Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949
Phone 252-261-2394 / Fax 252-255-0876
info@southernshores-nc.gov
www.southernshores-nc.gov

PLANNING BOARD
GENERAL APPLICATION FORM
TOWN OF SOUTHERN SHORES, NC 27949

Date: 4/20/18 **Filing Fee:** $200 **Receipt No.** N/A **Application No.** ZTA-18-06

NOTE: The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36. Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- ☐ Chapter 30. Subdivisions-Town Code
- ☐ Chapter 36. Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District
- ☐ Chapter 36. Article IX. Planned Unit Development (PUD)
- ☐ Chapter 36. Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units *
- ☐ Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use
- ☐ Chapter 36. Article X. Section 36-303 Fees
- ☐ Chapter 36. Article X. Section 36-304-Vested Rights
- ☑ Chapter 36. Article XIV. Changes and Amendments

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant
Name Town of Southern Shores
Address: 5375 N. Virginia Dare Trl
Southern Shores, NC 27949
Phone 261-2394 Email whaskett@southernshores-nc.gov

Applicant's Representative (if any)
Name _____
Agent, Contractor, Other (Circle one)
Address _____
_____
Phone _____ Email _____

Property Involved: ___Southern Shores ___Martin's Point (Commercial only)

Address: _____ Zoning district _____

Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: __ Site Plan Review __ Final Site Plan Review __ Conditional Use __ Permitted Use
__ PUD (Planned Unit Development) __ Subdivision Ordinance __ Vested Right __ Variance

Change To: __ Zoning Map ☑ Zoning Ordinance

Signature _____ Date 4-20-18

* Attach supporting documentation.

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Ordinance 2018-06-02

AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, N.C.G.S. § 160A-400.50 et seq. governs the Town's authority to regulate wireless telecommunications facilities. 2017 N.C. Sess. Law 159 made substantial changes to the text of N.C.G.S. § 160A-400.50 et seq. and become the law of North Carolina as of July 21, 2017. The changes to N.C.G.S. § 160A-400.50 et seq. affect the Town's regulations of wireless telecommunications facilities and require that the Town's Zoning Ordinance be updated accordingly; and

WHEREAS, N.C.G.S. § 160A-400.50 as amended provides that the Town is not authorized to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth in N.C.G.S. § 160A-400.50 et seq.; and

WHEREAS, N.C.G.S. § 160A-400.54 provides that the Town shall not prohibit, regulate, or charge for the collocation of small wireless facilities other than as set forth in N.C.G.S. § 160A-400.50 et seq.; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Zoning Ordinance and Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the

adopted Town Code which are not repeated herein, but are instead replaced by an ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Sec. 36-175 Wireless telecommunications sites, facilities and towers.** be amended as follows:

Sec. 36-175. Wireless telecommunications sites, facilities and towers.

(2) *Use of town rights-of-way.* Wireless providers may use town rights-of-ways in accordance with this section. Wireless providers may use Department of Transportation rights-of-way pursuant to lawful authorization from the Department of Transportation.

a. *Collocation of small wireless facilities*: Subject to the requirements of Section 36-175(i)(1), a wireless provider may collocate small wireless facilities along, across, upon, or under any town rights-of-way.

b. *Utilities and poles within rights-of-way*: A wireless provider may place, maintain, modify, operate, or replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any town rights-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and city utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any town rights-of-way shall be subject only to review or approval under Section 36-175(i)(1) if the wireless provider meets all the following requirements:

(1) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the rights-of-way shall not exceed 50 feet above ground level.

(2) Each new small wireless facility in the rights-of-way shall not extend more than 10 feet above the utility pole, city utility pole, or wireless support structure on which it is collocated.

c. *Application required to place or modify utility poles in rights-of-way*: A wireless provider shall apply to place utility poles in the city rights-of-way, or to replace or modify utility poles or city utility

poles in the public rights-of-way, to support the collocation of small wireless facilities. The town shall accept and process the application in accordance with the provisions of Section 36-175(i)(1), applicable codes, and other local codes governing the placement of utility poles or city utility poles in the town rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

d. *Installation of new poles in residential zoning districts*:

(1) No new utility pole may be installed for the principal use of wireless facilities if a pole exists within twenty (20) feet of a desired location.

(2) The minimum distance of a new pole from any residential structure shall be at least 150% of the pole height and shall not be located directly in front of any residential structure or vacant lot located in a residential zoning district.

(3) Along streets and within subdivisions where there are no existing utility poles (all underground utilities), wireless facilities may be attached to street lights in the public right-of-way.

(4) New poles may not be erected in a residential area solely for wireless communication equipment attachment unless the applicant has demonstrated it cannot reasonably provide service by:

i. Installing poles outside of the residential area;

ii. Attaching equipment to existing poles within the right-of-way; or

iii. Installing poles in rights-of-way not contiguous to parcels used for single family residential purposes.

e~~d~~. *Rights-of-way use to comply with other requirements*: Applicants for use of a city rights-of-way shall comply with Chapter 28 undergrounding requirements prohibiting the installation of above ground structures in the town's rights-of-way without prior

approval. In no instance in an area zoned single family residential where the existing utilities are installed underground may a utility pole, city utility pole, or wireless support structure exceed forty (40) feet above ground level, unless the town grants a waiver or variance approving a taller utility pole, city utility pole, or wireless support structure.

fe. *Rights-of-way charges*: The town may assess a rights-of-way charge for use or occupation of the rights-of-way by a wireless provider, subject to the restrictions set forth under G.S. 160A-296(a)(6). In addition, charges authorized by this section shall meet all of the following requirements:

(1) The rights-of-way charge shall not exceed the direct and actual cost of managing the city rights-of-way and shall not be based on the wireless provider's revenue or customer counts.

(2) The rights-of-way charge shall not exceed that imposed on other users of the rights-of-way, including publicly, cooperatively, or municipally owned utilities.

(3) The rights-of-way charge shall be reasonable and nondiscriminatory.

The town may provide free access to town rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

gf. *Consent required for use of private property*: No person may place, maintain, modify, operate, or replace a privately owned utility pole or wireless support structure or to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

hg. *Damages to rights-of-way*: Wireless providers shall repair all damage to a town rights-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles and to return the rights-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the town within a reasonable time after written notice, the town may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The town may maintain an action to recover the costs of

the repairs.

i~~h~~. *Approval under section relates only to small wireless facility*: The approval of the installation, placement, maintenance, or operation of a small wireless facility does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the rights-of-way.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the Town of Southern Shores, North Carolina which shall remain in full force and effect.

ARTICLE VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the ____day of _____, 2018.

_____, Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

Date adopted:

_____
Motion to adopt by Councilmember:

_____
Motion seconded by Councilmember:

Vote:___AYES___NAYS