



# Town of Southern Shores

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## Planning Board Meeting

August 20, 2018

5:30 p.m., Pitts Center

### MEETING MINUTES

#### I. CALL TO ORDER:

Planning Board Chairperson, Glenn Wyder called the meeting to order at 5:30 pm. Planning Board Members Elizabeth Morey, Joe McGraw, Andy Ward, David Neal, Planning Board Attorney Jay Wheless, Town Attorney Ben Gallop, Deputy Town Manager/Planning Director Wes Haskett and Permit Officer Dabni Shelton were present.

#### II. PLEDGE OF ALLEGIANCE:

Chairperson Wyder led the Pledge of Allegiance.

#### CHAIRPERSON COMMENTS:

Prior to approval of the Agenda; Chairperson Wyder informed those in attendance about the procedure regarding public comments. The public has two (2) opportunities to make "general" comments during Planning Board meetings. Those times are at the beginning and towards the end of the meeting. Public comment also occurs after the staff report for New Business items. Those comments should be directed to the specific issue presented by Town Staff. As to all Public Comments, the following will apply:

- 1) Comments will be limited to three (3) minutes;
- 2) For groups of like-minded citizens, please try to appoint one speaker to deliver the comment for the group;
- 3) At no time should there be comments blurted out from the public;
- 4) There will be no back and forth conversation between members of the public and the Board

#### III. APPROVAL OF AGENDA:

Andy Ward motioned to approve the agenda. Elizabeth Morey seconded the motion. The motion passed unanimously (5-0).

#### IV. APPROVAL OF MINUTES:

David Neal motioned to approve the minutes of the July 16, 2018 Planning Board Meeting as presented. Andy Ward seconded the motion. The motion passed unanimously (5-0).

#### V. PUBLIC COMMENT:

None

#### VI. NEW BUSINESS:

A. VA-18-06: VARIANCE APPLICATION SUBMITTED BY GRAY BERRYMAN FOR A VARIANCE FROM SECTION 36-99 OF THE SOUTHERN SHORES TOWN CODE FOR THE PROPERTY LOCATED AT 170 OCEAN BLVD

Variance requests are heard by the Board of Adjustment. Chairperson Wyder indicated that the Planning Board was now acting as the Board of Adjustment.

Chairperson Wyder explained the quasi-judicial public hearing procedure and rules and stated all witnesses wishing to give testimony will need to be sworn in. Chairperson Wyder then reviewed several areas of possible conflicts of interest and asked the Planning Board members if they had any conflicts of interest.

Chairperson Wyder read the standards for granting variances from the ordinance which is based on North Carolina General Statutes. Section 36-397 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 the following:

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
3. The hardship did not result from actions taken by the applicant or the property owner.
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.

SWEARING IN OF ALL PEOPLE GIVING TESTIMONY

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

OPEN HEARING & EVIDENTIARY PORTION OF HEARING

Chairperson Wyder opened the public hearing and called on Wes Haskett to present the Staff Report (attached) and stated all applicable regulations of the Town Zoning Ordinance and all of Town Staff's concerns that are applicable to this application have been identified. The applicant is requesting a variance to allow a roof to be added to an ocean dune platform. An Ocean dune platform is a permitted use in the RS-1, Single-family Residential District subject to size and height restrictions. Section 36-99, Ocean Dune Platforms, Walkway, and Steps states that no part of the platform structure, except a flagpole, shall extend more than three feet above the deck. Section 36-99 also states that the regulation of these structures is intended to preserve the natural appearance and integrity of the frontal dune and provide minimal interference with the natural accretion of sand and growth of vegetation.

An exception to these requirements can be found in the requirements for Community Recreation Facilities which allow a sunshade on the dune platform provided the footprint of the sunshade does not exceed 180 square feet; the sides are not enclosed; the height from the deck does not exceed 11 feet; and it is set back 25 feet from side property lines. No platform containing a structure extending more than three feet above the platform deck shall be constructed within 1,000 feet of a like structure. A Community

Recreation Facility is a Conditional Use in the RS-1, Single-family Residential District which is defined as a recreational facility owned and operated by a not-for-profit entity which is constructed for, open to, and available for use by members, property owners, and their guests.

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.
  - Strict application of the ordinance would result in not allowing the property owners a roof over the ocean dune platform prohibiting access to shade which would result in additional exposure to sunlight.
- (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.
  - The property's location, size, shape and topology are similar to many lots within the Town.
- (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.
  - The ocean dune platform on Lot B has a roof and it is allowed to remain as a legally nonconforming structure.
- (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.

The intent of Section 36-99 is to preserve the natural appearance and integrity of the frontal dune and provide minimal interference with the natural accretion of sand and growth of vegetation.

Chairperson Wyder called on the Board for questions. Andy Ward asked staff to explain the definition of legally nonconforming. Mr. Haskett stated that legally nonconforming is when a structure that does not meet the current requirements of the ordinance and was constructed prior to an ordinance regulation being adopted and could remain to be aka grandfathered. Andy Ward further asked if Mr. Haskett knew when the open dune platform was built. Mr. Haskett replied that he did not however, he suspected it was built when the house was built in the 1950's.

David Neal asked how many dune platforms are permitted on a lot. Mr. Haskett answered that one ocean dune platform is permitted per lot. David Neal further asked if that is why the other dune platform is being torn down. Mr. Haskett said that the other one is on a separate lot. It is a vacant lot. It is a conforming lot and was previously nonconforming however, they recently recombined the subject property where the house is located. The ocean dune platform was always utilized by the property with the house. The new ocean dune platform is on the lot with the house.

Planning Board Attorney Wheless asked if staff had an opinion if allowing an ocean dune platform will prohibit sand from adversely preventing accretion. Mr. Haskett's response was that in his opinion it would not.

Chairperson Wyder asked Mr. Berryman who owned the property at 170 Ocean Boulevard. Mr. Berryman responded that the owner of the property was Anne Pipkin. Chairperson Wyder pointed out that on Page 1 of the Variance application, Ms. Pipkin is listed as the owner, however on the notarized page 5 lists Pipkin Limited Partnership / Ashmead Pipkin as the owner. Mr. Berryman then stated that Ms. Pipkin was in fact the owner. Chairperson Wyder informed Mr. Berryman that any future appearances before the Board of Adjustment or Planning Board will require that his applications are in perfect order Applicant Gray Berryman spoke on behalf of the owners. He stated that he has no financial interest in the outcome and he met one of the owners, Anne Pipkin, through his work as a real estate agent. The property has been in the Pipkin family since it was built in the 1950's. The Pipkin property (Lot A) is an original flat top house and one of the few flat tops within the town that has remained in the same family ownership which is a unique situation.

Mr. Berryman explained that a recent lot recombination took place. The oceanfront lots used to be 4 lots and the family decided to recombine them into two lots so the house could remain on one single lot and the other lot would be a separate entity. That way Anne and her sister could keep the house (Lot B) and their uncle Ashmead Pipkin would keep the other lot (Lot A) resulting in the existing historic dune deck with a roof remaining on a vacant lot. An ocean dune platform was recently constructed at Lot A, 170 Ocean Boulevard however, they were not able to construct a roof. The family has a history of skin cancer and due to unique personal circumstances, and after having a roofed deck, they realized how important it is to them to now have a dune deck with a roof structure. A sunshade that would replicate the one that currently exists is what they're asking for now. The historical dune deck is scheduled for demolition in November.

David Neal asked Mr. Berryman why the existing dune deck being removed. Mr. Berryman explained that Anne Pipkin's uncle, Ashmead Pipkin, wants a vacant lot with no structures should he chose to sell the lot. Sale of Lot A would disallow access by other family members and they would be left with the new deck on Lot A without a roof.

David Neal stated that other towns allow roofs on dune decks and asked Mr. Haskett why do we, the Town, not allow them. Mr. Haskett answered that he was not sure what other towns allowed and he would have to go back and research the intent in the ordinance as to the appearance and integrity of the dune.

Andy Ward asked Mr. Berryman if he knew of other such structures in town. Mr. Berryman stated that Hillcrest Beach Access has a roof/sunshade over a deck because it is a different use and there is a relatively new house south of the Dogwood Trail that has a pool house cabana with a roof that sits near the dune that is considerably larger than what the Pipkin family is asking for.

Glenn Wyder stated that the word historic is referenced seven times in the application, is there a plan to apply for a historic designation.

Owner, Anne Pipkin answered by saying yes, there has been discussion to apply for a historic designation. They have previously inquired with Town Staff about proceeding with the historic designation now that they're the owners of the house however, there is much to consider that is dependent on this variance.

Glenn Wyder asked if the variance is granted, and the original deck is going to be demolished, will the new deck be built just like the original one.

Mr. Berryman replied that the proposed drawings were based on the dimensions of the new deck. Anne Pipkin elaborated that her uncle, Ashmead Pipkin, wanted to help pay for the new deck and he had it built the way it is today. The new deck is being requested to have a flat roof like the old deck.

Andy Ward reiterated the ordinance relative to a Community Recreation Facility that limits a sunshade to 180 square feet. Anne Pipkin replied that they are not asking for more than they have now on Lot B. Mr. Berryman said if they have to reduce down from what they're asking for they will do it.

Mr. Berryman wanted to point out that this application is unique to the property because there was once four lots and now there are two conforming lots; the other point is that the applicant and her sister did not cause this problem to prevent the use of the dune deck.

Joe McGraw stated that another alternative could be a sail for a sunshade and did they consider this. Anne Pipkin answered that they did look into that and it would be an alternative if they could not build a roof however, they feel that it would be difficult to put up and remove every time they used it and sometimes they are down by themselves and would be unable to put it up and therefore could not go out and enjoy the beach. They didn't realize how much they would miss a sunshade until this happened.

#### PUBLIC COMMENT

Chairperson Wyder asked if there were any members of the public that wish to speak during public comment.

Ann Sjoerdsma, 69 Hickory Trail, stated that she wanted to make a personal comment. My parents built the house in 1971 at 174 Ocean Boulevard and we knew "Pink Perfection" very well. She is delighted that Anne is choosing to keep the house in its original state. She stated she has many fond memories of their families gathering together over the years on the dune deck and she hopes the family will be granted the variance to keep this treasure from a by-gone era.

Chairperson Wyder asked the board if anyone had any questions.

Andy Ward asked Anne Pipkin if she had canvassed any of the other neighbors and if there were any adverse comments, about her request. Ms. Pipkin replied that she was unaware that Ms. Sjoerdsma was going to speak on her behalf to support the family and no, she has received no negative comments.

Attorney Wheless, asked Mr. Haskett, hypothetically prior to the division of the four lots into two, could they have moved the historic deck to the house lot at all or if just moving the deck would have required conformity with today's regulations. Mr. Haskett's response was that yes, moving the deck would have required conformity. There would have been a way to adjust that lot line to be part of the lot with the house, but that was prior to construction of the new dune deck.

Chairperson Wyder closed the evidentiary portion of the hearing and moved to the argument portion.

#### ATTORNEYS SUMMARIES

Chairperson Wyder called upon Town Attorney Ben Gallop.

Attorney Gallop stated that in this case the real issue is the hardship resulting from conditions peculiar to the property such as size, location or topography or hardship resulting from personal circumstances to this property. In this case there is nothing peculiar about a one hundred foot wide oceanfront lot as seen throughout the Town and therefore I would think that variance criteria number two could not be met.

Attorney Wheless asked Attorney Gallop, hypothetically what would you say to the argument that the flat top itself built in the 1950's puts this request into a different peculiar category.

Attorney Gallop, answered that the house did not make the location, size and topography peculiar and that he thought the best approach and mechanism would be a text amendment for the historic use on their properties and how to move structures around to keep the historic integrity.

Chairperson Wyder commented that the applicant (Mr. Berryman) cannot act as an attorney during this portion of the hearing. Attorney Wheless concurred and recommended Anne Pipkin speak as the owner.

Anne Pipkin stated that the property is in her opinion unique and they want to have a historical designation. It is a hardship for her and her family not having the use of a roof on their new deck. They are willing to do whatever needed to keep it. They looked at relocating the roof and are willing to at least keep the existing roof and moving it to the platform. They want to keep the property (Lot A) in the family for many years to come and enjoy it as a family and be outside. Right now they cannot use the property in this way without the roof.

Chairperson Wyder closed the evidentiary portion of the hearing.

#### DELIBERATION AND DECISION

The Board held a brief discussion.

Chairperson Wyder opened the floor for a vote/decision on the four standards that apply to variances. *(The concurring vote of four-fifths majority of the Board shall be necessary to grant a variance)*

David Neal commented. The character of this town has changed and he is here to ensure the character. This flat roof over this deck is in character.

Joe McGraw commented. He too agrees and thinks that the Pink Perfection house is the most beautiful house in Southern Shores. The historical fact that the house still does not have air conditioning means that the need of the dune deck with a roof for shade is the central place for the family to enjoy the outdoors.

Elizabeth Morey commented. Agrees with the two gentlemen before her that spoke about allowing this roof and keeping the integrity of this house.

Andy Ward commented. Agrees with the two gentleman and Elizabeth. He agreed that this request is important to the flat top but wanted to call attention to why there can't be dune decks with roofs on other properties within town. He stated that there is another side to this request and would agree with Attorney Ben Gallop that a text amendment may be addressed at a later date.

Chairperson Wyder commented. He has been coming to Southern Shores for 25 years and pays close attention to architecture. The flat tops are unique to this town. There is an exception and unique situation in this case.

Chairperson Wyder opened the floor for a vote/decision on the four standards that apply to variances. *(The concurring vote of four-fifths majority of the Board shall be necessary to grant a variance)*

- (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.

**VOTE: 5 aye / 0 no**

- (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.

**VOTE: 5 aye / 0 no**

Attorney Wheless offered the following facts that Attorney Gallop made a good argument regarding the nature of the house not being peculiar to the property and he noted that it was due to location, size and topography. Attorney Wheless disagreed, and believes that due to the historic nature, the peculiar characteristics such as the location, size and topography gives the Board the ability to give a finding of yes.

- (3) Does the hardship 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.

**VOTE: 0 aye / 5 no**

- (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.

**VOTE: 5 aye / 0 no**

The Board consulted with Attorney Wheless to include special conditions with their decision in regard to roof surface, roof height and style of roof.

Chairperson Wyder called on a vote for the variance. Elizabeth Morey motioned to approve variance request VA-18-06 with conditions: (a) That the new deck roof surface be the same square footage within 10% as the original deck roof. (b) That the new deck roof be the same height with 10% as the original deck roof. Joe McGraw seconded the motion.

**VOTE: 5 aye / 0 no The motion passed unanimously – Variance granted**

Chairperson Wyder closed the public hearing on VA-18-06. He also indicated that further business would be conducted as the Planning Board (not acting as a Board of Adjustment).

- B. ZTA-18-07 & ZTA-18-07A: Zoning Text Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Section 36-132, Regulation of Structures and Uses Nonconforming.

Chairperson Wyder introduced the application and Planning Director, Wes Haskett, presented the staff report (attached).

Elizabeth Morey asked what the difference was between ZTA-18-07 and ZTA-18-07A.

Attorney Gallop stated that ZTA-18-07A does not address vacant lots.

Elizabeth Morey asked why changes were made in ZTA-07A.

Attorney Gallop stated that council requested the changes.

Andy Ward requested Wes Haskett to bring up the Dare County GIS website on the monitors and locate 169 Duck Road for illustrative purposes. Ward stated that this parcel is four (4) 50 foot x 200 foot lots.

Chairperson Wyder asked Town Staff if ZTA-18-07 was “off the table”.

Wes Haskett replied that the Board had already heard and made recommendations to Council at the public hearing and council is sending ZTA-18-07A to you today for consideration.

Attorney Gallop stated that paragraph one is the least unchanged and has the least legal risk.

Chairperson Wyder made a statement that from Southern Shores Crossing to Chicahauk Trail, there is the potential for thirteen (13) 50 foot wide lots which he stated that it is his belief that this is not what was intended for future development in this town.

Andy Ward asked Town Staff at what point does a ZTA change.

Attorney Gallop answered by saying that Council will have a public hearing to decide if a substantial change at the Council level is made and then another public hearing would be set.

Chairperson Wyder recommended that in any district if the nonconforming lots are adjoining and in the same ownership then they must be recombined into conforming lots.

Attorney Gallop stated that the only thing to comply with is setbacks and lot width and paragraph one should remain and make a separate paragraph.

David Neal asked if Council chose to not address vacant lots.

Attorney Gallop answered that yes, Council wanted to only address development on multiple lots.

Wes Haskett stated that the Board always has the ability to recommend changes.

Chairperson Wyder asked the other members what was more prevalent and disturbing to this town – building on vacant 50 foot wide lots or tearing down and redeveloping on a 50 foot wide lot.

Andy Ward answered by saying in his opinion redevelopment is easy and the vacant lots are the problem.

Elizabeth Morey asked Attorney Gallop if the town was subject to legal ramifications to prohibit development on 50 foot wide lots.

Attorney Gallop answered that there is always a risk and it is a broad spectrum.

Elizabeth Morey asked how this is handled in other towns.

Attorney Gallop said that the town's ordinance was modeled from the Town of Nags Head when Tom White was on Town Staff with Southern Shores. He then stated that he would have to read Nags Head's current ordinance to compare and comment.

**PUBLIC COMMENT:**

Matt Neal, President of the Outer Banks Home Builders Association – He requested the Board to consider leaving paragraph one and restrict 50 foot lots from being built upon.

Mark Martin, 191 Wax Myrtle Trail – He stated that when he purchased property in Southern Shores several years ago, he was required to buy two lots in order to build. The interpretation in later years required that in order to get a building permit you had to recombine the lots. He said that there needs to be a mechanism to prevent building on a single 50 foot wide lot.

Ann Sjoerdsma – 69 Sea Oats Trail – She stated that the revision is inadequate. She does not know why the Town Council could not accept ZTA-18-07. She asked the Board to do what the Town Council could not do and that ZTA-18-07 is far superior to ZTA-18-07A and she is personally subjected to the more restrictive ordinance.

David Neal referenced Ann Sjoerdsma's comment that Council backpaddled on their decision and wants to address why they chose not to adopt ZTA-18-07.

Chairperson Wyder answered by stating that the Board cannot ask Council at this point and that the Board is here now to give recommendations on what is presented.

Attorney Gallop stated that if this Board's goal is to minimize potential loopholes, then we are here to derive a statutory intent. Something that would hold up in court. Treating them as one lot makes it permissible. ZTA-18-07 is the strengthening language. Council has said that they want the ordinance to apply to 50 foot lots only.

Chairperson Wyder stated that he would recommend making a motion to reject ZTA-18-07A and send ZTA-18-07 back to Council. David Neal seconded the motion. The motion passed 5-0 with a recommendation that ZTA-18-07A be rejected and send ZTA-18-07 back to Council.

**VII. OLD BUSINESS:**

- A. ZTA-18-04: Reconsideration of a Zoning Text Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Section 36-202, RS-1 Single-family Residential District to establish new lot coverage requirements.

Wes Haskett presented the staff report as written (attached).

**PUBLIC COMMENT:**

Mark Martin – The 500 square foot language for pools came from Dare County to allow pools on small lots. Duck allows open decks, walkways and gravel paths to be excluded from lot coverage. Over the years the interpretation for lot coverage has changed and he commended Wes Haskett for having a good handle on it now.

Ann Sjoerdsma – She stated that most people think more lot coverage will allow more building. The Planning Board previously took the lot coverage issue from the CodeWright update to make recommendations. She asked the Board to send this back to CodeWright to bring to a public hearing for Council to listen to the people of this town. She stated if the Board chooses to move forward – remove pools from the language.

Chairperson Wyder stated that with respect to the survey from CodeWright, 62% said no to increase in lot coverage. He feels that lot coverage is likely not understood and should be discussed. He recommended discussion of the following sections of ZTA-18-04:

- (5) Max lot coverage
  - A – Leave as is (5-0)
  - B – Leave as is (5-0)
  - C – Remove (5-0)
    - David Neal stated he did not think you should be able to build more.
    - Andy Ward stated that he has installed turfstone pavers and it does not infiltrate and it will be used if allowed and it will be impervious and count as coverage.
    - Elizabeth Morey recommended removing “C” all together.
  - D – Remove (5-0)
  - E – Remove (5-0)
  - F – Remove (5-0)
    - Chairman Wyder stated that the water in his pool went above the skimmer four times during recent rain events and had to pump it out and recommended removing F
  - G – Recommended keeping G as is (3-2 with Andy Ward and David Neal objecting)
    - David Neal stated that in his opinion this encourages building decks and Joe McGraw agreed. Andy Ward disagreed. Chairman Wyder stated that he researched architecture websites and 20-25% was acceptable for percentage of decks built in connection with a home.
  - G – Recommended keeping G as is (3-2 with Andy Ward and David Neal objecting)

Chairperson Wyder stated that he would recommend making motion that ZTA-18-04 be adopted as amended with the reference to subsection g. and h. in (6) h. be revised to f. and g. Joe McGraw motioned to recommend approval of ZTA-18-04 to Council as amended. Elizabeth Morey seconded the motion. The motion passed 5-0.

**VIII. PLANNING BOARD MEMBER COMMENTS:**  
(None)

**IX. ANNOUNCEMENTS:**  
Chairperson Wyder announced that the next scheduled Planning Board meeting is September 17, 2018.

**X. ADJOURNMENT:**

Andy Ward motioned to adjourn. Joe McGraw seconded the motion. The motion passed unanimously, and the meeting adjourned at 8:55 p.m.

ATTEST:

RESPECTFULLY SUBMITTED:

\_\_\_\_\_  
Glenn Wyder, Chairperson

\_\_\_\_\_  
Dabni Shelton, Permit Officer

**STAFF REPORT**

**To:** Southern Shores Planning Board  
**Date:** August 14, 2018  
**Case:** VA-18-06  
**Prepared By:** Wes Haskett, Deputy Town Manager/Planning Director

**GENERAL INFORMATION**

**Applicant:** Gray Berryman  
 37 Skyline Rd.  
 Southern Shores, NC 27949

**Property Owners:** Ashmead Pipkin      Pipkin I Limited Partnership  
 119 Pasquotank Dr.      1626 Queens Rd. W  
 Raleigh, NC 27609      Charlotte, NC 28207

**Requested Action:** Variance from Section 36-99

**PIN #:** 986819701350  
**Location:** 170 Ocean Blvd.  
**Zoning:** RS-1, Single-Family Residential District  
**Existing Land Use:** “Residential”

**Surrounding Land Use & Zoning:**  
**North-** Residential; RS-1, Single-Family Residential District  
**South-** Residential; RS-1, Single-Family Residential District  
**East-** Conservation; OSW, Ocean and Sound Waters District  
**West-** Residential; RS-1, Single-Family Residential District

**Physical Characteristics:** Developed

**Applicable Regulations:** Chapter 36, Zoning Ordinance: Article III, Interpretation and Definition of Terms; Article IV, Application of Regulations; Article VII, Schedule of District Regulations, Article XII, Board of Adjustment.

**ANALYSIS**

The applicant is requesting a variance to allow a roof to be added to an ocean dune platform. An

Ocean dune platform is a permitted use in the RS-1, Single-family Residential District subject to size and height restrictions. Section 36-99, Ocean Dune Platforms, Walkway, and Steps states that no part of the platform structure, except a flagpole, shall extend more than three feet above the deck. Section 36-99 also states that the regulation of these structures is intended to preserve the natural appearance and integrity of the frontal dune and provide minimal interference with the natural accretion of sand and growth of vegetation.

An exception to these requirements can be found in the requirements for Community Recreation Facilities which allow a sunshade on the dune platform provided the footprint of the sunshade does not exceed 180 square feet; the sides are not enclosed; the height from the deck does not exceed 11 feet; and it is set back 25 feet from side property lines. No platform containing a structure extending more than three feet above the platform deck shall be constructed within 1,000 feet of a like structure. A Community Recreation Facility is a Conditional Use in the RS-1, Single-family Residential District which is defined as a recreational facility owned and operated by a not-for-profit entity which is constructed for, open to, and available for use by members, property owners, and their guests.

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:

- (6) 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.
  - Strict application of the ordinance would result in not allowing the property owners a roof over the ocean dune platform prohibiting access to shade which would result in additional exposure to sunlight.
- (7) 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.
  - The property's location, size, shape and topology are similar to many lots within the Town.
- (8) 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.
  - The ocean dune platform on Lot B has a roof and it is allowed to remain as a legally nonconforming structure.
- (9) 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.
  - The intent of Section 36-99 is to preserve the natural appearance and integrity of the frontal dune and provide minimal interference with the natural accretion of sand and growth of vegetation.

## STAFF REPORT

**To:** Southern Shores Planning Board  
**Date:** August 14, 2018  
**Case:** ZTA-18-07A  
**Prepared By:** Wes Haskett, Deputy Town Manager/Planning Director

### GENERAL INFORMATION

**Applicant:** Town of Southern Shores

**Requested Action:** Amendment of the Town Zoning Ordinance by amending Section 36-132, Regulation of Structures and Uses Nonconforming

### ANALYSIS

Town Staff is proposing to amend the Town Zoning Ordinance by amending Section 36-132, Regulation of Structures and Uses Nonconforming to address the development of legally nonconforming lots. Since 2016, the Town has received and the Town Planning Board, performing the duties of the Town Board of Adjustment, has approved several requests for variances to reduce the side yard setback requirements for nonconforming lots from 15 feet to 12 feet. The proposed language states that prior to demolition of an existing principal building, redevelopment exceeding 50% of an existing principal building’s value, or construction of a new principal building when such existing or proposed principal building is located or proposed to be located on two or more lots any of which are non-conforming, all lots underlying the existing or proposed principal building shall be recombined into a single lot. The proposed language also includes a reduction in the side yard setback requirements from 15 feet to 12 feet which would apply to lots having a lot width of fifty (50) feet or less.

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 amendments are 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:** August 14, 2018  
**Case:** ZTA-18-04  
**Prepared By:** Wes Haskett, Deputy Town Manager/Planning Director

### GENERAL INFORMATION

**Applicant:** Town of Southern Shores  
5375 N. Virginia Dare Trl.  
Southern Shores, NC 27949

**Requested Action:** Amendment of the Town Zoning Ordinance by amending Section 36-202, RS-1, Single-family Residential zoning district.

### ANALYSIS

At the August 7, 2017 Special Planning Board meeting, the Town Planning Board unanimously recommended approval (4-0) of the proposed language to amend the Town Zoning ordinance to establish new lot coverage requirements which was subsequently denied (3-2) by the Town Council on September 5, 2017. On February 6, 2018, the Town Council voted (3-2) to send the proposed language back to the Planning Board for reconsideration with additional proposed language. On April 16, 2018 the Planning Board reconsidered the proposed language as ZTA-18-04 and unanimously recommended approval (4-0) of the application to the Town Council. On July 10, 2018, the Town Council unanimously voted (5-0) to send ZTA-18-04 back to the Planning Board for further consideration. The proposed amendments would establish the following changes in how lot coverage is calculated in the RS-1, Single-family Residential zoning district:

- c. Pervious materials and turfstone/pavers for driveways and parking areas contribute 50% to lot coverage.
- d. Gravel walkways shall not contribute to lot coverage.
- e. The outermost 4 feet of eaves shall not contribute to lot coverage.
- f. Up to 500 square feet of the water area of swimming pools shall not contribute to lot coverage. (The Board voted 2-2 to delete this amendment at the April 16, 2018 Planning Board meeting which resulted in no recommendation but was still included)

- g. Open-slatted decks that allow water to penetrate through to pervious material, not exceeding a total of 25% of the total footprint area of the attached single-family dwelling, shall not contribute to lot coverage.
- h. Those allowances and/or exemptions listed in sub-sections g. and h. of this-paragraph (6) shall be available only to an applicant for a building/zoning permit for a single-family dwelling, or adjacent swimming pool, or attached open-slatted deck over pervious material, upon presentation of a survey with all applicable requirements including plan certification, for a Lot Disturbance and Stormwater Management Permit as described in Sec. 36-171 (3) of the Town Code of Ordinances.

The Town's currently adopted Land Use Plan contains the following Policies and Action Items that are applicable to the proposed amendments:

- **Policy 2:** The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low density (1–3 units per acre) (see Map 13 Land Use Densities) residential community comprised of single family dwellings on large lots (20,000 square feet or larger) served by a small commercial district (56 acres out of 2,175 acres) 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.
- **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.
- **Policy 7:** Support stormwater management programs that reduce flooding and improve coastal water quality.
- **Action Item 7-b:** Encourage the use of Low Impact Development (LID), vegetative buffers to filter stormwater, impervious surface limits, and innovative stormwater management alternatives to reduce runoff and to improve water quality.

### **RECOMMENDATION**

Town Staff has determined that the proposed amendments, with the exception of item f (swimming pools), are 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.

