

FINAL



Town of Southern Shores

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Planning Board Meeting

September 21, 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 Elizabeth Morey, Sam Williams, David Neal, alternate member Karen Sykes, and alternate member Joe McGraw were present. Planning Board members Gray Berryman and Jay Russell were absent with excuse.

II. PLEDGE OF ALLEGIANCE:

Chairperson Sam Williams led the Pledge of Allegiance.

III. APPROVAL OF AGENDA:

David Neal motioned to approve the agenda. Elizabeth Morey seconded the motion. The motion passed unanimously.

IV. APPROVAL OF MINUTES:

Elizabeth Morey motioned to approve the minutes of the August 17, 2015 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. ZTA-15-02: Setback Preservation Requirements

Chairperson Williams introduced the Zoning Text Amendment (ZTA) application and called on Wes Haskett to present the Staff Report. Following the presentation of the Staff Report, Chairperson Williams asked for clarification regarding vegetation removal in setback areas. Wes Haskett explained that Town Staff had compiled recommendations for the Board to consider which included removing the language which would prohibit the removal of vegetation in the setback areas and replaced it with language that saved only trees that are 12 inches in diameter measured 4.5 feet from the ground.

Chairperson Williams asked for the number of vacant and developed lots in the Town. Wes Haskett stated that according to Dare County's tax records, there are currently

3,251 total lots, 2,672 are developed, 509 are vacant, and 70 are vacant that are owned by a property owner's association (e.g., SSCA, CPOA, and Mallard Cove).

Chairperson Williams asked if additional expertise would be required to enforce the ordinance. Wes Haskett stated that if a damaged or diseased tree is requested to be removed, the owner may be required to submit documentation from someone qualified to make that determination. No new hires by the Town would be required.

Chairperson Williams asked if a lot can be clear cut now and if a lot can be clear cut under the proposed ordinance if it is adopted. Wes Haskett explained that the proposed ordinance addresses lots that are not to be developed and lots to be developed. Currently, an owner can remove all vegetation (including trees) from a vacant or developed lot without a permit. The proposed ordinance would not allow the removal of any vegetation in the side yard and rear yard setback areas and the removal of no more than 25% of trees with a 12 inch or greater diameter at breast height (DBH) in the building envelope of a vacant lot following issuance of a Lot Disturbance and Stormwater Management Permit. It was recommended that DBH be redefined as trees with a 12-inch or greater diameter measured at 4.5 feet above the ground. For lots with a Lot Disturbance and Stormwater Management Permit application for a new single-family dwelling or major renovation, a Lot Disturbance and Stormwater Management Permit would be required for removal of trees with a 12-inch or greater diameter measured at DBH within the outer 7 feet of the side yard setback area and the outer 15 feet of the rear yard setback area. There is no proposed language that would prohibit removing vegetation following issuance of the C/O. Therefore, clear cutting could only occur after a house, and associated structures, had received a C/O.

Chairperson Williams asked about the penalties for violations of the proposed ordinance. Wes Haskett stated that violations would result in a warning citation issued to the offender giving 15 days to abate the violation. If the violation is not abated, the Town could assess a penalty of up to \$500 each day the violation continues to exist.

Chairperson Williams asked what percentage of lots have been clear cut. Wes Haskett stated that he cannot answer that question since it depends on how "clear cutting" is defined.

Elizabeth Morey asked if the proposed ZTA applied to vacant lots. Wes Haskett stated yes and explained how it would apply to vacant lots with no proposed development and how it would apply to lots with proposed development or a major renovation.

David Neal asked if a survey is currently required for a Lot Disturbance and Stormwater Management Permit and if trees can be shown. Wes Haskett stated that surveys are currently required with a Lot Disturbance and Stormwater Management Permit application for a new single-family dwelling and that surveyors can show trees if needed.

David Neal asked what the timeframe is for a Lot Disturbance and Stormwater Management Permit submittal and issuance. Wes Haskett stated the permit is usually issued the day after submittal.

Chairperson Williams asked the applicant's representative, Tony DiBernardo, to address the proposed ZTA.

Tony DiBernardo explained that the Southern Shores Civic Association (SSCA) has received dozens of complaints regarding tree removal and how the proposed ZTA would address vacant lots and lots to be developed.

In addition to the proposed ZTA, Town Staff submitted recommended revisions for the Planning Board's consideration. Most of the changes in the recommended revisions involved redefinition of the term DBH. In an attempt to minimize confusion, the Chairperson asked if the applicant would be willing to conduct further discussions based on Town staff's recommended revisions to the ZTA.

The SSCA agreed with most of the recommended revisions to the ZTA proposed by Town Staff. The major exception was to the Town Staff proposal involving the removal of vegetation within the setback areas of vacant lots. The proposed ZTA prohibited the removal of any vegetation in the side and rear setback areas for lots with no proposed development while Town Staff's recommended revisions eliminated this provision and replaced it with a requirement to only save trees greater than 12 inches in diameter at 4.5 feet above the ground within the side and rear setback areas.

Chairperson Williams stated that since the applicant had only a few objections to the recommended revisions proposed by Town Staff, further discussion would be based on the proposed ZTA including Town Staff's recommended revisions.

David Neal asked if a property owner who owned two lots next to each other could clear the middle boundary. Tony DiBernardo stated that the owner could apply for a variance.

David Neal stated that the term "vegetation" means everything and asked how that is supposed to be handled. Tony DiBernardo stated that setback areas on undeveloped lots would remain undeveloped and it is important for stabilization, stormwater, and birds.

David Neal asked if cutting can take place after a building permit has been issued. Tony DiBernardo stated that any tree that is 12 inches in diameter, measured 4.5 feet above the ground, within the inner 8 feet of the side and inner 15 feet of the rear setback areas can be removed and any tree that is 12 inches in diameter, measured 4.5 feet above the ground, outside that point must be replaced.

Chairperson Williams asked why the proposed ZTA only applies to the RS-1 zoning district. Tony DiBernardo stated that there are no commercial areas that could be affected but he has no objection to adding other zoning districts if that's what the Board would like to see.

Chairperson Williams asked why a major renovation was defined as renovations that exceed 50% of the value of a structure. Tony DiBernardo stated that was what was found in their research. Wes Haskett stated that the 50% threshold was established by FEMA.

Chairperson Williams stated that 12 inches in diameter measured 4.5 feet above the ground doesn't cover live oak trees. Tony DiBernardo stated that live oaks are unique because of their multiple trunks that spread widely and that measuring them at 4.5 feet above the ground to determine diameter would not be an effective way to save them from cutting. Measuring live oaks at 12 inches from the ground to determine diameter would be an effective way to prevent them from cutting.

David Neal stated that there are a lot of lots that have large Pine trees and leaving 7 feet undisturbed would result in a lot of Pines remaining which most folks do not want. Tony DiBernardo stated that the pines would be left in place at the beginning.

Chairperson Williams asked why the front yard setback area was left out of the proposed ZTA. Tony DiBernardo stated that the Town owns the right-of-way and it has its own regulations that address it. In addition, access to lots is needed. Wes Haskett stated that the right-of-way widths in the Town vary from street to street.

Chairperson Williams asked if consideration had been given to private property rights. Tony DiBernardo stated that that was a philosophical tunnel vision question and explained how zoning requirements apply to property. Property rights need some restriction for the betterment of the community. It is a question of balance between property rights and community rights.

PUBLIC COMMENT

Ash Pipkin stated that his family has owned property in Southern Shores for 60 years and the ocean side of town used to have no vegetation. The proposed ZTA is discriminatory against ocean side property owners and by leaving the outermost portions of the setback areas, you are creating a fire hazard. The United States Constitution allows for property rights. The proposed ZTA also allows anyone to cut what they want after a house is built.

Lorelei DiBernardo stated that she is a member of the SSCA Board of Directors and that clear cutting always comes with complaints. The proposed ZTA is a result of years of complaints which achieves the goal of leaving trees in setback areas. Town Staff's recommended revisions includes removing a key component of the ZTA which affects its applicability to ocean and soundfront properties. The SSCA sent the initial version of the proposed ZTA to the membership and received dozens of responses overwhelmingly in support of it. She urged the Board to approve the ZTA without removing the prohibition on removing vegetation from the setback areas on undeveloped lots with no proposed development.

Carol Riffin stated that she was a member of the SSCA Board of Directors. Regarding the removal of trees for an owner who owns lots next to each other, the proposed ZTA allows removing trees in the setback areas as long as they are replaced.

Mark Martin stated that he was a member of the Outer Banks Homebuilders Association and a resident of Southern Shores for 20 years. He explained that when his lot was developed, there were a few trees and over the past twenty years, 35 new trees have grown. He explained that he is not in favor of the proposed ZTA because it limits area for septic systems, prevents stormwater management, and there are too many other variables. All of the remaining lots would look the same if the proposed ZTA is adopted. With respect to major renovation, most of the older houses are valued at \$115,000 to \$125,000 and performing renovations under 50% of the value would be difficult.

Chairperson Williams stated that the proposed ZTA would allow the removal of trees in the side setback areas where access is needed as long as the trees are replaced. Mark Martin stated that property owners don't want 80 ft. tall 12" diameter trees near their homes and explained how there will be an educational gap between the Town and contractors and how the Town of Duck's tree ordinance hasn't been consistently enforced.

Ron Slesinski stated that he owns property on Wild Pony Ln. Replacing 12" diameter trees with shrubs is not a good idea and prohibiting the removal of vegetation from setback areas is not good for the Town. If adopted, the vegetation would consist of vines, invasive species, and other unwanted vegetation growing in the setback areas which would also weaken the trees.

Andy McConaghy stated that he had received the SSCA's proposed ZTA and was glad to comment. The proposed ZTA is disingenuous to regulate at this time since property owners in the Town have always been able to remove and maintain trees on their lots as desired or needed. He stated that he is a certified Arborist and that not every tree is an asset.

Joe Van Gieson stated that he lives at 228 N. Dogwood Trl. and questioned why there are three different versions of the proposed ZTA which means that there wasn't proper notice and not all citizens know exactly what is being proposed. He stated that he supports the SSCA's effort in the proposed ZTA but doesn't agree with the proposed language regarding the vegetative replacement plan. Replacing 12" diameter trees with 2 shrubs is crazy and the idea that anybody can cut all trees on a lot after work is complete shouldn't be allowed.

Mike Stone stated that he has lived in Southern Shores for 45 years and that there is more vegetation now that there was in the 70's. He explained that property owners die and trees will continue to grow and property owners might as well cut whatever they want now and not deal with a tree ordinance. In addition, the SSCA did not bring the proposed ZTA to the membership for a vote and had no right to submit it for consideration.

Ann Sjoerdsma stated that her family owns several developed and undeveloped lots in the Town and has for many years and thanked the SSCA for applying for the proposed ZTA. She explained how she is grateful that the SSCA got the ball rolling and how everyone needs to work together as a community and together. The best parts of the proposed ZTA are the findings that start with "Whereas". Zoning is a balance between property rights and regulations. The proposed ZTA needs some clarifying but she appreciates the spirit that brought it forward.

Mary Jane Slesinski stated that she is concerned about the 12" in diameter trees being removed and being replaced with shrubs in the vegetative replacement plan. She explained that leaving vegetation in setback areas will create problems for trees due to vines and other unwanted vegetation that would remain.

Earl Keel stated that he supported the ordinance and was concerned over clear cutting for a house built next to his.

Shelley Tarkton stated that she owned 73 and 75 Landfall Lp. and that there seems to be some confusion on what is being presented. She explained how she is concerned about not being able to remove vegetation and the impacts that it would have on trees. Twelve years ago, 75 Landfall Lp. was mistakenly cleared and today you can't tell the difference and the trees are mature. She asked why waterfront properties are allowed to clear in the rear setback area to view the water but other properties are prohibited from clearing a view of a large tree or trees. The proposed ZTA is way too unclear and hopefully the Board isn't ready to vote on it tonight.

Chairperson Williams closed public comment.

Elizabeth Morey asked how the Board should discuss the proposed ZTA and suggested going line by line.

Chairperson Williams agreed and the Board began to review the proposed ZTA and began discussing the issues that had been brought up that need to be addressed. How

to address live oak trees, keeping or removing the prohibition of removing vegetation from the setback areas on lots with no proposed development, stormwater retention, and other issues all need to be addressed which will require more time to consider.

Chairperson Williams was going to table the discussion until a later Board meeting to give the Board more time to address the issues. Wes Haskett advised the Board that proceeding in that way was not possible under the rules of the Board because the Board must make a recommendation to the Town Council at its next meeting. He stated that if the Board needs more time to address the issues with the proposed ZTA, the Board would have to recommend that the Town Council direct the Planning Board to revise and continue working on the proposed Setback Preservation Ordinance (ZTA-15-02).

David Neal motioned to recommend that the Town Council direct the Planning Board to revise and continue working on the proposed Setback Preservation Ordinance. Elizabeth Morey seconded the motion. The motion passed unanimously.

VIII. PUBLIC COMMENT:

None

IX. PLANNING BOARD MEMBER COMMENTS:

None

X. ANNOUNCEMENTS:

Chairperson Williams announced that the next Planning Board meeting date is October 19, 2015.

XI. ADJOURNMENT:

Elizabeth Morey motioned to adjourn. Joe McGraw seconded the motion. The motion passed unanimously and the meeting adjourned at 8:05 p.m.

ATTEST:



Sam Williams, Chairperson

RESPECTFULLY SUBMITTED:



Wes Haskett, Town Planner

STAFF REPORT

To: Southern Shores Planning Board
Date: September 16, 2015
Case: ZTA-15-02
Prepared By: Wes Haskett, Town Planner/Code Enforcement Officer

GENERAL INFORMATION

Applicant: Southern Shores Civic Association
5377 N. Virginia Dar Trl.
Southern Shores, NC 27949

Requested Action: Amendment of the Town Zoning Ordinance by adding Section 36-177, Setback Preservation Requirements to Chapter 36, Article VI.

ANALYSIS

The applicant is proposing a Zoning Text Amendment (ZTA) to amend Article VI, General Provisions by adding language to establish an ordinance regarding setback preservation requirements. For undeveloped lots with no Lot Disturbance and Stormwater Management Permit application or proposed building permit issued by the Town of Southern Shores (TOSS), the proposed ordinance would allow the removal of no more than 25% of trees with a 12-inch or greater diameter measured at 4.5 feet above the ground outside of the side yard and rear yard setback areas following issuance of a Lot Disturbance and Stormwater Management Permit. The proposed ordinance would prohibit the removal of any vegetation in the side yard and rear yard setback areas for undeveloped lots with no Lot Disturbance and Stormwater Management Permit application or proposed building permit issued by the Town. Town Staff suggests that instead of all vegetation, there shall be no removal of trees with a 12-inch or greater diameter measured at 4.5 feet above the ground inside the side yard and rear yard setback areas for undeveloped lots with no Lot Disturbance and Stormwater Management Permit application or proposed building permit issued by the Town.

For lots with a Lot Disturbance and Stormwater Management Permit application for new construction or proposed building permit for major renovation, a Lot Disturbance and Stormwater Management Permit shall be required for removal of trees with a 12-inch or greater diameter measured at 4.5 feet above the ground within the outer 7 feet of the side yard setback area and the outer 15 feet of the rear yard setback area. For undeveloped and developed lots, a site plan is required which shows which trees are to be removed and which trees are to be preserved. A Vegetative Replacement Plan must be submitted by the property owner for any removal of trees with a 12-inch or greater diameter measured at 4.5 feet above the ground within the outer 7 feet of the side yard setback Areas and/or the outer 15 feet of the rear yard setback Area. A Vegetative Replacement Plan shall not be required for the removal of dead, damaged, or diseased trees.

With respect to violations and penalties, violations will result in a warning citation issued to the offender giving 15 days to abate the violation. If the violation is not abated, the Town will assess \$500 each day the violation continues to exist. The proposed ordinance also establishes exceptions for dead, damaged, or diseased trees, where tree removal is unavoidably required for construction of driveways, infrastructure, outbuilding and other authorized improvements, for side yard and/or rear yard setback areas that abut a body of water, including ocean, sound, canal or pond, and if tree removal is required to prevent imminent danger to people or property.

RECOMMENDATION

This Staff Report is based on the draft ordinance which includes suggested revisions made by Town Staff. Town Staff recommends that the Planning Board consider these suggested revisions 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. Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan. The Town's currently adopted Land Use Plan contains the following Policies and Action Items that are consistent with the proposed ordinance:

- **Action Item 2-b:** The Town shall encourage the use of low impact development techniques and sound environmental preservation practices for all new development, remodeling and redevelopment within Southern Shores.
- **Action Item 17-b:** Continue enforcement of the Lot Disturbance provisions of the Town's Zoning Ordinance.
- **Policy 26:** Promote open space, tree protection, and natural vegetation diversity.
- **Action Item 26-b:** Encourage lot preparation methods that preserve natural vegetation and minimize clear cutting.

Ken Kobetsky Email Submitted to Wes Haskett on August 9, 2015

As a Southern Shores property owner who is not able to attend the public meeting on this requested variance therefore, I am providing this e mail as a formal response to the variance VA-15-01 by Mr Hurdle regarding the location of a existing deck. I have reviewed the request for the variance and offer the following comments:

Simply put, Mr. Hurdle would not have this problem had he followed the correct procedures before starting the deck construction.

Number 1. If the owner had followed the proper process of obtaining a permit which would have required a site drawing showing the location of the house and proposed deck along with showing the property line he would have been informed by the building department, he would have been in violation of required set backs from the property line and would not have issued a permit and that the deck could not be built as requested.

Number 2 If owner would have hired a license contractor who would have had to obtain a building permit it would also been denied for the same reason as described.

Number 3 Since Mr. Hurdle did not obtain a building and chose to hired a non license contractor who also failed to obtain a permit. Two wrongs do not make a right.

The other property owners and the City of Southern Shores are now being asked to accept this non complaint deck structure which has already been built, which would have never been allowed to be built had the property owner followed the correct procedure in obtaining a necessary building permit.

In summary I would like to go on record show I do not support the request by Mr. Hurdle for a the variance VA-15-01 for the reasons stated above.

If you have any questions regarding my request or my response you can contact me at the following

Property Owner In Southern Shores
Parcel # 020994000
Ken Kobetsky PE
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