

FINAL



Town of Southern Shores

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**Planning Board Meeting
(Functioning as the Board of Adjustment)**

May 16, 2016

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, Sam Williams, Jay Russell, David Neal, alternate member Joe McGraw, Board Attorney W. Jay Wheless, Town Attorney John Leidy, Town Planner Wes Haskett and Town Clerk Sheila Kane were present.

II. PLEDGE OF ALLEGIANCE:

Chairperson Sam Williams led the Pledge of Allegiance.

III. APPROVAL OF AGENDA:

Jay Russell motioned to approve the agenda. Elizabeth Morey seconded the motion. The motion passed unanimously.

IV. APPROVAL OF MINUTES:

Joe McGraw motioned to approve the minutes of the April 19, 2016 Planning Board Meeting as amended. David Neal seconded the motion. The motion passed unanimously.

V. PUBLIC COMMENT:

None

VI. OLD BUSINESS:

None

VII. NEW BUSINESS:

A. VA-16-01 VARIANCE REQUEST FROM STEVEN D. LOVE FOR 64 OCEAN BLVD.

Chairperson Williams explained the quasi-judicial public hearing procedure and rules and stated all witnesses wishing to give testimony will need to be sworn in by the Clerk. He then reviewed several areas of possible conflicts of interest and asked the Planning Board members if they have any conflicts of interest; hearing none Chairperson Williams moved on.

SWEARING IN OF ALL PEOPLE GIVING TESTIMONY

All parties wishing to give testimony during the public hearing were sworn in by the Clerk.

OPEN HEARING & EVIDENTIARY PORTION OF HEARING

Chairperson Williams opened the public hearing and called on Wes Haskett to present the Staff Report (attached).

Mr. Haskett stated the variance before the board is VA-16-01 which is a variance from Section 36-202, (d), dimensional requirements for the RS-1 single-family residential district. The applicant is Steven D. Love and the property is located at 64 Ocean Blvd. The applicant is requesting a variance of three feet on both (north and south) side yard setback requirements. The applicable side yard setback requirements in the RS-1 Single-Family Residential District is 15 ft. The width of the subject property is 50 ft. which would result in a single family dwelling that could not exceed 20 ft. in width if the applicable side yard setback requirements are met.

Mr. Haskett stated Section 36-367 of the Town Zoning Ordinance establishes that the Planning Board, when performing the duties of the Town Board of Adjustment, shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - Town Staff's comment is that the subject property is 50 ft. wide with 15 ft. side yard setback requirements which leaves a width of 20 ft. for development. To the best of Town Staff's knowledge, there are no existing 20 ft. wide single-family dwellings in the Town.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - Town Staff's comment is there are several other 50 ft. wide vacant lots of record that are oceanfront and non-oceanfront. There are also existing single-family dwellings that are built on multiple 50 ft. lots that encroach the currently applicable 15 ft. side yard setback requirement.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - Town Staff's comment is the subject property is a lot of record that was originally established in 1949 with a width of 50 ft. and subsequently purchased by the applicant.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
 - Town Staff's comment is the Town's Zoning Ordinance allows for development on nonconforming lots of record. Section 36-132, (a), (1) states that in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of adoption of the ordinance from which the chapter is derived, notwithstanding limitations imposed by other provisions of the chapter. These provisions shall apply even though such lot fails to meet the requirements for area or width, that are generally applicable in the district provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is

located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment as established in article XII of the zoning ordinance.

Chairperson Williams asked Mr. Love if he had any questions for Mr. Haskett in which he replied that he did not. Mr. Love stated it is pretty cut and dry. It is a super skinny lot and he is trying to put a home on it that will look good in the community.

David Neil asked Mr. Haskett if staff is recommending approval. Mr. Haskett replied that there is no recommendation in the staff report.

Andy Ward (public) asked Mr. Haskett if he had any indication to the number of lots in Southern Shores on the ocean front that are combined in spirit (100 ft.) that have not been recombined in the County Courthouse and could be divided back into 50 ft. lots. Mr. Haskett replied he thought it to be a fairly good amount of homes built on 2-3 50 ft. lots. Mr. Haskett stated if a current property sits on two 50 ft. lots then the homeowner can rebuild on the current 100 ft. lot or build individual homes on two 50 ft. lots.

Mr. Love stated he bought 62 Ocean Blvd. to build a home for themselves and they had asked the question about building on two lots. He stated he was told if there was a house on two 50 ft. lots you would have to combine the two 50 ft. lots and that you can only build on a 100 ft. lot. Mr. Haskett stated if you are proposing development that crosses a boundary then you have to recombine. There is a possibility you could develop on them individually but you have to meet the setback requirements and lot coverage as established, as is in this situation. When you inquired I do not know who you spoke with but our ordinance allows for development on individual lots or as one lot. But if you are proposing one house that does not meet these requirements and you have to cross a boundary then you have to recombine.

Mr. Love then inquired if he combined three 50 ft lots could he split it down the middle could he separate them into two 75 ft. lots. Mr. Haskett stated you would probably not meet the area required. You have to have a certain amount of frontage and both lots have to be at least 20,000 sq. ft. each. Mr. Haskett stated he did not have the information in front of him but did not think it would meet the 20,000 square ft.

Mr. Love's builder Allen Hutton asked Mr. Haskett if they have a use on a 75 ft. lot or a 100 ft. lot and it covers both those lots you're saying that we could increase the non-conformity by tearing that house down and building two houses on two 50 ft. lots. Mr. Haskett replied it is not increasing the non-conformity because they are existing lots. If you demolish that structure as is in this case you remove the non-conforming use and you are left with two non-conforming lots.

David Neal stated as you look at the Dare County tax maps there a lot of 50 ft. lots along the ocean front. Most of them are access points he stated was his understanding. Mr. Haskett stated that yes they are vacant lots but could not verify if they were exactly 50 ft. wide. He did state most of the 50 ft. wide lots in Southern shores sit under a current structure.

David Neil asked if you had a 100 ft. platted lot which is two 50 ft. lots combined and another 50 ft. lot beside it, could you go to Southern Shores or the County and turn that 150 ft. into two 75 ft. conforming lots. Mr. Haskett stated it would depend if you have enough area. Each lot would have to be 20,000 sq. feet and meet the minimum lot width requirements which is 100 ft. of the building setback line.

Allen Hutton asked Mr. Haskett what was the minimum lot width. Mr. Haskett stated that, under the current ordinance, it was 100 ft. at the building setback line. Mr. Hutton then stated how is that conforming if we split the lots into two 75 ft. lots. Mr. Haskett stated he is not arguing that it was conforming. Mr. Allen stated that answers a lot of the questions because in theory you could not build if the minimal lot width is 100 ft.

Chairperson Williams asked Mr. Haskett for clarification of the term "common" used in condition #2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Mr. Haskett referred to Town Attorney John Leidy. Attorney Leidy stated it would be up to the board to interpret. Chairperson Williams stated since there are several 50 ft. lots in Town that would make this common to the Town. Board Attorney Wheless stated the board must find facts to support their findings.

Chairperson Williams asked Mr. Haskett how many 50 ft. lots are left in Town. Mr. Haskett stated as far as vacant lots he would have to guess less than ten (10). He also stated he could not say how many exist with a structure on them.

Chairperson Williams stated further down on item #2 of the staff report it states there are several other 50 ft. wide vacant lots of record that are oceanfront and non-oceanfront. There are also existing single-family dwellings that are built on multiple 50 ft. lots. He asked Mr. Haskett if that was two 50 ft. lots to which Mr. Haskett replied yes. Mr. Haskett also stated it could be two or more 50 ft. lots and many were built long before the 15 ft. side yard setback requirement which was established in the year 2000.

Chairperson Williams stated Mr. Haskett's answer to #4 is the Town's Zoning Ordinance allows for development on nonconforming lots of record despite the limitations imposed by other provisions of the zoning text but these provisions still apply. Mr. Haskett stated this is in reference to this situation where the applicant has the ability to develop individually or combining the non-conforming lots of record but it is still subject to the other provisions of setbacks and lot coverage.

Chairperson Williams stated that the variance of the yard requirements shall be obtained only through the Board of Adjustment. Mr. Haskett stated that is correct and the Board of Adjustment through this process have authority to vary setback requirements.

Allen Hutton asked Mr. Haskett if the stated ten 50 ft. vacant lots left have the same 15 ft. side yard setback requirements or is there a more or less stringent requirement on them. Mr. Haskett stated they are the same RS-1 zoning district so the same requirements would apply.

Allen Hutton questioned how many 50 ft. lots are available that could have been combined to accommodate a 16 bedroom house. He stated this is what is different about this case. Mr. Haskett replied he did not know an exact number but could think of a few.

Andy Ward (public) asked Mr. Haskett what was the date that the septic language was removed off the book by Council action and what was the date the lot was purchased. Mr. Haskett stated he believed it to be January 22nd that the zoning text amendment was adopted. He believed the purchase of 62 Ocean Blvd. to be last summer and 64 Ocean Blvd. January of this current year.

Elizabeth Morey asked Mr. Haskett about the setback change in 2000 and the reason for it. She stated she believes she was told at least one of the reason was for emergency response equipment to have access down the property line. Mr. Haskett stated he has been with the Town since 2009 and has been told the same thing. Elizabeth Morey then stated if the setback was reduced to twelve (12) feet would it still allow for emergency vehicles to gain access. Mr. Haskett stated he could not respond for emergency responders and did not know what kind of impact it would have.

The staff's presentation ended.

Chairperson Williams admitted the Town Staff report into the evidentiary record (attached).

Chairperson Williams called on the applicant for presentation.

Allen Hutton, general contractor for Mr. and Mrs. Love, took the podium. He stated the Love family bought 62 Ocean Blvd. to build a seven (7) bedroom oceanfront family house. The situation existed that the Town would allow and was ready to permit a sixteen (16) bedroom house next door. This did not seem to be what the Town wanted as well as the Town was quick to make some changes as far as restrictions to make it more difficult. SAGA was willing to sell the 50 ft. lot (64 Ocean Blvd.) and the Love's bought it. It didn't make sense to add the 50 ft. lot to what they already had because for what they paid it would not reflect in the overall property value if combined. Now the Love's are in a position to try and make the best decision. They would like to have a structure next to them that would satisfy them, be aesthetically pleasing to the community and also maybe get some return if they needed to rent. A 20 foot wide home will probably not be aesthetically pleasing and to get the number of bedroom needed it would have to be longer and would not have a center corridor which safety wise would be better to have the center corridor.

Town Staff had no questions for the applicant.

Allen Hutton in response to a question from the public stated the house would be two (2) stories high and twenty six (26) feet wide if the variance is approved and twenty (20) feet wide if it is not.

Chairperson Williams asked Mr. Hutton what he meant when using the phrase "maximizing value" when describing the hardship. Mr. Hutton stated if you added that 50 ft. lot to the Love's other adjoining parcel it would not add much value in contrast to what they paid for it.

Chairperson Williams stated in looking at the plats provided in the application he did not notice any easements. Mr. Hutton replied he did not notice any on the surveys.

Chairperson Williams then asked about decks and if they are included. Mr. Hutton stated what he provided was just a visual aid to give the board some idea of how it might look.

Chairperson Williams asked about the lot coverage to which Mr. Hutton stated whatever the lot coverage is in Southern Shores it will be met. There are no plans yet as they are waiting to see the results of the variance ruling.

Attorney Wheless asked if decks are subject to the same setbacks regardless of whether they are covered or not. Allen Hutton stated that yes they are subject to the same 15 ft. setback requirements.

Mr. Wheless asked Mr. Hutton what is the unfair burden; what is the unnecessary hardship of the property itself. Mr. Hutton stated a 15 ft. side setback on a 50 ft. lot does not exist in any place he knows of today.

Mr. Wheless asked if there is a substantial or undo expense burden in construction of a twenty (20) foot wide house as compared to a twenty-six (26) foot wide house. Mr. Hutton stated that it would be more work to look pleasing and twenty-foot wide house cannot run typical setup, it needs to run longer and cost will go up per square foot because it is not a typical build.

Chairperson Williams admitted the Love's application to the evidentiary record (attached).

Town Attorney Leidy asked Mr. Hutton to clarify if the two sketches on the plats are just an illustration and not true plans. Mr. Hutton stated that was correct.

Town Planner Wes Haskett stated he would like to address the question that referenced decks and setbacks. He stated the ordinance states if you have uncovered decks or yard ornaments and things of that nature less than 30 inches in height are allowed to encroach in the side setback.

Mr. Wheless asked Mr. Hutton if there is anything unusual about the topography to which Mr. Hutton replied there is not.

The Love's presentation ended.

Chairperson Williams called on public comment.

Mr. Hogue stated he lives across the street at 65 Ocean Blvd and came today to be informed. He stated the proposed house seems to be in line with what they have hoped for.

Andy Ward, Southern Shores property owner and builder of several of the homes in close proximity to the Love's property. Stated he has lived here half of his life and has adhered to every setback requirement, some at the 10 ft. setback, others the 15 ft. setback. He stated by allowing 3 extra feet on each side what is to stop others from wanting more setbacks themselves. Just because they are asking doesn't mean they should be granted the additional 3 ft. on the setback.

Chairperson Williams closed the evidentiary portion of the hearing.

DELIBERATION AND DECISION

Chairperson Williams opened the floor for deliberation and a decision. He stated all four of the findings must be approved to grant the variance. (The concurring vote of four-fifths majority of the board shall be necessary to grant a variance)

The board discussed finding #1.

Joe McGraw stated as a builder a twenty foot wide house is subject to additional design and engineering costs created by the narrow width of the house and he believes there will be extra occupant safety being compromised by not having the center corridor.

David Neil stated that a 15 ft. setback on a 50 ft. lot is a unique hardship.

Jay Russell stated that building a 20 foot wide house will be costly and safety concern.

Elizabeth Morey agreed that is a undue hardship.

Chairperson Williams stated he felt safety is an issue and he doesn't think three (3) feet on each side will hinder emergency vehicles from gaining access.

(1) Does a strict application of the ordinance result in an unnecessary hardship to the applicant. **Vote (5-0) passed unanimously.**

The board discussed finding #2.

Joe McGraw referred back to the size of the lot and the setbacks requirements in which the board all agreed.

(2) Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography. **Vote (5-0) passed unanimously.**

The board discussed finding #3.

David Neil stated he did not think the applicant had anything to do with the setback.

Sam Williams stated he did not believe the hardship results from action taken by applicant.

(3) Does the hardship result from actions taken by the applicant (or the property owner) Voting yes is for the denial of the variance. **Vote (5 No / 0 Yes) passed unanimously.**

The board discussed finding #4.

Elizabeth Morey stated there has been a fair amount of safety issues discussed and by granting the variance it would benefit public safety.

Chairperson Williams stated he believes the proposed house meets the intent of the ordinance.

David Neal stated the intent of the ordinance is to beautify Southern Shores and consensus is that a twenty six (26) ft. wide house is more beautiful and falls in line with the intent of the ordinance.

(4) Is the requested variance consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and is substantial justice is achieved. **Vote (5-0) passed unanimously.**

MOTION: Joe McGraw moved to approve the variance as requested. The motion was seconded by Elizabeth Morey. The motion passed unanimously (5-0).

Chairperson Williams closed the Board of Adjustment hearing.

VIII. PUBLIC COMMENT:
None

IX. PLANNING BOARD MEMBER COMMENTS:

David Neil thanked everyone from coming.

X. ANNOUNCEMENTS:

Chairperson Williams announced that the next planning board meeting is June 20th.

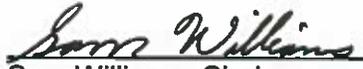
Town Planner Wes Haskett stated two member's terms are set to expire and both Elizabeth Morey and Gray Berryman have agreed to serve another term.

XI. ADJOURNMENT:

Hearing no other business Chairperson Williams adjourned the meeting. The time was 6:55 pm.

ATTEST:

RESPECTFULLY SUBMITTED:


Sam Williams, Chairperson




Sheila Kane, Town Clerk