Town of Southern Shores
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Ordinance-2018-06-03

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 N.C.G.S. § 160A-371 et seq. the Town may enact and amend ordinances regulating the subdivision of land within its territorial jurisdiction; and

WHEREAS, prior to the incorporation of the Town, many lots were created within its jurisdiction that have become nonconforming due to their lack of sufficient lot width and area. Over time the character and density of the Town have been developed such that many of these smaller nonconforming lots were built upon as if they were combined with one another. In recent years, the Town has seen a trend towards redevelopment of such informally combined parcels to the ends of breaking them back into the smaller nonconforming lots and building dwellings upon the nonconforming lots. Such redevelopment is inconsistent with the low density character of the Town; and

WHEREAS, the Town desires to manage the development of the Town in a manner which maintains the low density character of the Town and requires formal recombination of lots to current Town standards toward a goal of reducing the existence of nonconforming lots. Similarly, the Town desires to allow for existing nonconforming lots that are not otherwise adjacent to lots owned by the same person or entity to be developed rather than vacant and unusable; 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:

PART I. That subsection (a) of **Sec. 36-132 Regulation of structures and uses** be replaced in its entirety with the following:

(a) *Nonconforming lots of record.*

(1) In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on any single lot not under the same ownership as any adjacent lot and which met all legal requirements at the time of its creation and recording in the Dare County public registry. All applicable dimensional requirements other than lot area and lot width shall be met for development or redevelopment of such a lot except that a lot having a lot width of fifty (50) feet or less may use a side yard setback of twelve (12) feet.

(2) If any of the following situations apply, all adjacent lots under the same ownership shall be recombined into: (i) a single lot which may or may not meet the minimum requirements for the district in which such lots are located; or (ii) multiple lots which all meet the minimum requirements for the district in which such lots are located:

a. Development is proposed upon land under the same ownership which includes one or more nonconforming lots adjacent to one or more other lots under the same ownership;

b. Demolition or redevelopment exceeding 50% of an existing structure's value is proposed and any portion of the existing structure or associated use is currently or has been within the previous seven (7) years located upon or occurring on two or more lots under the same ownership, as measured from the time of application;

c. Development is proposed of a new structure or use to be located on two or more lots under the same ownership;

d. Prior to the sale or transfer of land when any portion of the land being sold or transferred was a parcel or part of a parcel of land upon which an

existing structure or associated use is currently or has been within the previous seven (7) years located upon or occurring on two or more lots under the same ownership, as measured from the time of application; or

e. Prior to the sale or transfer of land including a nonconforming lot or lots adjacent to one or more other lots under the same ownership;

A plat prepared by a North Carolina licensed surveyor showing the recombination shall be shall be recorded in the Dare County public registry, and a copy of the recorded plat shall be provided to the Town prior to the issuance of a zoning or building permit for development or redevelopment upon any of the newly created lots. Lots created by a recombination required by this section shall be deemed to equal or exceed the standards of the Town under Chapter 30, and are exempt from the subdivision process under Chapter 30.

(3) For purposes of this subsection (a), the term "same ownership" shall be construed broadly to effectuate the reduction of nonconforming lots within the Town. Land and lots under the same ownership shall include, but not be limited to, any of the following or any combination of the following:

a. A lot is owned, in whole or in part, by an individual and another lot is owned by the same individual or by an Affiliate of the same individual; and/or,

b. A lot is owned, in whole or in part, by a legal entity and another lot is owned by the same legal entity or by an Affiliate of the same legal entity.

(4) For purposes of this subsection (a), the following definitions apply:

a. An "Affiliate" of an owner shall mean:

(i) In the case of an individual owner, a family member of the owner, or a legal entity controlled by the owner.

(ii) In the case of a legal entity owner, an individual who controls the legal entity, or another legal entity controlled by the owner.

b. "Controlled" or "controls" shall mean the power, by ownership, operation of law or contract, whether exercised or not, directly or indirectly, actually or effectively, to operate, supervise, or manage a legal entity, or to appoint or elect the management of the legal entity, or to otherwise direct the operation, supervision or management of the legal entity.

c. "Family member" of an owner shall mean the owner's spouse, lineal descendants, siblings and parents whether related by blood or marriage.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

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

ARTICLE VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the 5th day of September, 2018.

Thomas G. Bennett, Mayor

ATTEST:

Town Clerk

TOWN OF SOUTHERN SHORES SEAL NC

APPROVED AS TO FORM:

Town Attorney

Date adopted: 9/5/18

Motion to adopt by Councilmember: Councilman Connors

Motion seconded by Councilmember: Mayor Bennett

VOTE: 4-1

Vote:___AYES___NAYS