



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, December 18, 2023 at 5:00 PM

MINUTES

1 **Call Meeting to Order**

2 Pledge of Allegiance

3

4 **Present**

5 Chairperson Andy Ward

6 Vice Chairperson Tony DiBernardo

7 Planning Board Member Collins

8 Planning Board Member Lawler

9 Planning Board Member (alternate) Michael Zehner

10

11 **Approval of Agenda**

12 **Motion** made by Vice Chairperson DiBernardo to approve the agenda of December 18, 2023, as
13 presented, Seconded by Planning Board Member Lawler. The motion passed unanimously.

14

15 **Approval of Minutes – October 16, 2023**

16 **Motion** made by Vice Chairperson DiBernardo to approve the minutes of October 16, 2023, as
17 presented, Seconded by Chairperson Ward. The motion passed unanimously.

18

19 **Public Comment**

20 None

21

22 **Old Business**

23 None

24

25 **New Business**

26 VA-23-02, Variance application submitted by Gerald Soucy to seek relief from Town Code Section 36-
27 202(d)(4), Minimum Side Yard (Setback) for the property located at 17 Ninth Ave. (performing the duties
28 of the Southern Shores Board of Adjustment).

29

30 Chairperson Ward stated the board will be performing the duties of the Board of Adjustment and
31 reviewed the procedures for a quasi-judicial hearing.

32

33 There were no aggrieved parties in attendance. The Town Clerk swore in all other parties wishing to give
34 testimony (Applicant Gerald Soucy and Planning Director Wes Haskett).

35

36 Chairperson Ward polled the board on the following recusal questions:

37

- Has any board member communicated with other board members, the applicant, or town staff about this application?

38

- Does any board member have a fixed opinion that is not susceptible to change?

39

- 40
- Does any board member have a close familial business or associational relationship with the applicant?
- 41
- Does any board member have a financial interest in the outcome of this matter?
- 42
- 43

44 All board members responded “no” to all recusal questions.

45

46 Chairperson Ward opened the hearing and called on the applicant.

47

48 The applicant, Gerald Soucy presented his testimony which was a summary of the timeline. He
49 purchased a shed in February without obtaining a permit, based on advice from the company. In June,
50 during a meeting with the Town Building Inspector Kevin Clark to review a permit for an enlarged deck
51 and building a Crow's Nest, it was discovered that a permit was required for the shed. The shed was
52 then included in the permit for the deck expansion. However, when the permit was submitted and the
53 shed was drawn on the plat, it was found that part of the shed was encroaching into the setback. The
54 shed had to be moved to a new location on the side of the house. A survey was conducted, which
55 revealed that the shed was now approximately 70% in the setback. It was later discovered that previous
56 surveys had not accurately located the back pins of the lot, resulting in the shed being placed in the
57 setback. The individual then consulted with Planning Director Wes Haskett, who advised that a variance
58 was needed.

59

60 The Board of Adjustment Members asked Mr. Soucy the following questions:

61

62 Planning Board Member Lawler asked, who is the surveyor?

63

- Mr. Soucy answered Midgett and Associate.
- 65

66 Chairperson Ward asked where did the two prior surveys come from?

67

- Mr. Soucy answered the two prior surveys came from the same office.
- 69

70 Chairperson Ward asked when was the 2005 survey done and who ordered it?

71

- Mr. Soucy answered that the 2005 survey was ordered by the Boyer family, who the property was purchased from.
- 74

75 Chairperson Ward asked if the coordinates were the same in both surveys?

76

- Mr. Soucy confirmed they were the same.
- 77

78 Vice Chairperson DiBernardo asked the cost to have the shed moved?

79

- Mr. Soucy answered the cost of moving the shed at that time was \$450, and when he purchased the shed the delivery charge was approximately the same amount.
- 82

83 Chairperson Ward asked where was the shed located on the survey when it was set in March?

84

- Mr. Soucy answered the shed was located in the corner adjacent to the rounded deck, against the side of the house and against the deck. It fit perfectly in that corner.
- 87

88 Chairperson Ward asked, was the shed in the rear setback even at that point?

89

90 ○ Mr. Soucy answered yes, according to the survey, about one foot of the front corner of the
91 shed was in the setback but when you look at the new survey it would have been much
92 further in the setback with the proper survey.
93

94 Chairperson Ward stated there is a setback line that is off on an angle from where the new deck is and
95 asked if that was where it was located.
96

97 ○ Mr. Soucy answered, there is a setback line that is off on an angle from where the new deck
98 is located and it was located right where the 25 ft angle is listed on the survey.
99

100 Chairperson Ward asked the owner if he built the fence on the property?
101

102 ○ Mr. Soucy answered, he built the fence on the property and now knows that it is
103 encroaching on other property. When he installed the fence, he went by the cleared
104 property lines. There was no fence there prior, but the lines were clear, and he just put the
105 fence where the clearing was. He did not have a plat at that time and the property backs up
106 to Hillcrest, which is owned by the civic association. He stated right, wrong, or indifferent,
107 the fence is not hurting anyone being there.
108

109 Chairperson Ward asked Mr. Soucy if he had come to town hall for any purpose before starting the
110 construction of the new deck?
111

112 ○ Mr. Soucy answered he did not.
113

114 Chairperson Ward asked Mr. Soucy who was the contractor for the deck?
115

116 ○ Mr. Soucy answered the contractor for the deck was Gary Ellard, who goes by Paragon.
117

118 Chairperson Ward asked if the contractor had any knowledge of setback problems?
119

120 ○ Mr. Soucy answered the contractor did not have any knowledge of setback problems until
121 the old plat was brought to the town planning office for a permit and it was indicated that
122 the shed was encroaching on the setback.
123

124 Chairperson Ward asked if staff recommended a location to move the shed?
125

126 ○ Mr. Soucy answered the suggestion given by Planning Director Wes Haskett regarding the
127 property line was that the best bet for the shed's location was to put it where it currently is.
128
129

130 Planning Board Member Collins asked is it routine for someone to not ask about a survey when moving a
131 shed?
132

133 ○ Chairperson Ward stated Planning Director Haskett can answer that after Mr. Soucy's
134 testimony.
135

136 Vice Chairperson DiBernardo asked if the neighbor at #15 said anything about the fence or shed?
137

138 ○ Mr. Soucy stated the neighbor at #15 is a new resident and has not said anything about the
139 fence or shed, he didn't even know there was a shed. The neighbor agreed the current
140 location is good because it cannot be seen from the front of the house.

141
142 Chairperson Ward asked how did the shed get into its current location?

143
144 ○ Mr. Soucy answered the shed was initially brought in through the side yard, and it took three
145 hours to move it using a heavy-duty forklift. When it was moved to its current location, an
146 even better machine was used.

147
148 Chairperson Ward asked how is the shed anchored?

149
150 ○ Mr. Soucy answered the shed is anchored according to code, with four corner anchors that
151 go down two feet into the ground. He stated Building Inspector Kevin Clark reported the
152 shed is installed according to code.

153
154
155 ○ Mr. Soucy added that the outmost corner of the shed is about 35 feet from the neighbor's
156 fence, and it is about 50 feet from the closest part of the neighbor's house. It meets the
157 spirit of the setbacks by distance.

158
159 Chairperson Ward asked the board if they had any questions for Planning Director Haskett.

160
161 Planning Board Member Collins asked is it routine for someone to not ask about a survey when moving a
162 shed?

163
164 ○ Planning Director Haskett stated it is not uncommon and staff are there to help the homeowner.
165 Most files contain all the historical surveys and elevation certificates for each property.

166
167 Planning Board Member Lawler asked what survey was in the file for 17 Ninth Avenue.

168
169 ○ Planning Director Haskett stated the 2005 survey was in the file. Mr. Soucy obtained, per a
170 condition in the zoning permit, an as-built survey once the shed and the deck were done to
171 verify that lot coverage and setbacks had been met. it was done after the fact.

172
173 Chairperson Ward asked if staff has ever seen a survey this far off.

174
175 ○ Planning Director Haskett stated staff has not seen a survey this inaccurate.

176
177 Vice Chairperson DiBernardo asked if Planning Director Haskett looked at the surveys of adjoining
178 properties.

179
180 ○ Planning Director Haskett stated he did not.

181
182 Planning Board Member Zehner asked if there is a subdivision plan for this that covers this property.

183
184 ○ Planning Director Haskett stated not in the town files but perhaps one is filed with the register of
185 deeds.

186

187 Planning Board Member Lawler asked if staff knew how many other surveys have been done by Midgett
188 & Associates.

189
190 ○ Planning Director Haskett stated he does not know how many others there are, but this is the
191 first he has seen from Benjamin Hardin with Midgett and Associates.

192
193 Planning Board Member Zehner inquired if the structure was less than 100 square feet, they wouldn't
194 need a building permit, but they would still need to comply with setback requirements.

195
196 ○ Planning Director Haskett stated since he has been employed by the town, staff has not required
197 a building permit for a shed if it's less than 12 x 12 (144 square feet) but a zoning permit is still
198 required regardless of the dimensions or size so that it meets setback requirements and lock
199 coverage. He stated inquiries about a shed are very common.

200
201 Planning Board Member Zehner asked if there was any provision about detached accessory structures,
202 any reduced setback.

203
204 ○ Planning Director Haskett stated that is a common question and the town does not have that
205 provision.

206
207 Chairperson Ward asked Mr. Soucy if he had any questions he would like to ask the Planning Director
208 Wes Haskett.

209
210 Mr. Soucy asked Planning Director Haskett if he felt the shed location meets the spirit of the setback.

211
212 ○ Planning Director Haskett stated he can't answer as to whether it meets the spirit, but he does
213 believe that it was Mr. Soucy's intent to meet all applicable requirements by removing the shed
214 from the previous location and moving it to the current location. He stated he believes it was in
215 good faith and an attempt to do the right thing.

216
217 Planning Board Member Zehner asked Mr. Soucy when he purchased the property and if he received a
218 survey as part of the closing documents.

219
220 ○ Mr. Soucy stated he purchased the property in August of 2020 and there was no survey required
221 as part of the closing documents.

222
223 Chairperson Ward asked Planning Director Haskett if he had any evidence that staff would like presented
224 that has not already been done so. Planning Director Haskett had no further evidence other than what
225 has already been presented in the board's packet. He would like to note and make the changes wherever
226 there is a reference east side of existing single-family dwelling should be changed to west side.

227
228 Chairperson Ward called on the board for any further questions from Planning Director Haskett.

229
230 Planning Board Member Zehner asked if a homeowner came in and got a zoning permit for a shed but
231 not a building permit what is the closeout procedure.

232
233 ○ Planning Director Haskett answered if what a homeowner is proposing is close to the
234 setback requirements or if lot coverage is at 29% or 28%, staff will require a new as-built
235 survey, it doesn't matter what the size of the shed is. If the shed is not near the setback
236 distances and or close to the maximum 30% lot coverage requirement, an as- built survey is

237 not required and a building permit isn't required. The building inspector goes out and it is
238 usually verified in the field. If a building permit is not issued there is no CO, just a copy of the
239 zoning permit.
240

241 Chairperson Ward stated anything under 144 square feet will only have the zoning permit and there's no
242 sign off on that and that is everything required unless an as-built survey is required as a condition.
243

244 Planning Director Haskett added that in this case, because of the deck they needed a final inspection
245 under the building permit and the shed was part of the permit. The building inspector inspects the deck
246 and the shed in this case before a CO is issued.
247

248 DELIBERATIONS AND VOTE

249
250 1. Does a strict application of the ordinance result in an unnecessary hardship for the applicant? All
251 members voted yes, **VOTE: YES 5-0**
252

253 Planning Board Member Collins stated this is an unusual and unique situation and the applicant tried to
254 do the right thing in good faith. Moving the shed to the front would not be a good look.
255

256 Vice Chairperson DiBernardo felt it would cause an unnecessary hardship.
257

258 Planning Board Member Zehner stated the cost is not significant, but it is unnecessary and a hardship.
259

260 2. Does the hardship result from conditions that are peculiar to the property? **VOTE: YES, 5-0**
261

262 Both Chairperson Ward and Vice Chairperson DiBernardo stated the survey is peculiar to the property.
263

264 Planning Board Member Zehner stated if the variance is approved, he suggested that the variance be
265 granted based on our recognition of the record.
266

267 3. Does the hardship result from actions taken by the applicant or the property owner? **VOTE: NO,**
268 **5-0**
269

270 Chairperson Ward stated that the applicant's actions were taken in good faith with what the Town
271 provided.
272

273 4. Is the requested variance consistent with the spirit, purpose, and intent of the ordinance? **VOTE:**
274 **YES, 5-0**

275 Chairperson Ward stated the applicant made all efforts to comply and the variance would be consistent
276 with the spirit, forcing a hardship would be worse. **VOTE YES, 5-0**
277

278 Chairperson Ward stated he would like to discuss approval with some minor conditions.
279

280 Vice Chairperson DiBernardo suggested approval of the variance but for this shed only.
281

282 Chairperson Ward suggested using the wording "no future alterations to the footprint without a permit".
283 He also recommended a condition moving fence off the civic association property, need to have on file a
284 certified letter to adjacent property owners' encroachment acknowledgment.
285

286 Planning Director Haskett stated adjourning property owners have been notified and their response is on
287 file.

288
289 Planning Board Member Zehner stated he did not think the fence encroaching on civic property and the
290 neighbors concern about the fence should have bearing or be made a condition of the variance. The
291 variance should be based on the application that is submitted and that they are allowed a variance for
292 the shed as installed.

293
294 Vice Chairperson DiBernardo stated he has worked with the civic association on an encroachment issue
295 in the past and it is up to the civic association to allow it or not. Planning Board Member Zehner added
296 we cannot dictate what private parties will do.

297
298 Planning Board Member Lawler felt that approving the variance does not make the encroaching fence
299 okay, but it is up to the civic association to dictate that.

300
301 Planning Board Collins asked if the variance goes only with the current owner or with the property.
302 Planning Board Member Zehner replied it goes with the property.

303
304 **By a vote of 5-0 the Board of Adjustment approved the variance as presented.**

305
306 ZTA-23-05, Zoning Text Amendment application submitted by the Town of Southern Shores to amend
307 Town Code Sections 36-57, 36-202(d)(2), 36- 203(d)(2), 36-204(d)(2), 36-205(d)(2), and 36-206(d)(2) to
308 amend the Town’s current lot width requirements.

309
310 ZTA-23-05 staff report read as, On June 6, 2023, the Town Council adopted ZTA-23-03 (3-2 vote), a Zoning
311 Text Amendment application submitted by the Town that amended the Town’s minimum lot width
312 requirements in all residential zoning districts to make them less ambiguous, as recommended by the
313 Planning Board. The amendments included a new definition of “lot width” in Section 36-57 which is the
314 minimum horizontal distance between the side lot lines of a lot measured from the front lot line at right
315 angles to the rear lot line. The amendments also included amendments to Sections 36-202(d)(2), 36-
316 203(d)(2), 36-204(d)(2), 36-205(d)(2), and 36-206(d)(2) that establishes that the minimum lot width is
317 measured from the front lot line at right angles to the rear lot line instead of from the building setback
318 line. Town Staff is now proposing to amend the Town’s minimum lot width requirements in all of the
319 residential zoning districts by amending the definition of “building setback line” in Section 36-57 by
320 removing “minimum”. The proposed amendments also include another new definition of “lot width” in
321 Section 36-57 which is the width of a lot at the required building setback line measured at right angles to
322 the rear lot line. Lastly, the proposed amendments include amendments to Sections 36-202(d)(2), 36-
323 203(d)(2), 36-204(d)(2), 36-205(d)(2), and 36-206(d)(2) that reestablish the building setback line as the
324 measuring point for lot width and establishes a new lot width requirement for lots on cul-de-sacs.

325
326
327 Planning Director Haskett reported the council adopted ZTA-23-03, however at the time that ZTA was
328 made the towns lot width requirements stricter, and that was because we were removing the
329 ambiguity. At the time there was discussion about where we would revisit it so that we could address cul
330 de sac lots and irregular shape lots. This is another round of proposed amendments in this ZTA which
331 includes an amendment to building setback line definition, removes the word minimum so that it says a
332 line parallel to or concentric with the street right of way establishing the allowable distance, not the
333 minimum allowable distance. It also amends the lot width definition by stating that it means the width of
334 a lot at the required building set back line measured at right angles to the rear lot line. The way it's
335 worded now as adopted it is measured the lot width is measured at the front property line. So now, we

336 are going back to the building set back line. The minimum lot width is 100 feet at the building setback
337 line and again there's no ambiguity as to minimum, it is at the building setback line. That is 100 ft. wide
338 at the building setback line. There is also a deviation from the 100 ft setback line being provided for cul
339 de sac lots or lots that front a cul de sac by saying that the building setback line may be established up to
340 80 feet from the front lot line for all other Lots the building setback line shall be established 25 ft from
341 the lot line. Planning Director Haskett added if the board has issue with the 80 feet he suggested that it
342 reads something to the effect of, this is for lots that front a cul de sac, the building setback line shall be
343 established at the point where the lot is 100 feet wide up to 80 feet whichever is less.

344
345 Chairperson Ward reviewed an example of a typical cul de sac lot and the measurements suggested in
346 the zta.

347
348 Planning Board Member Zehner stated part of the challenge for him is that there are now multiple terms
349 in there that define a similar thing, it becomes confusing. The minimum lot width requirement is really
350 more concerned with the creation of a lot, not necessarily the location of a structure.

351
352 Chairperson Ward stated he has always had a hard time with the building setback line, how it is defined
353 and still is defined. There are several setback lines on a parcel and building setback line is being defined
354 as front line which is misleading.

355
356 Chairperson Ward suggested defining the setback lines individually. Planning Board Member Zehner
357 stated there are definitions for yard for all of those, setback and yard work in concert of one another.

358
359 Planning Board Member Zehner stated what the ZTA is proposing to do is create a different yard setback
360 requirement for lots on a cul de sac, which he stated he didn't know if that was the goal or is the goal to
361 make sure that the regulations don't preclude the creation of a lot on a cul de sac, because they
362 currently do. Planning Director Haskett answered the intent is to not render existing cul de sac lots non-
363 conforming and that when lot are created, whether it's through subdivision or recombination, that it is
364 not ambiguous and that is clear that the lot is 100 feet wide at some point. Based on the measurements
365 using GIS, 80 feet is a start, but that number may need to go out and it could be added in there wording
366 "up to a point not to exceed or whichever is less or wherever 100 feet wide is achieved and not beyond
367 that point."

368
369 Planning Direct Haskett reviewed how it was regulated before the change was made, "minimum lot
370 width 100 ft measured at the building set back line" and then building set back line was the same
371 definition that's in the ZTA but it had the word minimum in it.

372
373 Planning Board Member Zehner asked how the old version was regulated on a cul de sac. Planning
374 Director Haskett stated existing houses were built back where the lot reached 100 feet wide.

375
376 Planning Board Member Zehner recommended not providing a dimension, just the wording where the
377 lot is 100 feet wide. Vice Chairperson DiBernardo agreed, it is simpler and very clear.

378
379 Planning Board Member Zehner also stated maintaining that depth at least through the depth of the of
380 the structure could be a requirement as well.

381
382 Chairperson Ward stated he does not believe the amendment is to preclude building on cul de sac lots,
383 what we are trying to do is preclude from creating lots that should have been recombined and getting
384 more lots out of recombination.

385

386 Planning Director Haskett stated he appreciated the board's feedback and staff can go back and take the
387 feedback into consideration.

388
389 Chairperson Ward stated lot line and yard all are defined separately, front, sides, and back. He suggested
390 doing the same with setbacks, three separate definitions (front, side, back). Planning Board Member
391 Zehner stated the way it's currently written it is applicable only to determining lot width, that the
392 regulatory requirement the dimensional standard is not building setback its yard. We do not have a
393 minimum required building setback; we have a minimum required yard.

394
395 Chairperson Ward felt strongly that it is still a setback regardless of what you call it and recommended
396 providing a definition for each, front, side, and rear. The issue is the front building setback line, but we
397 might as well go a step further and define the building setback line in parentheses.

398
399 Planning Board Member Collins asked what the goal is, and the purpose of regulating the font setback.
400 Chairperson Ward stated he always felt the goal was to limit lots under same ownership that are large
401 enough to possibly recombine and then divided into several lots.

402
403 Planning Board Member Zehner stated that the purpose of setbacks is to create some uniformity
404 standard for lots. There is an argument to be made that as long as you have the requisite area then it
405 doesn't matter, you're still netting the same amount of density. Chairperson Ward disagreed and felt the
406 large lots in Southern Shores were not intended to be split into flags lots.

407
408 Chairperson Ward asked if the town attorneys were involved in the language of this ZTA. Planning
409 Director Haskett stated the town attorney was okay with eliminating the ambiguity.

410
411 Chairperson Ward felt the ZTA needed more work and Planning Director Haskett stated staff can bring it
412 back to the Planning Board.

413
414 Chairperson Ward stated the measurements for each district are not reflected correctly. Planning Board
415 Member Zehner suggested creating a table to simplify things.

416
417 **Public Comment**

418 None

419

420 **Planning Board Member Comments**

421 Chairperson Ward reminded the Planning Board members of the rules of procedure, being removed
422 from the board, and the criteria expected of members, especially absences.

423

424 **Announcements**

425 Planning Director Haskett stated the next regular meeting will be held January 17th and distributed
426 copies of the 2024 Planning Board meeting schedule. He noticed that SUP-23-01 will be considered at
427 the Town Council January 9th meeting.

428

429 **Adjourn**

430 Motion to adjourn the meeting by Planning Board Member Collins, Seconded by Vice Chairperson
431 DiBernardo. The time was 6:46 p.m. The motion passed unanimously.

432

433

434 ATTEST:

Respectfully submitted,

435

436 _____
437 Andy Ward, Chairperson

Sheila Kane, Town Clerk

DRAFT