



October 30, 2018

Mayor Tom Bennett
Town of Southern Shores
Southern Shores, N.C.

Mayor Bennett,

I have followed with great interest discussions about regulation of very large residences in resort areas of the Outer Banks. As a long-time land use lawyer and now part-time resident of Southern Shores, I appreciate the attention you and the council have undertaken to retain the town's low-density family character. As we briefly discussed yesterday, the town has several options it may consider as it evaluates its ordinance provisions on this issue.

The 2015 legislative amendments to G.S. 160A-381 that prohibit a town from using its zoning to regulate the number and types of rooms in one and two family residential structures complicates your efforts in this regard. That said, G.S. 160A-381(a) expressly allows the town to regulate both the size of buildings and the density of population. This allows the town to set a maximum square footage of buildings, as the current code does. It also allows the town to regulate the density of population by setting maximum septic and parking capacity for residential lots.

A good illustration of this authority is provided by a recent court case upholding a Chapel Hill zoning restriction that limited the number of cars that could be parked at residences in a particular zoning district. *Patmore v. Town of Chapel Hill*, 233 N.C. App. 133, *rev. denied*, 367 N.C. 519 (2014). The limit was four cars per residence and was applied to both owner-occupied and rental properties. The regulation was based on concerns that over-occupancy of housing in this zoning district had led to traffic congestion, excess garbage, noise, and displacement of long-time residents by transient renters. The town contended, and the court agreed, that number of cars allowed at a residence was reasonably related to occupancy and population density. The court thus held the parking limits were a permissible zoning restriction. A limit on septic capacity is similarly related to addressing the land use impacts of population density such as traffic, noise, congestion, and preservation of the low density, noncommercial character of residential zoning districts.

If the town elects to include such a restriction in your ordinance, it should be based on regulating maximum occupancy by limiting the total septic capacity allowed per lot, setting a maximum daily flow rate, or using a similar measure based on occupancy and density, not the number of bedrooms in the structure. It should be the maximum number of occupants of a residence that is regulated, not how many rooms are used to house those occupants. The land use and zoning concern is, for example, having twenty-four occupants of a single-family home, whether they are all in a single bunkroom or are in twelve bedrooms.

Should the town elect to consider revision of its ordinances on this, I would be glad to assist your staff, attorney, or board in any way you feel would be productive.

Yours,

A handwritten signature in cursive script that reads "David Owens". The signature is written in black ink and is positioned above the typed name.

David W. Owens
Gladys Hall Coates Professor of Public Law and Government