



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

Join Zoom Meeting:

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or dial: +1 646 558 8656 US

Meeting ID: 945 3998 0368

Password: 806770

July 21, 2020
COUNCIL WORKSHOP MEETING
9:00 A.M.-PITTS CENTER

1. Opening
 - A. Call Meeting to Order
 - B. Pledge of Allegiance
 - C. Moment of Silence
 - D. Approval of Agenda
2. General Public Comment (Limit: 3 minutes per speaker)
3. Business Items
 - A. Budget Amendments (reappropriate money from FY 19-20 budget) **TAB 1**
 - i. Police Equipment
 - ii. Facilities Assessment-Architect Contract
 - B. Public Hearing-ZTA 20-01 Temporary Emergency Zoning Accommodations. **TAB 2**
 - C. Resolution 2020-07-03 (beach nourishment legislation resolution) **TAB 3**
4. Council Comments
5. Adjourn



Agenda Item Summary Sheet

Date: July 21, 2020

Item #: 3 - A

Item Title: Budget Amendments

Item Summary: Budget amendment #6 carries funding forward for the Design Services Agreement with Florez Design Studios, P.C. from last fiscal year to the current fiscal year in the amount of \$22,656.00 as work continues.

This Council initiated project began on February 20, 2018, with unanimous approval to direct the Town Manager to budget for a facilities assessment in the FY2018-2019 budget. Oakley Collier was contracted in the amount of \$26,370 to perform a property conditions assessment and provided their report to Council at its February 26, 2019 meeting. At the February 2019 meeting the Town Manager stated "the Town Hall building itself has three deficiencies noted by staff; workflow, confidentiality, and deficiency of space. Also noted by the consultants were security issues, no protection for employees."

Capital funds to repair Town buildings and bring them up to code were approved in the FY 2019-2020 budget in the amount of \$220,000. On March 30th of this year the Town entered into a contract with Florez Design for construction drawings in the amount of \$29,570 to incorporate the Oakley Collier recommendations. Due to anticipated loss of revenue brought on by the affects of COVID-19, the remaining funds were left unspent and have not been re-appropriated.

Florez Design has completed approximately 50% of the contracted design work (agreement is attached). Once the work is completed and final construction drawings are produced, staff will request direction from Council on how to move forward. However, at a minimum, staff would recommend that some improvements and additions be made to those buildings in need of improved accessibility, public safety, and improved workflow space.

Budget amendment #7 –The purpose of this amendment is to move funds from last year's budget into the current year's budget to complete the process of ordering police equipment in the amount of \$2,780. The equipment was budgeted and ordered last fiscal year, but delivery and payment will carry over into the current fiscal year.

Requested Action: Approve budget amendment number 6 and 7.

**Town of Southern Shores
Budget Amendment Number # 6**

**Public Works
Increases**

Decreases

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
	<u>Revenues</u>				
40-39909	Unassigned Fund Balance	\$22,656			
	<u>Expenditures</u>				
59-50978	Town Building Upgrades	\$22,656			
					\$0

Explanation: To reappropriate money from the FY 19-20 budget to complete the architectural work up on Town buildings.

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date

FLOREZ

DESIGN STUDIOS, P. C.

9138 Caratoke Highway • P.O. Box 170 • Point Harbor, NC 27964
877-441-0360 • 252-491-8000
florezdesignstudios@gmail.com
www.florezplans.com

DESIGN SERVICES AGREEMENT

THIS DESIGN SERVICES AGREEMENT (the "Agreement") is made and entered into on this 30th day of March 2020 (the "Execution Date")

Between

Town of Southern Shores (the "Client")

And

Florez Design Studios, PC (the "Architect")

PROJECT NAME: Alterations the Town Hall, Pitts Center, Police Station, Police Training Center and Public Works Buildings

PROJECT DESCRIPTION: Provide to Client as instruments of service, design sketches, technical drawings and other documents, depicting the design of alterations the existing above listed buildings. The design shall be based on the Client's Program as prepared by the Architect and attached here. A general contractor for the project's construction shall be selected by Client through a selection process not yet determined.

I. SERVICES:

A. Architect shall provide Existing Space As-Built Drawings to include schematic partial floor plans and exterior elevations of areas to areas affected by the program requirements.

B. Architect shall provide Conceptual Design Sketches to include schematic floor plans and elevations. This work shall also be presented with any changes to the initial program based on code research and field work.

C. Architect shall provide Preliminary Design Drawings to include technical drawings of the floor plans, elevations, sections and details. Architect's drawings shall be coordinated with preliminary engineering consultants' drawings or other work as necessary.

D. Architect shall provide Construction Drawings to include Appendix B code summaries, floor plans, elevations, sections and details and other information. Architect's drawings shall be building permit ready and coordinated with engineering consultants' (if needed) final plans.

II. FEES

A. Architect's fees for services are listed below.

a. Town Hall	\$14,310.00
b. Pitts Center	\$ 8735.00
c. Police Station	\$ 3290.00
d. Police Training Center	\$ 375.00
e. Public Works	\$ 2860.00
f. Total Fee	\$29,570.00

1. Client may request revisions to completed presentations. Architect's fees for revisions shall be based on an hourly rate of \$135.00.
2. Client may request other additional services. Architect shall provide a quote on fees for Client's authorization to proceed with additional services.
3. After each presentation listed above, Architect shall proceed with the next presentation only after receiving Client's approval of previously submitted work. Client may terminate services at any time in accordance with paragraph III.H below.

B. Client shall compensate Architect as follows:

1. Make an initial payment of \$1,000.00 upon execution of this contract. The initial payment shall be applied to the final invoice.
2. Make payments according to the following schedule.
 - a. 20% of each building fee listed above upon presentation of Conceptual Design Sketches
 - b. 40% of each building fee listed above upon presentation of Preliminary Construction Drawings
 - c. 40% of each building fee listed above upon presentation of Construction Drawings less the initial payment.
3. Pay amounts invoiced for revisions or additional services upon presentation of those services.

C. Architects fees for services do not include the following:

1. Material and installation specifications other than as noted within drawings.
2. Contractor bid services or contractor selection.
3. Professional engineer's or other project consultants' services.
4. Submittals to plan review agencies.
5. Interior design selections of specific finishes such as flooring, wall coverings, window treatments, finish color, or the selection of plumbing or electrical fixtures.
6. Specialty kitchen or other equipment selection, specifications or installation instructions.

II. OTHER TERMS

- A. Client shall make payment for completed work within 30 days of invoice dates. Amounts unpaid after 30 days shall accrue interest at a monthly rate of 1-1/2%. In the event of a default in payment, Client agrees to pay all collection costs, including attorney fees.
- B. In the event Architect's work is stalled through no fault of Architect for more than 30 days, Client agrees to pay Designer for the percentage of work completed.
- C. Client shall reimburse Architect for additional expenses incurred on Client's behalf for such items as printing, overnight mailing, and shipping.
- D. Client shall furnish Architect with a building site survey and any available existing building plans.
- E. All parties acknowledge and agree that all original designs, documents, digital otherwise contemplated or created pursuant to this agreement are instruments of service and shall remain the sole property of Architect. Client is granted a license to use drawings and other documents created under this agreement for this project at the above stated location only. This license is granted only after payment is received in full for all fees and expenses.

F. LIMITED LIABILITY: Architect shall not be held responsible for the construction of the proposed design including, but not limited to construction procedures, safety precautions or injuries incurred before, during, or after construction. In the event of errors or omissions to the contents of the construction documents, Architect shall make corrections to the drawings and reissue new copies of all corrected sheets at no additional expense to Client. This remedy is applicable only if Architect is notified within 7 days of discovery of any errors or omissions. Client understands and acknowledges that no other remedies are available.

G. SETTLEMENT OF DISPUTES: All parties acknowledge that the State of North Carolina shall govern all terms of this contract.

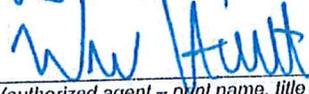
H. TERMINATION OF AGREEMENT: This agreement may be terminated by either Party upon seven (7) days written notice. In the event of termination by Client, Architect shall be compensated for all services performed to the termination date, plus any reimbursable expenses then due.

I. ENTIRE AGREEMENT: This contract contains the entire agreement of the parties, and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein and can only be amended by further written agreement.

J. BINDING EFFECT: Except as otherwise stated herein, all the provisions of this contract shall be binding upon the respective parties and or assigns of the parties.

IN WITNESSES WHEREOF, the parties do hereby set their hands and seals the day and year first written above.

By:  Date: 3/31/2020
(Michael Florez, AIA, Florez Design Studios, PC) - Architect

Wes Haskett, Interim Manager
By:  Date: 3-30-2020
(authorized agent -- print name, title and sign) - Client

Client Initials WA

FLOREZ

DESIGN STUDIOS, P.C.

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Town of Southern Shores – Alterations to Building Facilities Design Program

Town Hall

1. Relocate public entrance to west entrance. Remodel covered entry porch deck, steps and ramp to comply with ADA standards.
2. Evaluate condition of both center building (north and south sides) entrances. Repair or replace existing deck, steps and guard rails as necessary to comply with ADA standards.
3. Evaluate condition of east entrance. Repair or replace deck, steps and guard rails as necessary to comply with ADA standards.
4. Remodel interior center room to provide new lobby and service window.
5. Remodel existing toilet rooms to comply with ADA standards.
6. Add ADA compliant drinking fountain.
7. Evaluate other areas for accessibility compliance issues and remodel if necessary. New plan layout to address visibility and access to the Finance office and accessible route(s) to toilet rooms and other areas.

Pitts Center

1. Remodel existing east entrance to comply with ADA standards or add a second accessible entry elsewhere to meet the building's exiting requirements.
2. Add code compliant guard and handrails to existing ramp, west entry porch and steps.
3. Repair or fill in existing west side door and wall openings.
4. Add ramp to raised assembly room platform.
5. Remodel existing toilet rooms and replace hardware as necessary to comply with current ADA standards. Add ADA compliant drinking fountain as necessary.



6. Verify code compliance or exception for accessibility and egress at second floor.
7. Evaluate other areas for accessibility compliance issues and remodel if necessary.

Police Station

1. Remodel existing public entrance to comply with ADA standards.
2. Renovate or replace existing side entry ramp as needed to comply with ADA standards.
3. Remodel existing toilet rooms and replace hardware as necessary to comply with current ADA standards.
4. Evaluate other areas for accessibility compliance issues and remodel if necessary.

Police Training Center

1. Add personnel entry door to existing garage area.

Public Works

1. Remodel existing toilet room to comply with ADA standards.
2. Remodel as necessary to provide accessible access to toilet room and building exit.

**Town of Southern Shores
Budget Amendment Number # 7**

Police Increases			Police Decreases		
<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
40-39909	Revenues Unassigned Fund Balance	\$2,780			
51-50151	Expenditures Police Equipment Purchase	\$2,780			
	TOTAL			TOTAL	\$ -

Explanation: To reappropriate money from FY 19-20 budget for Police equipment that was ordered but not yet delivered

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date _____

STAFF REPORT

To: Southern Shore Town Council
Date: July 15, 2020
Case: ZTA-20-01
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Town of Southern Shores
Requested Action: Zoning Text Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Section 36-416, Planning Board Action and by adding Section 36-177, Temporary Emergency Zoning Accommodations.

ANALYSIS

At the May 19, 2020 Town Council meeting, the Council read and considered a letter from the President of the Outer Banks Restaurant Association requesting that Dare County and all of its municipalities consider allowing temporary accommodations for businesses impacted by the COVID-19 pandemic. Specifically, the letter requested allowing restaurant carts, kiosks, and food trucks on their operational premises, and allowing outdoor dining since Phase 2 of the Governor's Safer at Home Order restricts restaurants to 50% capacity. As a result of these requests and the circumstances involved, and after hearing recommendations from the Town Attorney, Council agreed that the Town's Declaration of a State of Emergency should be revised to allow for reasonable temporary accommodations in the Town's Zoning regulations as a short-term solution. Council also directed Town Staff to draft a Zoning Text Amendment (ZTA) to address the requests. During that discussion, the Town Council recognized that the Town Zoning Ordinance currently requires the Planning Board to have a minimum of 30 days to consider amendments to the Town Zoning Ordinance, which prevented the Town from being able to quickly address the requests in the form of a Zoning Text Amendment application, as recommended by the Town Attorney.

As directed by Council, Town Staff is proposing to amend the Southern Shores Town Code by amending Section 36-416, Planning Board Action and by adding Section 36-177, Temporary Emergency Zoning Accommodations. The proposed amendment to Section 36-416 removes the current requirement for the Planning Board to have a minimum of 30 days to consider amendments to the Town Zoning Ordinance. The proposed Section 36-177 allows for the Mayor to authorize the Town Manager or his designee to exercise their discretion to allow for reasonable temporary accommodations in Town Zoning regulations consistent with and furthering the purposes of a declared State of Emergency and in the interests of public health, safety, and welfare, including the economic prosperity of the community. Such temporary accommodations cannot extend beyond the termination of the State of Emergency or the end of the circumstances under the declaration causing the need for accommodations, whichever is shorter. All temporary accommodations must be ceased within five days of the expiration of the temporary accommodation.

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 the Town Planning Board unanimously (5-0) recommended approval of the proposed ZTA on July 2, 2020.

From: [Joe Heard](#)
To: [Donna Creef](#); [Michael Zehner](#); [Meredith Guns](#); [Rob Testerman](#); [Wes Haskett](#); [Melissa Dickerson](#)
Cc: [Chris Layton](#)
Subject: FW: COVID Recovery Ordinance Compatibility
Date: Monday, May 4, 2020 1:24:01 PM
Attachments: [image001.png](#)

OBX Planners,

I presume that all of our communities have received a similar request from the Outer Banks Restaurant Association (see email below). The key points appear to be:

- Temporarily allow the use of on-premise carts/kiosks/food trucks.
- Temporarily allow the establishment/expansion of outdoor food service areas.
- Expedite the approval processes for these allowances.
- Waive fees associated with these processes.

Have you had any discussions about if/how your community plans to address these requests?

Joe Heard, AICP
Director of Community Development
Town of Duck
P.O. Box 8369
Duck, NC 27949
252-255-1234



From: Chris Layton <CLayton@TownofDuck.com>
Sent: Sunday, May 3, 2020 5:01 PM
To: Joe Heard <JHeard@TownofDuck.com>; Sandy Cross <SCross@TownofDuck.com>
Subject: Fwd: COVID Recovery Ordinance Compatibility

Sent from my iPhone

Begin forwarded message:

From: Don Kingston <don.kingston@townofduck.com>

Date: May 3, 2020 at 3:36:14 PM EDT

To: Chris Layton <CLayton@TownofDuck.com>

Subject: Fwd: COVID Recovery Ordinance Compatibility

Sending again.

Sent from my iPhone

Begin forwarded message:

From: "dlewis coastalprovisionsmarket.com"

<dlewis@coastalprovisionsmarket.com>

Date: May 3, 2020 at 12:25:24 PM EDT

To: Don Kingston <don.kingston@townofduck.com>, Tom Bennett

<tbennett@southernshores-nc.gov>, Ben Cahoon

<ben.cahoon@nagsheadnc.gov>, Benjamin Sproul

<ben.sproul@kdhnc.com>, Gary Perry <gperry@kittyhawktown.net>,

Bobby Owens <owens@townofmanteo.com>

Cc: Sheila Davies <sheila.davies@darenc.com>, "dcboc@darenc.com"

<dcboc@darenc.com>

Subject: COVID Recovery Ordinance Compatibility

First, I would like to thank you all for your efforts on the Control Board in seeing our community through this current crisis. I'm sure it has been difficult balancing a variety of concerns and not being able to please everyone with these tough decisions.

I am reaching out to you all as head of the Outer Banks Restaurant Association (OBRA), a member of the NC Restaurant & Lodging Association's (NCRLA) Government Affairs Committee, and a member of the recently formed NCRLA COVID-19 Recovery Task Force. NCRLA has been in daily contact with Governor Cooper's office since the crisis began, and is now working with them on a reopening timeline and procedures, including the [NC Restaurant Promise](#) and COVID-19 training programs for restaurant personnel in conjunction with DHHS and NCSU Extension. Based on the task force's recent recommendation to the governor's office, we are expecting NC phase two to occur in late May, and will include among other things, restaurants opening at 50% capacity seating inside and on patios, and/or maintaining separation of tables/chairs to comply with social distancing expectations. This would be expected to last at least 4-6 weeks in a best case scenario. Regardless of the timeline, our industry expects that outdoor dining, takeout and curbside delivery options will continue to play a much larger role in our business model for a much longer time. And the fact of the matter is, without other support or stimulus options, many restaurants here and across the country will not make it through this crisis.

With that said, I ask that all our municipalities take a look at two areas in their zoning that may work against efforts to service our guests in options other than inside dining. First is the itinerant/mobile vending ordinances that prohibit the use of carts, kiosks, and food trucks in most towns. I fully understand and agree with the intent of these ordinances: to not allow just anyone set up shop anywhere. But, especially now, with the tremendous need to serve guests for takeout, I would ask that all towns create an exception for restaurants to be able to use their own carts/kiosks/trucks on their own operational premises.

The second area of concern is the outdoor dining ordinances, many of which set a limited amount of square footage based on things such as lot coverage, parking, etc...., but don't necessarily take into account the number of people. In our new era, I would ask that all towns consider modifications to those limits in order to allow restaurants to space their tables in compliance with social distancing standards while still maintaining a viable number of seats with those spacing expectations.

I understand that most of these asks require either a text amendment, a zoning variance, and/or a conditional use application, along with a fee and a timeline that may take 2-3 months for any movement. But during these extremely trying times, I would ask if there is any way to expedite the process, and the possibility of waving any fees that might be incurred. I would also be happy to have an OBRA member point person from each town work with all of you individually on these matters.

As many are having upcoming town council meetings shortly, I ask that the above be read in public comments, or added to the agenda, with exception of Town of Duck, as I have my own specific business interest there and will draft a separate version for their meeting on May 6.

Thank you again for your service to our community, and your consideration.

Dan Lewis

Daniel Lewis, CS, CSW
Chef/Owner, Coastal Provisions Restaurants
President, Outer Banks Restaurant Association
252-489-3171

From: [Benjamin M. Gallop](#)
To: [Wes Haskett](#)
Subject: RE: Outdoor Seating Request
Date: Thursday, May 14, 2020 4:04:33 PM

Wes,

We've reviewed the authority that some other local towns are relying upon to address waiving certain zoning provisions through emergency declarations. Unfortunately, we do not find support under the Emergency Management Act to be helpful and feel that the only way to avoid risk of a challenge to lack of enabling authority is to go through the zoning process to put in place a zoning ordinance amendment that allows for temporary zoning management only during declared emergencies. This could include a sunset clause or be permanent reusable for future emergencies if they arise. Of course, the timing of that process in Southern Shores could cause some unwanted delay to what is probably a reasonable request under the circumstances that was just never considered as a possibility in the past. While we feel there is significant legal risk that relying on the emergency declaration authority could be an issue for the Town if a neighbor challenges the activities being allowed contrary to the zoning ordinance, the practical risk might be lessened by using that method only in the short term while a zoning amendment is sent through the process.

If the Town wants to go forward with a zoning ordinance amendment, I would expect the Town would want the amendment to take a flexible approach, maybe giving discretion to the Mayor, manager or Planning Director (or their designee) after being authorized by the Mayor in his declaration of emergency. A "from the hip" example would be something like:

1. Typical preamble explaining zoning authority and emergency declaration authority;
2. Enactment of new zoning section: "In the event of an emergency declared by the Mayor pursuant to [code section] and/or NCGS 166A-19.22 the Mayor may authorize the Town Manager or his designee to allow for reasonable temporary accommodations in zoning regulations consistent with and furthering the purposes of the emergency declaration and in the interests of public health, safety and welfare. Such temporary accommodations shall not extend beyond the termination of the declaration of emergency, the end of the circumstances under the declaration causing the need for accommodations or beyond the timeframe set by the Mayor whichever is sooner. Such temporary accommodations may include, but shall not be limited to:
 - a. List more specific items boundaries of this authority, i.e. limitations on increases in floor area, no permanent structures, time limitations.

Let me know if you have any questions or further thoughts you want to discuss. I'm glad to help.

Thanks,

-Ben

Benjamin M. Gallop, Attorney at Law
Hornthal, Riley, Ellis & Maland, LLP

2502 S. Croatan Highway, Nags Head, NC 27959

T: (252) 441-0871

F: (252) 441-8822

E: bmgallop@hrem.com

W: <http://www.hrem.com>

From: Wes Haskett [mailto:whaskett@southernshores-nc.gov]

Sent: Thursday, May 14, 2020 2:46 PM

To: Benjamin M. Gallop <bmgallop@hrem.com>

Subject: Outdoor Seating Request

>>Warning! The source of this email is from outside of the firm.<<

Good afternoon, Ben. Council will be addressing a request from a local restaurant owner about allowing outdoor seating in a shopping center parking lot area during their meeting on Tuesday. I believe I've read that other Towns are doing this through Orders under their declared State of Emergencies. Is that the correct avenue?

Wes

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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 GENERAL APPLICATION FORM TOWN OF SOUTHERN SHORES, NC 27949

Date: 6/2/2020 Filing Fee: \$200 Receipt No. N/A Application No. ZTA-20-01

NOTE: The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36. Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- Chapter 30. Subdivisions-Town Code
- Chapter 36. Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District
- Chapter 36. Article IX. Planned Unit Development (PUD)
- Chapter 36. Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units *
- Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use
- Chapter 36. Article X. Section 36-303 Fees
- Chapter 36. Article X. Section 36-304-Vested Rights
- Chapter 36. Article XIV. Changes and Amendments

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant

Name Town of Southern Shores
 Address: 5375 N. Virginia Dare Trl
Southern Shores, NC 27949
 Phone 261-2394 Email whaskette@southernshores-nc.gov

Applicant's Representative (if any)

Name _____
 Agent, Contractor, Other (Circle one)
 Address _____
 Phone _____ Email _____

Property Involved: ___ Southern Shores ___ Martin's Point (Commercial only)

Address: _____ Zoning district _____

Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: ___ Site Plan Review ___ Final Site Plan Review ___ Conditional Use ___ Permitted Use
 ___ PUD (Planned Unit Development) ___ Subdivision Ordinance ___ Vested Right ___ Variance

Change To: ___ Zoning Map Zoning Ordinance

Whaskette
Signature

6-2-2020
Date

* Attach supporting documentation.



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

ZTA-20-01

AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Southern Shores (the “Town”) may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the density of population and the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the “Town’s Zoning Ordinance”) and has codified the same as Chapter 36 of the Town’s Code of Ordinances (the “Town Code”); and

WHEREAS, pursuant to applicable provisions of Chapter 12, Emergency Management, of the Town Code, and N.C.G.S. § 166A, the Town, through the Mayor, has the authority to declare the existence of a state of emergency; and

WHEREAS, the Town Council finds that it is necessary to enact provisions allowing for temporary emergency accommodations to zoning regulations in order to address the conditions which occur during declared states of emergency or resulting from such emergencies; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town’s Zoning Ordinance and Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses (“...”) shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

1
2 **PART I.** That subsection (b) of **Sec. 36-416. Planning board action.** be amended as
3 follows:
4

5 ~~(b) No proposal shall be considered by the planning board within 30 days from the filing~~
6 ~~of the proposal with the town. The planning board shall have 30 days within which to~~
7 ~~submit its recommendation to the council.~~ All petitions for a change in the zoning map
8 shall include a legal description for the property involved, the names and addresses of
9 current abutting property owners, and a copy of all or a portion of the applicable tax or
10 zoning map with the applicable property outlined. The planning board shall advise and
11 comment on whether the proposed amendment is consistent with the town comprehensive
12 land use plan and any other officially adopted town plan that is applicable. The planning
13 board shall provide a written recommendation to the town council that addresses plan
14 consistency and other matters as deemed appropriate by the planning board, but a comment
15 by the planning board that a proposed amendment is inconsistent with the town
16 comprehensive land use plan shall not preclude consideration or approval of the proposal
17 by the town council.
18

19 **PART II.** That **Sec. 36-177. Temporary Emergency Zoning Accommodations** be
20 added to the Town Code as follows:
21

22 In the event of an emergency declaration applicable within the Town's jurisdiction and
23 issued by the United States, the State of North Carolina, or Dare County, or the Town of
24 Southern Shores pursuant to N.C.G.S. § 166A-19.22, the Mayor may authorize the Town
25 Manager or his designee to exercise their discretion to allow for reasonable temporary
26 accommodations in town zoning regulations consistent with and furthering the purposes of
27 the emergency declaration and in the interests of public health, safety and welfare,
28 including the economic prosperity of the community. Such temporary accommodations
29 shall not extend beyond the termination of the declaration of emergency or the end of the
30 circumstances under the declaration causing the need for accommodations whichever is
31 shorter. All temporary accommodations must be ceased within five (5) days of the
32 expiration of the temporary accommodation. The official designated to manage requests
33 for accommodations may adopt reasonable procedures and requirements to apply for,
34 analyze and provide temporary emergency permits for the accommodations. Temporary
35 emergency accommodations shall not be deemed to constitute a change or modification of
36 the underlying use of the applicable property, to affect any existing nonconforming
37 situations on the property or to create any vested rights. Violation of the provisions of a
38 temporary emergency accommodations permit shall constitute a zoning violation.
39

40 **ARTICLE IV. Statement of Consistency with Comprehensive Plan and**
41 **Reasonableness.**
42

43 The Town's adoption of this ordinance amendment is consistent with the Town's adopted
44 comprehensive zoning ordinance, land use plan and any other officially adopted plan that
45 is applicable. For all of the above-stated reasons and any additional reasons supporting the

1 Town's adoption of this ordinance amendment, the Town considers the adoption of this
2 ordinance amendment to be reasonable and in the public interest.

3

4 **ARTICLE V. Severability.**

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6 All Town ordinances or parts of ordinances in conflict with this ordinance amendment are
7 hereby repealed. Should a court of competent jurisdiction declare this ordinance
8 amendment or any part thereof to be invalid, such decision shall not affect the remaining
9 provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the
10 Town of Southern Shores, North Carolina which shall remain in full force and effect.

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12 **ARTICLE VI. Effective Date.**

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14 This ordinance amendment shall be in full force and effect from and after the ____ day of
15 _____, 2020.

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Tom Bennett, Mayor

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Town Clerk

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APPROVED AS TO FORM:

Town Attorney

Date adopted:

Motion to adopt by Councilmember:

Motion seconded by Councilmember:

Vote: ___AYES ___NAYS



Agenda Item Summary Sheet

Date: July 21, 2020

Item #: 3 - C

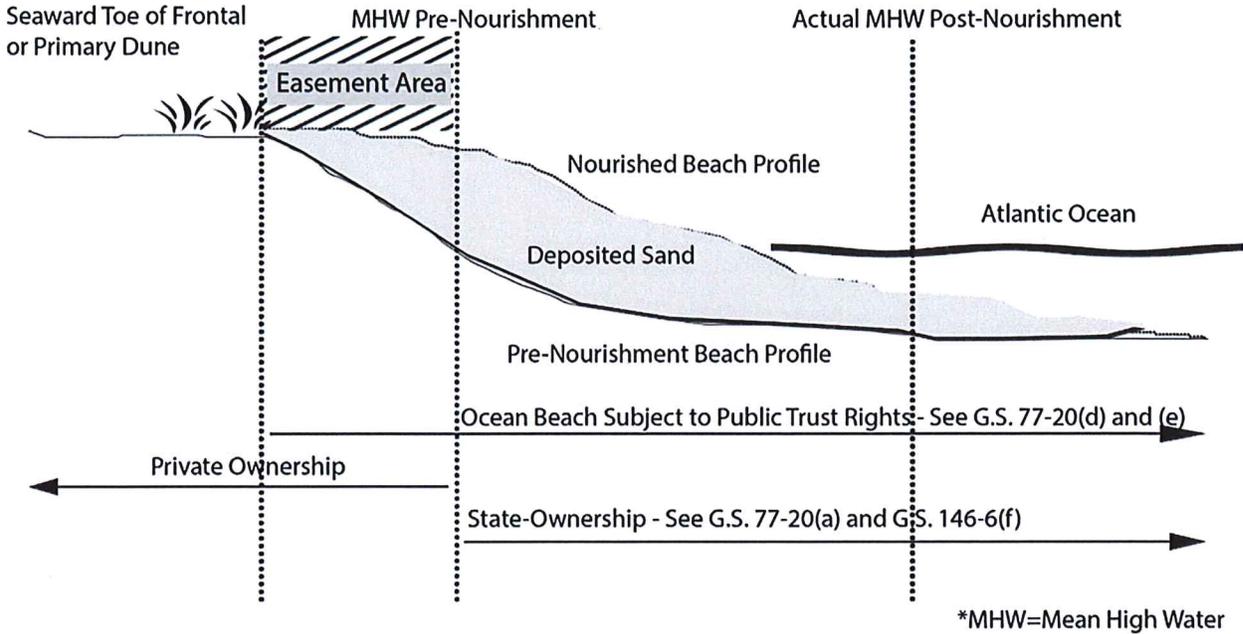
Item Title: Resolution 2020-07-03 (beach nourishment legislation resolution)

Item Summary: Prior to the initiation of the beach nourishment project, the Town is required to obtain easements in order to perform work in the required construction activity area above the mean high water line (MHW) within project area.

The attached resolution, if approved, would request that the North Carolina General Assembly add Southern Shores to already established legislation that allows the Town to acquire the right to use a portion of the privately-owned beach for the construction of its beach nourishment project. The Town is seeking only the authority to acquire easements for the project. Like the Town of Duck, this request would exclude the town from "establishing access for the public to public trust beaches and appurtenant parking areas". The easements are not for the purpose of acquiring public beach access in the project area.

Easements allow for the temporary construction activities necessary to build the beach. An easement allows the Town to undertake the nourishment project. This easement will enable the Town to move more quickly to protect property in the future when needed. The easement will only apply to the oceanfront part of property that is adjacent to the state-owned ocean beach and already subject to public trust rights under North Carolina law. It does not change the boundaries of property, convey property to the Town, or change the ability for property owners to access or use their property as they currently do, except in limited instances during the construction phase of the project. Property owners are still allowed to maintain private access to the beach from other portions of their property, it remains privately-owned property.

The diagram below depicts a typical easement area.



Requested Action: Adopt the attached resolution requesting the North Carolina General Assembly to consider adoption of legislation authorizing the Town to acquire the use of property for the purpose of constructing a beach nourishment project.



Town of Southern Shores

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RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA REQUESTING THE NORTH CAROLINA GENERAL ASSEMBLY TO CONSIDER ADOPTION OF CERTAIN LEGISLATION AUTHORIZING THE TOWN TO ACQUIRE PROPERTY FOR THE PURPOSES STATED IN G.S. 40A-3(b)(10) AND TO BE ABLE TO MAKE SUCH ACQUISITIONS VIA THE PROCEDURES ALLOWED BY G.S. 40A-42(a)(2)

(Resolution #2020-07-03)

WHEREAS, the Town of Southern Shores (the "Town") is located adjacent to the Atlantic Ocean; and

WHEREAS, due to erosion, both constant and sudden, the Town may at some point in the future desire or require to construct beach erosion control or flood and hurricane protection works, including beach renourishment upon the ocean beaches located within the Town (collectively "Beach Protection"); and

WHEREAS, the Town may in the future engage in or participate with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving Beach Protection including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment; and

WHEREAS, the Town finds that it may need to obtain property such as easements by purchase, gift or condemnation to execute a future Beach Protection project; and

WHEREAS, the Town finds that the timeliness of obtaining property via easements or otherwise for Beach Protection could affect the implementation of a future Beach Protection project; and

WHEREAS, the Town finds that it is in the interest of the public's health, safety, morals and general welfare that the Town have the option in the future to acquire property for the purposes of a beach nourishment project and to be able to do so via the condemnation procedures allowed for by G.S. 40A-42(a)(2).

NOW, THEREFORE BE IT RESOLVED, the Town Council hereby respectfully requests that the North Carolina General Assembly consider and pass the attached proposed act entitled as follows:

“AN ACT TO ALLOW THE TOWN OF SOUTHERN SHORES TO EXERCISE THE POWER OF EMINENT DOMAIN FOR PURPOSES OF ENGAGING IN BEACH EROSION CONTROL AND FLOOD AND HURRICANE PROTECTION WORKS.”

Adopted this ____ day of _____, 2020.

Tom Bennett, Mayor

Attest:

Sheila Kane, Town Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2020

SESSION LAW 2020-__
_____ BILL _____

AN ACT TO ALLOW THE TOWN OF SOUTHERN SHORES TO EXERCISE THE POWER OF EMINENT DOMAIN FOR PURPOSES OF ENGAGING IN BEACH EROSION CONTROL AND FLOOD AND HURRICANE PROTECTION WORKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-3(b1) is amended by modifying the last two sentences to read:

...

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island. This subsection, excluding subdivision (11) of this subsection, applies to the Towns of Duck and Southern Shores.

SECTION 2. G.S. 40A-42(a)(2) is amended by modifying the last sentence to read:

...

This subdivision applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Southern Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the ____ day of _____, 20__.

President of the Senate

Speaker of the House of Representatives