

FINAL



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 Meeting

October 19, 2015

5:30 p.m., Pitts Center

MEETING MINUTES

I. CALL TO ORDER:

Chairperson Sam Williams called the meeting to order at 5:30 pm. Planning Board Members Gray Berryman, Elizabeth Morey, Jay Russell, Sam Williams, and alternate member Joe McGraw were present. Planning Board member David Neal was absent with excuse.

II. PLEDGE OF ALLEGIANCE:

Chairperson Sam Williams led the Pledge of Allegiance.

III. APPROVAL OF AGENDA:

Chairperson Williams suggested amending the agenda by moving ZTA-15-02 from New Business to Old Business. Elizabeth Morey motioned to approve the agenda as amended. Jay Russell seconded the motion. The motion passed unanimously (5-0).

IV. APPROVAL OF MINUTES:

Chairperson Williams noted that minor changes had been made to the draft minutes. Joe McGraw motioned to approve the minutes of the September 21, 2015 Planning Board Meeting as amended. Gray Berryman seconded the motion. The motion passed unanimously.

V. PUBLIC COMMENT:

None

VI. OLD BUSINESS:

A. ZTA-15-02: Setback Preservation Requirements

Chairperson Williams reintroduced the Zoning Text Amendment (ZTA) application and explained that at the last Planning Board meeting, the Board recommended that the Town Council give the Board more time to review and consider the proposed ZTA which the Council unanimously approved.

As proposed, the ZTA applies only to lots in the RS-1 zoning district. Gray Berryman stated that he felt that the proposed ZTA should apply to all lots equally. Chairperson Williams stated that he thought restricting the ZTA to only the RS-1 zoning district is reasonable because of all of the zoning districts only the Commercial zoning district had a few undeveloped lots and that the rules applying to the Commercial zoning district are often different (e.g., lot coverage and set-back requirements) than the other zoning districts.

Jay Russell stated that he was concerned about the expense (e.g., hiring a surveyor to prepare a site plan) incurred by the property owner for a site plan. Wes Haskett clarified that the site plan can be drafted by anyone as long as it clearly demonstrates compliance.

Chairperson Williams explained that the proposed ZTA doesn't allow the removal of "any" (emphasis added) vegetation in the side and rear setback areas for lots with no proposed development. He suggested that "partial clear cutting" of the entire lot should be allowed. This would permit the removal of trees, shrubs and vines but not all vegetation. The Board would have to develop a definition for "partial clear cutting" which would allow bush hogging and clearing or trimming of trees and shrubs. He also proposed that no chemicals could be used for lot clearing.

Gray Berryman expressed concern regarding the prohibition of the use of chemicals to clear lots and suggested that property owners could work with the SSCA or the CPOA on removal and planting. Chairperson Williams stated that the SSCA had submitted the proposed ZTA in order to preserve setback areas and address unnecessary cutting.

Joe McGraw stated that he was concerned that large trees kept in the setback areas could become safety hazards.

Jay Russell expressed concern regarding diseased trees growing in the setback areas. Chairperson Williams clarified that the proposed ZTA does have exceptions for dead or diseased trees.

Chairperson Williams suggested that language could be added to address multiple lots under single ownership and the Board began discussing enforcement and if the Town should incur the cost of determining which trees are dead or diseased. Wes Haskett stated that the Town pays the Town Attorney in some code enforcement situations.

Chairperson Williams stated that the Board should go back to discussing undeveloped lots with no proposed development. He suggested removing the 25% restriction and allowing for the removal of trees and shrubs in the side and rear setback areas and establishing a definition of partial clear cutting. Wes Haskett stated 25% of the trees to be removed in the building envelope is measurable and could easily be determined.

PUBLIC COMMENT

Tony DiBernardo stated that the Board is missing the point and explained that preserving the setback areas and 25% of the building envelope helps prevent water erosion and improves aesthetics and has other benefits. If someone's house is in danger then trees can be taken down. For adjoining lots under the same ownership, consider the outer setback areas only.

Andy McConaghy explained how he felt that the proposed ZTA is unconstitutional and takes away property rights. In 1947, Kitty Hawk Land Company ripped this area apart with canals and streets and today we all love it. At this point, the Town is about 90% built out and now we're telling the remaining 10% that they can't do what they want which is hypocritical and sad. The Town has been experiencing development over the past 68 years and everything has been fine. In addition, the SSCA had no right to bring this proposal forward and there are no minutes which say that the membership is in favor of it. The terms and language in the proposed ZTA are not accurate. With respect to chemicals, they are a good tool if used properly.

Mark Martin stated that he appreciated the Planning Board and Town Staff trying to rework the proposed ZTA but there isn't a problem with the current conditions without an ordinance that addresses tree removal. Martin's Point restricted tree removal and they had a lot of issues following storms and property owners were removing whatever they wanted. At this point, most of the remaining vacant lots are so heavily vegetated that an owner or surveyor can't easily access it and find all of the trees that are greater than 12 inches in diameter. Go back and beef up the language that's currently on the website and determine what we like and what we do not like.

Doug Boulter stated that the ordinance would have to be enforced and expertise will be required. In Virginia, we have an urban forester who identifies dead or diseased trees and the owner agrees or disagrees. If the urban forestry department says a proposal will not work then it is final. Here, if an owner or the Town hires an arborist, the arborist is going to advocate for whoever hired them. It is commendable that the SSCA submitted this proposal which would ensure construction is done in a proper and manner and it is an attempt to save trees. The proposed ZTA has some great ideas but the Board has been given a tough job.

Ann Sjoerdsma, speaking as a non-practicing lawyer, stated that the proposed ZTA is not unconstitutional. The SSCA should withdraw and rework the proposed language. The Board is doing too much rewording. By defining partial clearing, you' are trying to fix the problem but it should be sent back to the SSCA. The proposed language needs definitions and exceptions. Clear cutting has been on the Town's radar in Land Use Plans since the 80's and the SSCA should go back to the drawing table.

Mike Stone stated that the Town already has a lot disturbance ordinance in effect that addresses vegetation. The Board shouldn't be considering more regulation than what is being proposed and you are wasting your time because they will want more. The Board should say yes we want something or put something else together. Preserving setback areas is adding an expense to the property owner and it decreases the building envelope. If property owners want to preserve trees, let them do it on their own property.

Chris Nason thanked the Board for considering the proposed ZTA and stated that he is at the front lines as an architect. Property owners come to me when a lot is undeveloped and I assist them with what they can and cannot do. I encourage the Board to keep the language simple and concise. It should be simple to explain what you can and cannot do and by keeping it simple and concise, it is enforceable. If you do adopt something, make sure you have a good reason.

Chairperson Williams closed public comment.

Jay Russell stated that one of the paintings on the wall showed how much has changed in the Town over the years. The painting referred to is of Cypress Pond which doesn't look that way today. A lot of studies were conducted to address stormwater and they all indicate that the island is always changing.

Jay Russell motioned to send the proposed ZTA back to the SSCA `by recommending disapproval of the application. This is the fourth time that clear cutting has been addressed in the Town. It could be sent to a Committee but a lot of hours have been wasted on this topic. He stated that he was not sure how it could be kept simple, but it needs to be simple. Gray Berryman seconded the motion.

Chairperson Williams stated that he would prefer to move forward and get additional information and comments on Section 36-177 (c), (2) for lots with a Lot Disturbance Permit for New Construction or Proposed Building Permit for Major Renovation and continue discussion. Because the SSCA did not have the benefit of hearing the Planning Board's entire discussion, he stated that he would take a first crack at revising the proposed ZTA. If the Board sends it back to the SSCA, they will not have the benefit to consider what we have discussed.

The motion passed (3-2) with Chairperson Williams and Elizabeth Morey opposed.

VII. NEW BUSINESS:

None

VIII. PUBLIC COMMENT:

None

IX. PLANNING BOARD MEMBER COMMENTS:

Gray Berryman stated that he is willing to listen if the SSCA wants to continue discussing proposed language.

Elizabeth Morey stated that she was disappointed that the Board cannot move forward with the proposed ZTA.

Jay Russell stated that he agreed with Gray Berryman and hopes the SSCA can come back with another proposal.

Chairperson Williams stated that he was disappointed that the Board did not want to move forward and continue discussion of the proposed ZTA.

X. ANNOUNCEMENTS:

Chairperson Williams announced that the next Planning Board meeting date is November 16, 2015.

XI. ADJOURNMENT:

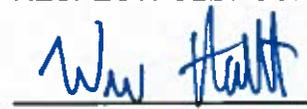
Joe McGraw motioned to adjourn. Jay Russell seconded the motion. The motion passed unanimously and the meeting adjourned at 7:25 p.m.

ATTEST:



Sam Williams, Chairperson

RESPECTFULLY SUBMITTED:



Wes Haskett, Town Planner