes that the Town Planning Board shall review Special Use Permit applications and recommend approval, conditional approval, or rejection of applications to Town Staff instead of the Town Council.
 - 160D-301(b)(6) allows Planning Boards to provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.
- Reorganizes the Section so that it follows the Special Use Permit process chronologically.
- Establishes requirements for transmitting Special Use Permit applications, reports, and written materials to the Town Council.
- Establishes procedural requirements for evidentiary hearings held by the Town Council when considering Special Use Permits.
- Establishes that approved Special Use Permits shall be recorded by the applicant in the county registry.
- Establishes that a building permit and zoning permit must be issued within one year of approval of a Special Use Permit application and accompanying site plan. If a building permit and zoning permit are not applied for and issued within one year from the date of final approval of the Special Use Permit application and accompanying site plan, the Special Use Permit approval and site plan expire, and the applicant must submit a new Special Use Permit application and accompanying site plan.

Part VIII, Section 36-304, Vested Right:

- Revises the Section title to Vested Rights – Site Specific Vesting Plans.
- Deletes the Section in its entirety and replaces it with the requirements established in G.S. 160D-108.1 The ZTA is consistent with the Town’s Existing and Future Land Use Map in the Town’s currently adopted Land Use Plan. The Town’s Land Use Plan contains the following Policies and Action Items that are applicable to the proposed ZTA:
 - Policy 2: The community values and the Town will continue to comply with the founder’s original vision for Southern Shores: a low-density residential community comprised of single-family dwellings on large lots (served by a small commercial district for convenience shopping and services located at the southern end of the Town). This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.
 - Action Item 2-b The Town shall encourage the use of low impact development techniques and sound environmental preservation practices for all new development, remodeling and redevelopment within Southern Shores.
 - Policy 7 Support stormwater management programs that reduce flooding and improve coastal water quality.
 - Action Item 7-b Encourage the use of Low Impact Development (LID), vegetative buffers to filter stormwater, impervious surface limits, and innovative stormwater management alternatives to reduce runoff and to improve water quality.
 - Policy 26 Promote open space, tree protection, and natural vegetation diversity.

181 o Action Item 26-b Encourage lot preparation methods that preserve natural
182 vegetation and minimize clear cutting.

183
184 RECOMMENDATION-Town Staff has determined that the proposed amendments are consistent with the
185 Town's currently adopted Land Use Plan and Town Staff recommends that the Planning Board
186 recommend approval of the application to the Town Council.

187
188 Vice Chairperson DiBernardo recommended reviewing the ZTA by individual sections making necessary
189 changes at that time. He noted there are strikeouts throughout that is due to 160D.

190
191 Planning Director Haskett stated before the board reviews the ZTA in its entirety, staff would like to
192 recommend two additional changes.

193
194 1. Revise section 24-27 part one-the planning board duties, to provide a preliminary forum
195 for review of special use permits provided that no part of the forum or recommendation
196 may be used as a basis for the Town Council.

197
198 Planning Board Member Zehner felt the change made sense, and stated in practice he is hopeful that
199 staff is at Planning Board meetings and hears the concerns that are raised by the board and by the public
200 and if there is anything that warrants additional investigation before it goes to council, staff would be
201 doing that. The whole point is that when it gets in front of the council as a quasi-judicial hearing the
202 facts must be presented in front of them and anything that's pertinent is going to be raised again.

203
204 Planning Director Haskett explained the Planning Board will still have the meetings and receive public
205 comments. The only difference is the board would be making recommendations to staff; whether it's
206 approval, disapproval, or with conditions.

207
208 2. Part II, Section 36-171-Town staff is withdrawing the proposed amendments to this
209 section at this time no amendments are being proposed at this time. Staff will come
210 back at another time with a ZTA to address tree removal.

211 Section .36-207 General Commercial District-Permitted Uses Vice Chairperson DiBernardo recommended
212 using less than 20,000 sq. feet rather than using the term "small". Planning Director Haskett felt it was
213 already specific, and the term would need to be changed everywhere else it referred to.

214 Planning Board Members Zehner and McClendon didn't disagree but felt for now to stick with the
215 current wording and review of the ZTA before them.

216 Part three 36-207 pages four, five, and six-Written comments submitted by Chairperson Ward to be read
217 into the record.

218 *"We had talked about how to handle a series of docks and piers (marinas) in the commercial*
219 *district. I would propose adding language onto permitted uses (9) "Estuarine bulkheads must be*
220 *permitted by all applicable local, state and federal agencies having jurisdiction"; however,*
221 *marinas (series of docks and piers) are not an allowed use.*

222 *In the ZTA, pg 12, lines 6-10 re: wwtp language: I would suggest a slight modification starting*
223 *with line 9 to read "the wastewater treatment facility is an approved public utility; is the utility*
224 *franchise holder; and is the permit holder issued by the North Carolina Department of*
225 *Environmental Quality. All documentation of these requirements shall be submitted with the site*

226 *plan application. *****I think it is important to distinguish between the permit holder and the*
227 *franchise holder, with the owner of the facility being required to be the holder of both.*

228

229 *I'm still fuzzy on why "residential districts" is more legally binding than "residential use" as it*
230 *relates to the boundaries and buffers in mixed use group development and the dimensional*
231 *requirements in the C general commercial district. See (8) under dimensional requirements -----*
232 *It says "Where a commercial use or zone abuts". For my point, why not say residential use*
233 *or zone or planned unit development rather than residential zone or planned unit development. I*
234 *think of zone and district as being interchangeable in our ordinances. A residential use is just*
235 *that----- the property is being used for residential purposes. It may be splitting hairs and*
236 *somewhat redundant, but this needs to be bulletproof moving forward."*

237

238 Planning Board Member Zehner did not agree with inserting “; however, marinas (series of docks and
239 piers) are not an allowed use” as it is spelled out as a permitted use elsewhere in the code, so that
240 presumes that we then have to list every use that is prohibited by its omission.

241

242 Planning Director Haskett stated the SSCA marina is considered a community recreation facility and not a
243 marina. Planning Board Member Zehner then recommended adding marinas to the prohibited uses.

244

245 Planning Director Haskett read the community recreation facilities definition and stated marinas, nor its
246 definition are in the town code. The board can revisit marinas at another meeting.

247

248 Planning Board Member McClendon stated the State of North Carolina does have a definition for
249 marinas.

250

251 Planning Director Haskett also commented on Chairperson Wards comment about residential use by
252 stating, town staff suggests keeping residential districts throughout these changes in 207 instead of
253 zones. One zone would have to be revised to district (missed) and add residential use(s).

254 Planning Board Member Zehner commented that if two commercial adjacent properties are developed,
255 one commercial and one multifamily singular, then it would have stricter buffer and setback
256 requirements. He questioned if that was the intended outcome. Planning Director Haskett did not think
257 it was an issue to provide an extra buffer or setback between a residential use and a commercial district.

258 Planning Member McClendon stated that a variance could be requested and may be appropriate.

259 Planning Board Member Zehner in referencing Chairperson Wards ‘comment stated he was comfortable
260 using “residential use, district, or planned unit development.”

261 Planning Director Haskett continued with 36-207, proposed amendments also remove multifamily
262 dwellings from the list of Permitted Uses and make them a special use that meets the density and
263 dimensional requirements of the RS8 multi-family district. In addition to making multifamily dwellings a
264 special use, it removes the question about which lot coverage requirement applies to multi-family
265 dwellings (40% or 30%) and establishes 30%.

266 Planning Board Member Zehner asked what the commercial lot coverages is. Planning Director Haskett
267 stated commercial lot coverage is 60%. Lot coverage is building and parking and can be up to 67% in the
268 commercial district with the use of permeable pavement.

269 Planning Board Member Zehner suggested making the change but revisit as part of the commercial
270 design standards. Planning Board Member McClendon agreed, stating he would rather see an apartment
271 complex than a Sugar Kingdom and we are making it difficult for someone to develop on their
272 commercial property.

273 All members agreed by consensus to move to special use as proposed and go to 40% coverage.

274 Planning Board Member Lawler asked if there was anything in the ordinance referencing maintenance of
275 permeable pavement. Planning Director Haskett stated there is nothing currently in the ordinance.

276 Vice Chairperson DiBernardo suggested approaching the maintenance of permeable pavement when
277 they discuss commercial design standards.

278 Vice Chairperson DiBernardo moved onto buffer zones in planned unit development (#8). He reviewed
279 the amendments and suggested adding that plants should be maintained by the developer and replaced
280 within 60 days or appropriate planting season if they die. All board members agreed.

281 Section 36-209-All board members agreed to the proposed amendments in the ZTA. Planning_Director
282 Haskett added, in the list of prohibited uses is smoke and vapor shops but in the current list of permitted
283 uses the retail sale of tobacco products is a permitted use, staff recommends deleting tobacco products
284 from that section to be consistent with the list of prohibited uses.

285 Planning Board Member Zehner stated there is a distinction there though between the retail sale of
286 tobacco that may be incidental to a retail store versus a smoke and vapor shop where that is the
287 predominant use. Planning Director Haskett stated that made sense.

288 Part V- Vice Chairperson DiBernardo reviewed the section, all members agreed to the amendments
289 (160D changes).

290 Part VI-36-299-Vice Chairperson DiBernardo reviewed the section.

291 Planning Board Member Zehner number one - proposed to scale architectural elevations of the front,
292 sides, rear, and roof lines of the proposed structures shown on the site plan. All members agreed.

293 Vice Chairperson DiBernardo commented that the building, volume, and density aspect was brought up
294 at a previous meeting and would be a good thing to apply to commercial design standards.

295 Planning Board Member Zehner used to the applicant having to provide project narrative and maybe
296 that is something that could be required. He would like to see as may be part of the commercial design
297 standards some eventual scale of appropriateness in -terms of the volume and floor area ratio, some
298 evaluation of the existing development is in town so they can understand what is too big beyond what
299 we have. Planning Board members felt it was an important topic to take up with commercial design
300 standards.

301 Planning Board Member Zehner stated under #21 proposed number of bedroom and occupants, you can
302 say residential density expressed as proposed number of bedrooms and their occupants per acre or per
303 square foot. Then similarly some expression of commercial density.

304 Vice Chairperson DiBernardo stated number 20 and 21 are both new additions. Planning Board Member
305 Zehner stated you would want to add rendering showing proposed front, sides, and rear appearances of

306 the proposed structures with views relative to the context of adjacent properties, including retained
307 vegetation, landscaping, and other site elements.

308 Vice Chairperson DiBernardo reviewed the new items added for a wastewater treatment facility.

309 Planning Board Member Collins stated she would like to see on page 11 number 5- the treatment of
310 wastewater be incorporated into 6G on page 13. She stated it needs to be specific versus just saying
311 appropriate permitting agencies and keep it consistent. All board members agreed.

312 Planning Director Haskett read a comment from Chairperson Ward pertaining to page 12, line 6-12
313 modify to read "the wastewater treatment facility is an approved public utility, is the utility franchise
314 holder, and is the permit holder issued by NC Dept. of Environmental Quality". All members agreed to
315 the proposed wording change.

316 Planning Board Member McClendon stated he did not have an issue adding that language, but he did not
317 know if the Town of Southern Shores has the authority to require that if the NC Utilities Commission and
318 the Department of Environmental Quality don't require it. Planning Director Haskett stated the town
319 attorney will review the changes.

320 Vice Chairperson DiBernardo reviewed the application for special uses section and the procedure for a
321 quasi-judicial hearing process which is already in place. The board had no suggested changes.

322 Vice Chairperson DiBernardo had Planning Director Haskett explain vested rights and touched on the
323 pertinent changes to the section.

324 Planning Board Member McClendon asked if the recording of the special use permit goes with the land.
325 Planning Director Haskett stated once a special use permit is issued and recorded, it goes with the land
326 (2-5 years if they request a vested right).

327

328 **The Planning Board reviewed ZTA -24-01 making the following changes:**

329

- 330 • revise section 24-27 part one-the planning board duties to provide a preliminary forum for
331 review of special use permits provided that no part of the Forum or recommendation may be
332 used as a basis for the Town Council.
- 333 • Number 7 page three, change governing board to town council.
- 334 • part two 36- 171 -Town staff withdrew the proposed amendments.
- 335 • section 36-171 staff is going to come back with another ZTA.
- 336 • Provisions -marinas we're going to revisit.
- 337 • Going to add residential districts and residential use or uses throughout 36-27 where it talks
338 about the buffers and setback buffer and setback requirements.
- 339 • Part 6 36-299 -improvements that require a new wastewater treatment facility or existing
340 wastewater treatment facility connection, revising "wastewater treatment facility an approved
341 public utility is the utility franchise holder and is the permit holder issued by NCDEQ.
- 342 • page six- multifamily dwellings block coverage is going to be set at 40% and it will be made of
343 special use.
- 344 • revisit the list of permitted uses during our commercial design standard consideration.

- 345 • page six- make a revision says buffer shall be maintained by the property owner/developer, and
- 346 dead vegetation shall be replaced during their appropriate planting seasons.
- 347 • page 10 number one- proposed to scale architectural elevations of the front, sides, and rear of
- 348 roof lines.
- 349 • page 10 -revisit area ratio in commercial design standards
- 350 • page 11 -a rendering showing the proposed front side and rear appearances of the structures
- 351 relative to the views from the from adjacent properties, including retained vegetation, proposed
- 352 landscaping, and other site elements.
- 353 • page 13 -we are going to take language from number five on page 11.
- 354 • page 12 -add the language referred to by Chairperson Ward (letter).

355
 356 **MOTION: Planning Board Member McClendon moved to adopt ZTA 24-01 with the proposed changes**
 357 **and forward to council, and that the amendments are consistent with the land use plan policies and**
 358 **action items as listed, Seconded by Planning Board Member Zehner. The motion passed unanimously.**
 359

360 **Public Comment**

361 Paul Watson-Sassafras Lane-town should avoid preventing the taking down of trees. It is nice to save
 362 them, but trees are affected by the elements and disease. As far as marinas are concerned, the council
 363 should grandfather the existing marinas. New marinas come under CAMA. Would like to know the
 364 town’s vegetative management plan for the canals/marsh.
 365

366 **Planning Board Member Comments**

367 Planning Board Member Collins would like to see some water quality tests done and some type of plan
 368 created. Planning Director Haskett stated it is in the Land Use Plan.
 369

370 Planning Board Member McClendon stated at the council meeting on March the 12th the contractor for
 371 the Trinite/Juniper Culvert Bridge will be making a presentation. The culvert is proposed to be reduced in
 372 height to make the road a little flatter and safer.
 373

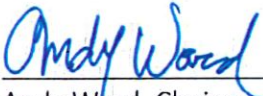
374 **Announcements**

375 Planning Director Haskett stated the next planning board meeting is scheduled for March 18th, agenda
 376 items may consist of considering tree removal, commercial design standards, and lot width. DCM has
 377 completed their review of the Land Use Plan, and it has been forwarded to other agencies for review.
 378

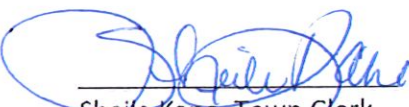
379 **Adjourn**

380 **Motion** to adjourn the meeting by Vice Chairperson DiBernardo, Seconded by Planning Board Member
 381 McClendon. The time was 6:47 p.m. The motion passed unanimously.
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383 ATTEST:

384 
 385
 386 Andy Ward, Chairperson



Respectfully submitted,

 Sheila Kane, Town Clerk