



Town of Southern Shores

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2011-04-01

WIND GENERATION FACILITIES ORDINANCE AMENDING THE ZONING ORDINANCE OF THE TOWN OF SOUTHERN SHORES

ARTICLE I. Purpose(s) and Authority.

WHEREAS, the Town of Southern Shores (the “Town”) may enact and amend ordinances to protect the health, safety, and welfare of its citizens under North Carolina General Statutes § 160A-174; and

WHEREAS, the Town may enact and amend ordinances regulating the zoning and development of land within its jurisdiction under North Carolina General Statutes § 160A-381; and

WHEREAS, the Town Council for the Town of Southern Shores (the “Town Council”) finds that Wind Energy is an abundant, renewable, and nonpolluting energy resource that can be converted into electricity for residential and commercial use; and

WHEREAS, the Town Council further finds that Wind Energy Facilities constructed for the purpose of generating electricity may potentially endanger the citizens and visitors of the Town or damage the aesthetics and historical nature of the Town unless regulated; and

WHEREAS, the Town Council finds that it is in the interest of the public's health, safety, and general welfare that the Town's Zoning Ordinance be amended as stated below.

ARTICLE II. Construction.

For purposes of this Ordinance, 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 a “...” 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 that the Town's Code of Ordinances shall be amended as follows:

Part I. That Chapter 36, Section 36-57 be amended as follows:

Sec. 36-57. Definition of specific terms and words.

~~Windmills and wind driven electric generators are excluded from the definition of accessory use.~~

PART II. That Chapter 36, Section 36-170 be amended as follows:

Sec. 36-170. Electrical and communication service.

All electrical, telephone and TV distribution lines and all conduits used for the distribution of such signals, located within the town, shall be placed underground from the point of separation from the transmission or trunk line to the structure of the ultimate user. Existing distribution lines that are in place overhead on the effective date of this regulation may be extended only if placed underground. Transformers and enclosures containing switches, meters, capacitors, etc., may be pad mounted as an exception to the aforementioned. ~~Windmills and wind driven generators used for the generation of electric power are prohibited in all zoning districts.~~

PART III. That Chapter 36, Section 36-202 be amended as follows:

(c) *Conditional uses permitted.* The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the Town Council as provided in Article X of this Chapter:

(7) Wind Generation Facility, in compliance with the requirements of Section 36-176.

PART IV. That Chapter 36, Section 36-203 be amended as follows:

(c) *Conditional uses permitted.* The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the Town Council as provided in Article X of this Chapter:

(1) Wind Generation Facility, in compliance with the requirements of Section 36-176.

PART V. That Chapter 36, Section 36-204 be amended as follows:

(c) *Conditional uses permitted.* The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the Town Council as provided in Article X of this Chapter:

(4) Wind Generation Facility, in compliance with the requirements of Section 36-176.

PART VI. That Chapter 36, Section 36-205 be amended as follows:

(c) *Conditional uses permitted.* The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the Town Council as provided in Article X of this Chapter:

(8) Wind Generation Facility in compliance with the requirements of Section 36-176.

PART VII. That Chapter 36, Section 36-206 be amended as follows:

(c) *Conditional uses permitted.* The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the Town Council as provided in Article X of this Chapter:

(3) Wind Generation Facility in compliance with the requirements of Section 36-176.

PART VIII. That Chapter 36, Section 36-207 be amended as follows:

(c) *Conditional uses permitted.* The following uses shall be permitted as a conditional use, subject to the requirements of this district; shall be subject to conditions and modifications relating to impacts on adjacent properties, transportation and transportation systems, transportation interconnectivity, stormwater, utilities and telecommunication facilities (including capacity), vegetation and other elements of the natural environment, noise, hours of operation, and other factors that the Town Council finds applicable; and additional regulations and requirements imposed by the Town Council, as provided in Article X of this Chapter:

(9) Wind Generation Facility in compliance with the requirements of Section 36-176.

PART IX. That Chapter 36, Section 36-176 be added as follows:

Sec. 36-176. Wind Energy Facilities .

(a) Definitions. The following definitions shall apply to all portions of the Town Code relating to the use or construction of Wind Generation Facilities within the Town:

(1) Applicant is the person or entity filing an application under this Ordinance.

(2) Dwelling, Single-Family is a detached building designed for or occupied exclusively by one family.

(3) Facility Owner is the entity or entities having controlling or majority equity interest in the Wind Energy Facility, including their respective successors and assigns.

(4) Occupied Building is a residence, school, hospital, church, public library or other buildings used for public gathering that is occupied or in use when the permit application is submitted.

(5) Public Road is a full passage right-of-way.

(6) Structure is anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground.

(7) Vegetation Line means the first line of stable natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. It is generally located at, or immediately oceanward of, the seaward toe of the frontal dune and/or erosion escarpment. In areas where there is no stable natural vegetation present, this line shall be established by connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line.

(8) Wind Generation Facility is a single system designed to supplement other electricity sources as an accessory use to a structure, wherein the power generated is used primarily for on-site consumption. The facility may consist of a wind turbine, support structure, foundation, battery bank, and transformer. The support structure must be a self supporting monopole and may be free standing or attached to a structure.

(9) Wind Power is the conversion of wind energy into another form of energy.

(10) Wind Turbine or windmill is a wind energy conversion system that converts wind energy into electricity.

(11) Wind Turbine Height is the distance measured from the lowest adjacent grade to the highest point of the structure, including any attachments, such as a turbine rotor, or tip of the turbine blade when it reaches its highest elevation.

(b) Permit Requirements.

(1) Wind Generation Facilities shall only be permitted as follows:

(a) Wind Generation Facility as an accessory use to a structure in the RS-1, RS-8, RS-10, R-1, G&I, and C Zoning Districts.

(i) No more than one free standing Wind Generation Facility as an accessory use to a structure; or

(ii) No more than one attached Wind Generation Facility as an accessory use to a structure.

(b) For properties that are divided by a street or canal and are under the same ownership, the Wind Generation Facility shall be located on the same side of the street or canal which the structure receiving power from the Wind Generation Facility is located.

(2) No Wind Generation Facility shall be constructed unless a permit has been issued to the Facility Owner that approves construction of the facility under this Ordinance.

(3) Any physical modification to an existing and permitted Wind Generation Facility that materially alters the size and/or type of Wind Turbine or other equipment shall require a permit modification under this Ordinance. Like-kind replacements shall not require a permit modification.

(c) Dimensional and Design Requirements.

(1) Height Requirements.

(a) Wind Generation Facilities shall observe a maximum height of forty five (45) feet measured from the lowest adjacent grade to the highest point of the facility, including any attachments, such as a turbine rotor, or tip of the turbine blade when it reaches its highest elevation.

(2) Setback Requirements.

(a) The base of all Wind Generation Facilities shall be located at least one (1) foot from the nearest property line for every one (1) foot of proposed height.

(i) For rear setback requirements for oceanfront properties, the base of the Wind Generation Facility shall be located at least one (1) foot from the Vegetation Line for every one (1) foot of proposed height.

(3) Noise and Vibration Requirements.

(a) Noise shall be in compliance with the standards established in Section 22-3 of the Town Code.

(b) No vibration shall be detectable at adjacent property lines.

(d) Installation.

(1) Free standing Wind Generation Facilities shall be a self supporting monopole; and installation and design of the Wind Generation Facility shall be site specific and conform to applicable industry standards, including those of the American National Standards Institute.

(2) All structural, electrical, and mechanical components of the Wind Generation Facility shall conform to relevant and applicable Local, State, and National Codes including the N.C. Building Code and National Electric Code.

(3) All Wind Generation Facilities shall be constructed to withstand sustained winds of at least one hundred thirty (130) miles per hour.

(4) All Wind Generation Facilities shall be equipped with a braking device and power disconnect to keep the rotor stationary while the turbine is being inspected and/or maintained. The braking device shall also be used for winds exceeding optimal speeds as defined by the manufacturer.

(5) All Wind Generation Facilities shall be constructed according to the local electric service provider's standards for power disconnect and grid connections.

(6) The visual appearance of Wind Generation Facilities shall at a minimum:

(a) Be finished with a neutral color (not white);

(b) Not be artificially lighted; and

(c) Not display advertising (including flags, streamers or decorative items), except for identification of the turbine manufacturer or facility owner. One identification sign which identifies the turbine manufacturer or facility owner may be attached to the Wind Generation Facility and shall not exceed one (1) square foot in total area at a height not to exceed six (6) feet.

(e) Application Requirements.

(1) An application shall not be deemed complete until all of the following required items have been submitted:

(a) A narrative describing the proposed Wind Generation Facility, including an overview of the project;

(b) The proposed total rated capacity of the Wind Generation Facility;

(c) Documentation signed and sealed by the manufacturer and a North Carolina registered engineer that the Wind Generation Facility can

withstand sustained winds of at least one hundred thirty (130) miles per hour;

(d) The proposed representative type and height of the wind turbine to be constructed; including its generating capacity, dimensions, and respective manufacturers, and a description of ancillary facilities;

(e) A site plan showing the location of all structures and properties, demonstrating compliance with the applicable setback requirements;

(f) Certification of compliance with applicable Local, State, and Federal regulations;

(g) Other relevant information as may be reasonably requested by the Town of Southern Shores to ensure compliance with the requirements of this Section;

(h) Signature of the applicant.

(2) Throughout the permit process, the applicant shall promptly notify the Town of any proposed changes to the information contained in the permit application that would alter the project.

(3) Changes to the approved application that do not materially alter the initial site plan may be approved administratively.

(4) The Town Council may place reasonable conditions on the issuance of a Conditional Use Permit pursuant to this Section regarding public safety, land use, or zoning issues, including, but not limited to, aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

(f) *Validity of Permits.* A Conditional Use Permit issued pursuant to this section shall expire if the improvements permitted are not completely constructed within twenty four (24) months of the date of the approval of a building permit.

ARTICLE IV. Severability.

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

ARTICLE V. Effective Date.

This ordinance shall be in full force and effective from and after the 5th day of April, 2011.


ATTEST SEAL
Carrie Gorder
Town Clerk
Approved as to form:

Hal Penny
Mayor

Date: 4/5/11

Vote: 4 Ayes 1 Nayes

John M. [Signature]
Town Attorney