

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

February 20, 2018

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 Elizabeth Morey, David Neal, Sam Williams, alternate member Glenn Wyder, ETJ representative John Finelli, Town Attorney Ben Gallop, and Town Planner Wes Haskett were present.

II. PLEDGE OF ALLEGIANCE:

Chairperson Sam Williams led the Pledge of Allegiance.

III. APPROVAL OF AGENDA:

Glenn Wyder motioned to approve the agenda. David Neal seconded the motion. The motion passed unanimously (5-0, alternate member Glenn Wyder serving as a voting member).

IV. PUBLIC COMMENT:

A. Variances VA-18-01 and VA-18-02

Chairperson Williams noted that there were only four Planning Board members present (ETJ Representative John Finelli excluded). This means that 100% of the four votes on four different standards would be required in order to grant a variance. The applicant, Gray Berryman, may request a delay in the consideration of these variances until all five members of the Board of Adjustment are present. The applicant requested to table the Board's discussion until the next scheduled Planning Board meeting. Chairperson Williams tabled the Board's consideration of VA-18-01 and VA-18-02 until the March 19, 2018 Planning Board meeting.

B. Zoning Text Amendment (ZTA-18-01) application submitted by Southern Shores Crossing, LLC to amend the Southern Shores Town Code by amending Section 36-163, Off-street Parking Requirements

Chairperson Williams introduced the application and called on Wes Haskett to present the Staff Report (attached).

Chairperson Williams called on the applicant's representative, Mike Strader, P.E., Quible & Associates, to address the application. Mike Strader stated that he was representing the property owner, Mike Stone, with a request to amend the current Town Code to allow for shared parking between adjacent commercial properties. This capability is not currently in the Town Code.

The Board, Mike Strader, and Town Staff discussed sections of the proposed language that were unclear, including why fifty percent of the parking spaces required for one use may be used to meet the parking requirements of another use on the same or a different lot, how a Certificate of Occupancy can be revoked, and the details in the example parking agreement that was submitted. Following the discussion, Chairperson Williams tabled the Board's consideration so that Mike Strader could revise the proposed language to address the Board's concerns.

C. Zoning Text Amendment (ZTA-18-02) application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Section 36-175, Wireless Telecommunications Sites and Towers

Chairperson Williams introduced the application and called on Wes Haskett to present the Staff Report (attached).

Ben Gallop stated that the State legislature had passed legislation on the regulation of small wireless facilities and he drafted language to modify the Town Code which reflects the State passed legislation. These types of wireless amendments occasionally come up and usually favor the wireless industry. In this case, there is not a lot of room for regulation of small wireless facilities beyond what the proposed language addresses. Additional regulations are limited to the Town's applicable codes; Town Code of ordinance provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground mounted equipment; public safety and reasonable spacing requirements concerning the location of ground mounted equipment in a right-of-way; or the historic preservation requirements in NCGS 160A 400.55(h).

The Board discussed the proposed language and agreed that the Town's lack of authority to regulate the placement of utility poles and the collocation of small wireless facilities on utility poles is concerning. Addressing public safety with respect to the fall zone of utility poles and equipment will be an issue that the Town can only try to address.

Ben Gallop noted that a Statutory reference on page 22 should be revised. Glenn Wyder motioned to recommend approval of the application to the Town Council. Elizabeth Morey seconded the motion. The motion passed unanimously.

V. PUBLIC COMMENT:

None.

VI. PLANNING BOARD MEMBER COMMENTS:

Chairperson Williams stated that at the February 6, 2018 Town Council meeting, Mayor Pro Tem Nason suggested changes to ZTA-17-03 (lot coverage requirements) and that it should be sent back to the Planning Board for further discussion.

Chairperson Williams stated that Jay Russell resigned from the Planning Board effective February 20, 2018.

VII. ANNOUNCEMENTS:

Chairperson Williams stated that a Special Meeting will be held on March 5, 2018 to continue discussion of the Module One footnotes. The following meeting will be held on

March 19, 2018 to consider VA-18-01, VA-18-02, and continue consideration of ZTA-18-01.

VIII. ADJOURNMENT:

Elizabeth Morey motioned to adjourn. Glenn Wyder seconded the motion. The motioned passed unanimously and the meeting adjourned at 7:30 p.m.

ATTEST:

RESPECTFULLY SUBMITTED:



Sam Williams, Chairperson



Wes Haskett, Town Planner

STAFF REPORT

To: Southern Shores Planning Board
Date: February 6, 2018
Case: ZTA-18-01
Prepared By: Wes Haskett, Town Planner/Code Enforcement Officer

GENERAL INFORMATION

Applicant: Southern Shores Crossing, LLC
 P.O. Box 150
 Kitty Hawk, NC 27949
 (252) 261-2000

Applicant’s Representative: Michael W. Strader, Jr., P.E.
 Quible & Associates, P.C.
 P.O. Drawer 870
 Kitty Hawk, NC 27949
 (252) 491-8147

Requested Action: Amendment of the Town Zoning Ordinance by amending Section 36-163, Off-street Parking Requirements

ANALYSIS

The applicant is proposing to amend the Town Zoning Ordinance by amending Section 36-163, Off-street Parking Requirements by adding language to allow shared parking as a Conditional Use. Following issuance of a Conditional Use Permit, the proposed language would allow shared parking within any one site, or on two adjacent commercial sites, the required parking for any number of separate uses. The shared parking spaces may be combined on the site or sites, but the number of parking spaces assigned to one use may not be assigned to another use, except as provided in the proposal. Fifty percent of the parking spaces required for one use may be used to meet the parking requirements of another use on the same, or on two adjacent commercial, parcel(s) when the hours of operation and parking demands of the uses occur at different times of day. Prior to approval of the Conditional Use Permit, a shared parking agreement, in recordable form and executed by both the property owners sharing parking, shall be submitted to the Town.

The Town’s currently adopted Land Use Plan contains the following Policy that is 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.

RECOMMENDATION

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan and Town Staff recommends that the Board consider this when making its recommendation to the Town Council. Please note that prior to adopting or rejecting any zoning amendment, the Planning Board shall adopt a statement describing whether its action is consistent with the adopted Town Comprehensive Land Use Plan and explaining why the Planning Board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

STAFF REPORT

To: Southern Shores Planning Board
Date: February 6, 2018
Case: ZTA-18-02
Prepared By: Wes Haskett, Town Planner/Code Enforcement Officer

GENERAL INFORMATION

Applicant: Town of Southern Shores

Requested Action: Amendment of the Town Zoning Ordinance by amending Section 36-175, Wireless Telecommunications Sits and Towers

ANALYSIS

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. 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. 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. Similarly, the statutory amendments place limitations on the Town’s ability to regulate the use of rights-of-way and utility poles by wireless providers using small wireless facilities.

Town Staff is proposing to amend the Town Zoning Ordinance by amending Section 36-175, Wireless Telecommunications Sites and Towers by adding language to allow Small Wireless Facilities and the use and installation of utility poles in accordance with aforementioned General Statues. A Small Wireless Facility is defined as a wireless facility that meets both of the following qualifications:

1. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.
2. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground based enclosures, grounding equipment, power transfer switches, cut off switches, vertical cable runs for the connection of power and other services, or other support structures.

The proposed language would allow Small Wireless Facilities as a permitted use in all zoning districts which may collocate along, across, upon, or under any Town rights-of-way. Following review and approval of a wireless application, 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 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.

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. Or, the Town may assess a rights-of-way charge for use or occupation of the rights-of-way by a wireless provider. In addition, charges shall meet all of the following requirements:

1. The rights-of-way charge shall not exceed the direct and actual cost of managing the Town 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's currently adopted Land Use Plan contains the following Policy that is 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.

RECOMMENDATION

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan and Town Staff recommends that the Board consider this when making its recommendation to the Town Council. Please note that prior to adopting or rejecting any zoning amendment, the Planning Board shall adopt a statement describing whether its action is consistent with the adopted Town Comprehensive Land Use Plan and explaining why the Planning Board considers the action taken to be reasonable and in the public interest. That

