



# Town of Southern Shores

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

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[www.southernshores-nc.gov](http://www.southernshores-nc.gov)

## MEETING MINUTES

PLANNING BOARD-APRIL 19, 2021, 5:30 P.M.

LOCATION: PITTS CENTER-5377 N VIRGINIA DARE TRAIL, SOUTHERN SHORES, NC 27949

### I. CALL TO ORDER:

Chairperson Andy Ward called the meeting to order at 5:30 pm. Planning Board Members Lynda Burek, Ed Lawler, Robert McClendon, Tony DiBernardo (Vice Chairperson), Andy Ward (Chairperson), John Finelli (ETJ) representative, Deputy Town Manager/Planning Director Wes Haskett, and Town Clerk Sheila Kane were present. Alternate Member Jan Collins was present but did not vote.

### II. PLEDGE OF ALLEGIANCE:

Chairperson Ward led the Pledge of Allegiance.

### III. APPROVAL OF AGENDA:

Vice Chairperson DiBernardo motioned to approve the agenda. Planning Board Member Lawler seconded the motion. The motion passed unanimously (5-0).

### IV. PUBLIC COMMENT:

None

### V. OLD BUSINESS

### VI. NEW BUSINESS

#### TCA-21-03, SUBDIVISIONS

Amendment of the Town Subdivision Ordinance by amending Section 30-2, Definitions; Section 30-43, Alternatives to Final Plat Approval; and addition of Section 30-44, Expedited Review.

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments to Chapter 30, Subdivisions are a result of State Law changes. The first is an amendment as a result of S.L. 2017-10 to the current definition of Subdivision which establishes an exemption for the division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes. The second amendment is a replacement of Section 30-43, Alternatives to Final Plat Approval as a

result of S.L. 2015-187 that addresses performance guarantees. The third amendment is the addition of Section 30-44, Expedited Review which is a result of S.L. 2017-10 that establishes an expedited review of qualifying subdivisions that can be reviewed and approved by the Zoning Administrator.

The Town's currently adopted Land Use Plan contains the following Policy that is applicable to the proposed TCA:

- 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.

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed TCA.

Planning Director Haskett stated there are two minor changes.

1. Page 5 of 6, line 11, instead of the reference to subsection 2, it should state section 30-2.
2. Line 29, remove the "c"

Planning Director Haskett also stated Mr. Finelli (ETJ) submitted comment which stated this is unlikely to involve Martin's Point, under section C, 30-44 an expedited review, he asked should it be less than five acres, or greater than five acres? Mr. Haskett stated it is greater than five acres, straight from the statute.

Vice Chairperson DiBernardo stated it is a state mandated change and had no issue.

**MOTION** made by Vice Chairperson DiBernardo to approve TCA-21-03 Subdivisions as written, Seconded by Planning Board Member Burek. Motion passed unanimously (5-0).

[Clerk's Note: Planning Board ETJ Representative John Finelli was in attendance and voted "aye"; including this vote is unanimous 6-0]

Vice Chairperson DiBernardo **amended his motion** to approve TCA-21-03 as amended with the changes, Seconded by Planning Board Member Burek. Motion passed unanimously (5-0).

[Clerk's Note: Planning Board ETJ Representative John Finelli was in attendance and voted on all motions, all motions were recorded as an "aye" vote; including this vote is unanimously 6-0]

#### TCA-21-04, AO ZONE RFPE

Amendment of the Town Flood Damage Prevention Ordinance by amending Section 16-2, Definitions.

The Town is currently in the process of preparing for a CRS (Community Rating System) cycle visit that typically occurs every five years. The Town's last cycle visit was in 2015 and the Town's

current CRS rating is a Class 6 which allows for a 20% discount on flood policies in the Town. The reviewing agency recently brought to our attention that there is an issue with our current flood ordinance that would limit us to a Class 9 community which are only allowed a 5% discount on flood policies. The issue is an addendum to the CRS requirements that went into effect on January 1, 2021 that requires communities to have at least one foot of freeboard in flood ordinances in order to qualify as a Class 8 or better community. For AE and VE flood zones, our current elevation requirements satisfy the new CRS requirement, but our AO flood zone elevation requirements do not. Town Staff has confirmed with the reviewing agency that the proposed amendment would satisfy the new freeboard requirement and make us eligible to maintain or improve our current CRS rating.

The Town's currently adopted Land Use Plan contains the following Policy and Action Item that are applicable to the proposed TCA:

- Policy 18: Minimize and mitigate potential damages to individual properties from natural hazards.
- Action Item 18-b: While considering resources needed, seek the most points available from the Community Rating System to keep flood insurance costs to the citizens as low as possible.

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed TCA.

Planning Director Wes Haskett stated no substantial changes are being made, strictly CRS requirements.

**MOTION** made by Planning Board Member Lawler to approve TCA-21-04 AO Zone RFPE as written, Seconded by Vice Chairperson DiBernardo. Motion passed unanimously (5-0). [Clerk's Note: Planning Board ETJ Representative John Finelli was in attendance and voted "aye"; including this vote is unanimous 6-0]

### **ZTA-21-01, MINIMUM LIVING SPACE AND PROTEST PETITIONS**

Amendment of the Town Zoning Ordinance by amending Section 36-202, RS-1 Single Family Residential District; Section 36-203, RS-8, Multifamily Residential District; 36-204, RS-10 Residential District; Section 36-205, R-1 Low-density Residential District; and Chapter 36, Article XIV, Changes and Amendments.

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments to Section 36-202, RS-1 Single Family Residential District; Section 36-203, RS-8, Multifamily Residential District; 36-204, RS-10 Residential District; Section 36-205, R-1 Low-density Residential District; and Chapter 36, Article XIV, Changes and Amendments are a result of State Law changes. The first proposed amendment is an amendment as a result of S.L. 2019-174 which states that zoning ordinances may not set a minimum square footage of any structures



subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings. The proposed amendment to Chapter 36, Article XIV, Changes and Amendments is an amendment as a result of S.L. 2015-160 which eliminated protest petitions.

The Town's currently adopted Land Use Plan contains the following Policy and 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.

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed ZTA. 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.

Planning Director Wes Haskett's overview stated this is a result of state law changes. Southern Shores ordinance says there is a minimum living space of 1000 square feet, this is not consistent with statute and will need to be removed from each of the applicable sections that apply to the residential zoning districts in the Town. That is from session law 2019-174. The proposed amendment to article 14 is also a result of state law which eliminates protest petitions, which is related to map changes. Currently as it is worded in section 36-415 a petition could be submitted opposing a change in the zoning classification of properties and there are requirements that went with it. The change in state law took away that ability, staff is proposing to delete it in its entirety.

Planning Director Haskett answered Chairperson Ward's inquiry that he has not had a protest petitions as they are addressed in this ordinance and has only had one rezoning since 2009.

Chairperson Ward stated it is a state required change, our hands are tied.

**MOTION** made by Vice Chairperson DiBernardo to approve ZTA-21-01, Minimum Living Space and Protest Petitions as written, Seconded by Planning Board Member Burek. Motion passed unanimously (5-0).

#### **ZTA-21-02, EAVES AND TEMPORARY HEALTHCARE STRUCTURES**

Amendment of the Town Zoning Ordinance by amending Section 36-57, Definition of Specific Terms and Words and Section 36-168, Temporary Uses.

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for

review by the Planning Board and the Town Council for future consideration. The proposed amendments to Section 36-57, Definition of Specific Terms and Words are a result of direction from the Planning Board at the March 15, 2021 Planning Board meeting. The proposed amendments allow the outermost three feet of eaves to encroach yard (setback) requirements on all sides of a structure instead of only from the building setback line. The proposed amendments to Section 36-168, Temporary Uses are a result of State Law changes from S.L. 2014-94 which establishes temporary health care structures as permitted accessory uses in any single-family residential zoning district on lots zoned for single-family detached dwellings.

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.

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed ZTA. 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.

#### Part I Eaves

Chairperson Ward stated he would like to have the board table Section 36-57 line 44 through line 12 of the following page (eaves), stating it deserves more work on the boards part and further consideration. He would like to move ahead on the state required language changes (Section 36-168 Temporary Uses). The board members agreed by consensus and made a motion to table.

Planning Director Wes Haskett recommended one change:

1. Page 2, line 36, strike the word sewer and replace with septic/private wastewater system.

**MOTION** made by Vice Chairperson DiBernardo tabled consideration to the proposed amendments to Part 1, Section 36-57 in ZTA 21-02, with respect to eaves and yards until the Planning Board's May 17 2021 meeting, Seconded by Planning Board Member Lawler. Motion passed unanimously (5-0).

[Clerk's Note: Planning Board ETJ Representative John Finelli was in attendance and voted "aye"; including this vote is unanimous 6-0]

#### Part II Temporary Healthcare Structures

Planning Board Member Lawler asked if these were trailers.



Planning Director Haskett stated a temporary health care structure is one that is transportable and primarily assembled at a location other than the site of installation.

Vice Chairperson DiBernardo stated it is in conflict with the manufactured homes if you allow a trailer.

Planning Board Member McClendon stated this is for a very specific purpose, and nothing to do with a mobile home.

Planning Board Member Collins stated this structure could be up for years. When a permit is pulled, they could be provided a set of aesthetic requirements.

Planning Board Member (ETJ) Finelli stated if you want to be more liberal by allowing the caregiver to be someone other than a relative, I think you can do that, you are not conflicting with the ordinance. If you start putting conditions on here to make it more appealing, that is when I think you need an attorney's input about how far you can go before you cross the line.

Vice Chairperson DiBernardo stated we should recommend council seeks legal review and clarification.

Planning Board Member McClendon stated he does not want the Town Attorney to think the board is dodging the zoning text amendment.

Planning Director Wes Haskett stated it cannot be stricter than statute.

**Motion** to send ZTA 21-02 to the Town Attorney for legal review, Seconded by Planning Board Member Burek. After further consideration and discussion, Vice Chairperson DiBernardo withdrew his motion.

Vice Chairperson DiBernardo recommended tabling the whole ZTA. He had an issue with the relationship wording, as it should be a medical professional.

Planning Board Member McClendon once again stated this was for a specific purpose and intent is to be sympathetic for the family with the issue.

Chairperson Ward stated all the points are valid and asked what would happen if the board did not recommend it.

Planning Director Haskett stated if it is in our ordinance and someone puts one in, then it becomes a zoning violation. That person can then take it to superior court and the court will not look fondly upon the Town. We would we opening ourselves up for risk.

**Motion** made by Vice Chairperson DiBernardo to approve ZTA-21-02, Part II, as amended with the conditions.

1. item number 11, page 2, must meet all applicable local, state, and federal requirements
2. line 36, is connected with water and sewer (strike sewer), and replace with

septic/private wastewater systems.

3. under need and relationship add, or a licensed healthcare professional [should be listed first in the relationship list-before individual]

4. Under permit conditions, add all local, state, and federal requirements.

Motion seconded by Planning Board Member Burek. The motion passed unanimously (5-0).

### ZTA-21-03, MANUFACTURED HOMES

Amendment of the Town Zoning Ordinance by amending Section 36-203, R-1 Low Density Residential District and adding Section 36-177, Manufactured Homes.

At the March 2, 2021, Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments in new Section 36-177, Manufactured Homes are a result of State Law changes found in N.C.G.S. 160D-910 that establishes that manufactured housing offers affordable housing opportunities for low- and moderate-income residents of this State who could not otherwise afford to own their own home. A copy of N.C.G.S. 160D-910 is attached for reference. The proposed amendment to Section 36-203, R-1 Low Density Residential District establishes Manufactured Homes as a Conditional Use in the R-1 Low Density Residential District.

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.

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed ZTA. 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.

Chairperson Ward stated the state requirement does not have piling language and he would be in favor of leaving the wording as written.

Planning Director Haskett stated the only state requirements are in the staff report and the proposed standards is language from CodeWright. The Planning Board could make changes to the standards/aesthetic requirements. The aesthetics as proposed are strict.

The Planning Board discussed few amendments to strike or add.



**MOTION** made by Vice Chairperson DiBernardo to approve ZTA-21-03 with applicable amendments as noted,

1. Item #8, page 2, strike the word firmly and replace with “as attached to the primary structure and anchored in accordance with local coastal building regulations”. Could also be stated “in accordance with all applicable local, state, and federal requirements”.
2. Item #12, page three, line one, no less than six inches or greater than the current existing eave ordinance.
3. Item #13, “shall comply with flood damage requirements”.
4. Item #7 “with the exception of Temporary Healthcare Structures”

The motion was seconded by Planning Board Member Burek. Motion passed unanimously (5-0).

### **ZTA-21-04, PROHIBITED USES**

Amendment of the Town Zoning Ordinance by adding Section 36-209, Prohibited Uses in all Districts.

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments in new Section 36-209, Prohibited Uses in all Districts are a result of NC Court of Appeals rulings regarding the need to identify prohibited uses. The proposed amendments include a list of prohibited uses, how to address unlisted uses, and rejection of proposals for uses that are not clearly prohibited.

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.

Town Staff has determined that the proposed amendments are consistent with the Town’s currently adopted Land Use Plan and Town Staff recommends approval of the proposed ZTA. 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.

Planning Director Wes Haskett stated if the board moves forward with recommendation of ZTA-21-04, another suggested revision would be to also amend section 36-89 by inserting the word prohibited after the word permitted and then striking out the second sentence in 36-89(b) that



states “any use not specifically designated as a permitted or conditional use shall be deemed to be prohibited” which is obviously inconsistent.

Planning Director Wes Haskett also stated the list of uses were created by a combination of CodeWright suggestions, some staff, and other municipalities.

The Planning Board recommended the following amendments to prohibited uses:

1. remove funeral homes
2. remove produce stands
3. strike ~~mental~~ hospitals
4. remove microbreweries
5. Motor vehicle strike ~~sales~~, add dealership
6. Remove transit stop
7. Parking standards for nursing homes

Planning Director Wes Haskett stated on page 3 line 21, “consistency with the adopted vision statement and policies of the comprehensive plan”, he recommended striking the statement and inserting the Town’s Land Use Plan. The Planning Board agreed by consensus.

**MOTION** made by Vice Chairperson DiBernardo to approve ZTA-21-04 with suggested amendments discussed, Seconded by Planning Board Member Burek. Motion passed unanimously (5-0).

[Clerk’s Note: Planning Board ETJ Representative John Finelli was in attendance and voted “aye”; including this vote is unanimous 6-0]

## VII. Public Comment

None

## VIII. Planning Board Member Comments

Chairperson Ward thanked the board for agreeing to work more on eaves and side yard setbacks.

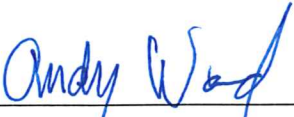
## IX. Announcements

Planning Director Wes Haskett stated the next meeting is May 17<sup>th</sup> and the agenda will include consideration of a subdivision (residential property on Hillcrest Drive), perhaps some 160D changes, and the board’s request of eaves and side yard setbacks. Also, the Town Council adopted a resolution opposing Senate Bill 349 /HB 401 *Increased Housing Opportunities*. It is legislation that preempts local zoning authority by putting in place a statewide zoning scheme that would allow duplexes, triplexes, quadplexes, and townhomes in every zone that also has single family zoning. It mandates that every single-family zone in the state also accommodate an accessory dwelling unit on each lot; subject to the local government setback rules, as well as preempts local government’s ability to set parking standards for these additional homes.

X. Adjourn

MOTION made by Vice Chairperson DiBernardo to adjourn, Seconded by Planning Board Member Burek. Motion passed unanimously (5-0). The time was 7:20 P.M.

ATTEST:

  
\_\_\_\_\_  
Andy Ward, Chairperson



Respectfully submitted,

  
\_\_\_\_\_  
Sheila Kane, Town Clerk