



Town of Southern Shores

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

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8

9 MEETING MINUTES

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

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

12
13

14 I. CALL TO ORDER:

15 Chairperson Andy Ward called the meeting to order at 5:30 pm. Planning Board Members Lynda
16 Burek, Ed Lawler, Robert McClendon, John Finelli (ETJ), Tony DiBernardo (Vice Chairperson),
17 Andy Ward (Chairperson), and Deputy Town Manager/Planning Director Wes Haskett.

18

19 II. PLEDGE OF ALLEGIANCE:

20 Chairperson Ward led the Pledge of Allegiance.

21

22 III. ELECTION OF OFFICERS

23 Town Code Section 24-24.(a) The Planning Board shall elect its chairman and vice-chairman
24 subject to the approval of the Council. The term of the chairman and vice-chairman shall be for
25 one year, with eligibility for reelection.

26

27 Vice Chairperson DiBernardo nominated Andy Ward to serve as Chairperson, Seconded by
28 Planning Board Member Lawler. Nomination passed unanimously.

29

30 Chairperson Ward nominated Tony DiBernardo, Seconded by Planning Board Member Burek.
31 Nomination passed unanimously.

32

33 IV. APPROVAL OF AGENDA:

34 Planning Board Member Lawler moved to approve the agenda, Seconded by Chairperson Ward.
35 The motion passed unanimously.

36

37 V. APPROVAL OF MINUTES

38 Planning Board Member Burek moved to approve the May 17, 2021 as presented, Seconded by
39 Vice Chairperson DiBernardo. The motion passed unanimously.

40

41 VI. PUBLIC COMMENT

42 None

43

44 VII. OLD BUSINESS

45 None

46

47 **VIII. NEW BUSINESS**

48 **SPA-21-01: Site Plan Amendment application submitted by Aston Properties to amend the site**
49 **plan for the Marketplace shopping center**

50 Karen Partee, Aston Properties stated that Aston Properties is seeking approval of site plan
51 modifications for the Marketplace at Southern Shores to accommodate a new retail store.
52 Approximately 19,775 sf of existing shops will be demolished to provide room for the new
53 24,000 sf building. Sufficient space will be reserved at the end of the new building for a future
54 6,000 sf store.

55
56 To meet the parking needs of the new tenant, approximately two acres of the existing parking lot
57 will be reconfigured, and 27 new parking spaces will be added. Landscape islands and site
58 lighting will be reconfigured to accommodate the new parking. The new parking areas will be
59 graded to utilize existing storm drainage structures and piping.

60
61 The placement of the new building will require the existing 6" watermain and the existing 4"
62 domestic water service line to be relocated. The design plans show proposed routing to provide
63 separation between the water lines and the building foundation as well as required separation
64 from the existing sanitary sewer.

65
66 Aston Properties purchased the Marketplace back in 2014 and knew then that the center
67 needed a good bit of redevelopment. Aston Properties has been presented with the opportunity
68 to add a Marshalls, which they do have a signed lease and are also working with a national soft
69 goods retailer for the smaller 6,000 sq. foot unit. That opportunity is not far enough along to talk
70 about who that retailer might be. Ms. Partee stated she will be making her presentation next
71 month as all site plan details are being worked out. She would like to hear if the board has any
72 questions or feedback that may help with the final site plan application being presented to the
73 Planning Board next month.

74
75 Vice Chairperson DiBernardo inquired about sustainability and looking towards the future; solar
76 lights, permeable surfaces, and vehicle charging stations.

77
78 Karen Partee stated tenants require a certain light level in parking lots under their leases, and
79 solar lights cannot be relied upon to the degree a tenant is going to require. Aston Properties
80 has previously replaced the halide lights with LED, a good consistent light level. They would not
81 want a security issue to happen as a result of poor lighting.

82
83 Karen Partee addressed the permeable pavement. She has researched the function, issues, long
84 term issue, and ADA issues. The Lowes parking lot is not something that she would want for her
85 project, stating it is just not a smooth surface. She is still working with Planning Director Haskett
86 to meet requirements for permeable surfaces and will address it at next month's presentation.

87
88 Karen Partee also stated that vehicle charging stations have been something tenants have added
89 in the past and not Aston properties itself, but she will inquire about them.

90
91 Planning Board Member McClendon would like to see the island, which is a barrier, actual used
92 to funnel water; an inverted infiltration system so that there is the ability for an overflow, an
93 infiltration system before funneling out into the canal.

94

95 Planning Board Member Lawler was concerned with the original straight pipe into the canal. It is
96 an older pipe, original to the system and should probably be reviewed. He also does not think
97 there should be a straight pipe into the canal and water should bypass through some type of
98 treatment first.

99

100 Chairperson Ward inquired about lot coverage and the possible need for permeable surface to
101 keep the amount of lot coverage within allowable limits.

102

103 Karen Partee, Aston Properties stated they are not increasing impermeable areas, simply
104 rearranging. The shopping center may have more parking than what the Town requires, but on
105 number with what the leases require. They had to obtain amendments from two tenants to pull
106 down the amount of parking spaces the lessee required, which is the current number today. She
107 also stated the same pipe is being used, it is functional, and they are confident it is fine and there
108 are no plans to modify it. They are looking to take out 27,000 sq. feet of asphalt and replace with
109 permeable surface.

110

111 Planning Board Member Finelli (ETJ) inquired if DEQ or CAMA had any say on the canals.
112 Planning Director Haskett stated no stormwater permit could be located in the original 1987
113 Marketplace files. The state could not locate such a permit as well.

114

115 Chairperson Ward felt it would be reasonable to have an engineer look at the situation as it
116 stands right now and what is in place. The Town just needs assurance the system is protecting
117 stormwater from getting into the canal system.

118

119 Chairperson Ward also provided some suggestions. He asked that the presentation slides show
120 ownership and boundaries of the adjoining properties and inquired if the shopping center would
121 have a universal façade.

122

123 Planning Director Wes Haskett stated the Town does not have an any architectural requirements
124 and the applicant is only required to submit drawings and materials to be used with the site plan.

125

126 Karen Partee stated this should be looked at as phase one, until the new tenant can create a
127 revenue stream. The façade will be painted to match more of the Food Lion and Keller Williams
128 exterior.

129

130 Chairperson Ward asked if a representative from the Timmons Group will be in attendance of
131 the next meeting. Karen Partee of Aston Properties confirmed a representative would be there.

132

133 **TCA-21-06: Town Code Amendment application submitted by the Town of Southern Shores to**
134 **amend Town Code Section 30-96, General Requirements**

135 At the May 17, 2021 Planning Board meeting, the Board recommended conditional approval of
136 PSP-21-01, a preliminary subdivision plat to subdivide the property located at 279 Hillcrest Dr. At
137 the June 1, 2021 Town Council meeting, the Town Council conditionally approved PSP-21-01 and
138 instructed the Planning Board to recommend a Town Code amendment that would eliminate the
139 possibility of subdividing property that does not have frontage on a public or private street. At
140 the June 21, 2021 Planning Board meeting, Town Staff provided and the Planning Board

141 recommended approval of ZTA-21-07, Lot Access Requirements. After further review of ZTA-21-
142 07, it was determined that the ZTA would render existing lots with frontage on an easement
143 nonconforming and the Town Council took no action on it at the July 6, 2021 Town Council
144 meeting. Town Staff is now suggesting TCA-21-06 which removes the possibility of creating a
145 new lot or lots that only have frontage on an easement.

146
147 Planning Board Member Finelli (ETJ) submitted written comments prior to the meeting which
148 read as,

149 Sec. 30-96. General requirements.

150 (f) Lots. All lots shall front upon a public road or ~~access easement~~ private street. ~~Double~~
151 ~~frontage lots should be avoided.~~

152
153 Comment: Remove the phrase "Double frontage lots should be avoided." This is an
154 opinion and serves no purpose. If you want to prohibit them, then do so. "Opinions"
155 often lead to decisions not supported in the law.

156
157 (g) Road names. Proposed roads which are obviously in alignment with existing roads
158 ~~should~~ be given the same name. In assigning new names, the proposed name shall not
159 duplicate an existing name or ~~duplication should be avoided and in no case should the~~
160 ~~proposed name~~ be phonetically similar to existing names, irrespective of the use of the
161 suffix: street, avenue, boulevard, drive, place, court, etc.

162
163 Comment: accomplishes the same task but removes the term "should be avoided"

164
165 Vice Chairperson DiBernardo stated the zoning text amendment (ZTA) needs to be cleaned up
166 and the word "*should*" which is stated multiple times be removed.

167
168 Planning Board Member Finelli (ETJ) stated double frontage lots usually do not occur in
169 subdivisions but rather when land is purchased behind another and is on another road.

170
171 Planning Director Haskett stated double frontage lots could also be corner lots and in further
172 review the words "*private street*" could be removed all together from the zoning text
173 amendment (ZTA).

174
175 Chairperson Ward stated the zoning text amendment (ZTA) cuts to the meat of what we are
176 trying to achieve with subdividing a large parcel and an easement having to be granted to
177 comply. He further stated he was okay with not including private street.

178
179 **Motion:** Vice Chairperson DiBernardo moved to strike "access easement" as written and not
180 include "private street" and strike "should be avoided" in the lots, and then the road names add
181 "shall" rather than should be given, add "the proposed name shall not duplicate an existing
182 name or", strike "duplication should be avoided and in no case should the proposed name be".

183
184 Sec. 30-96. General requirements.

185 (f) Lots. All lots shall front upon a public road or ~~access easement~~ private street. ~~Double~~
186 ~~frontage lots should be avoided.~~

187

188 (g) Road names. Proposed roads which are obviously in alignment with existing roads
189 ~~should~~ shall be given the same name. In assigning new names, the proposed name shall
190 not duplicate an existing name or ~~duplication should be avoided and in no case should~~
191 ~~the proposed name~~ be phonetically similar to existing names, irrespective of the use of
192 the suffix: street, avenue, boulevard, drive, place, court, etc.

193
194 The motion was seconded by Chairperson Ward. The motion passed unanimously.
195

196 **Discussion of potential amendments to Section 36-202 (d)(6), Maximum Allowable Lot Coverage**

197 Planning Director Haskett stated at the March 2, 2021 Town Council meeting, the Town Council
198 instructed Town Staff to take valuable elements out of the adoption draft of the Town Code
199 Update written by CodeWright for review by the Planning Board and the Town Council for future
200 consideration.

201
202 CodeWright in the code update brought forth the lot coverage as it applies to oceanfront
203 property owners in the RS1 single family residential district which states in the case of an
204 oceanfront lot, only that area landward of the first line of stable natural vegetation, as defined by
205 CAMA, shall be used for calculating lot coverage.

206
207 CAMA defines natural vegetation as the line that represents the boundary between the normal
208 dry sand beach which is subject to constant flux due to waves, tides, storms, and wind in the
209 more stable upland areas. Vegetation line is generally located at or immediately oceanward of
210 the seaward toe of the frontal dune or erosion escarpment.

211
212 Sec. 36-202. - RS-1 single-family residential district currently reads as,
213

- 214 (6) Maximum allowable lot coverage.
- 215 a. Maximum allowable lot coverage shall be 30 percent, except for town-owned facilities
 - 216 and fire stations;
 - 217 b. Maximum allowable lot coverage shall be 85 percent for town-owned facilities and fire
 - 218 stations.
 - 219 c. Gravel walkways shall not contribute to lot coverage.
 - 220 d. Open-slatted decks that allow water to penetrate through to pervious material, not
 - 221 exceeding a total of 25 percent of the total footprint area of the attached single-family
 - 222 dwelling, shall not contribute to lot coverage.
 - 223 e. Those allowances and/or exemptions listed in subsection d. of this paragraph (6) shall
 - 224 be available only to an applicant for a building/zoning permit for a single-family dwelling
 - 225 or attached open-slatted deck over pervious material, upon presentation of a survey with
 - 226 all applicable requirements including plan certification, for a lot disturbance and
 - 227 stormwater management permit as described in subsection 36-171 (3) of the Town Code
 - 228 of Ordinances.

229
230 In the case of an oceanfront lot, only that area landward of the first line of stable natural
231 vegetation (as defined by CAMA) shall be used for calculating lot coverage.
232
233

234 The Town Attorney provided written comments which stated that it was inconsistent with NCGS
235 77-20. (b)(c) and should be updated to the line being the mean high watermark rather than the
236 first line of stable natural vegetation.

237

238 Chairperson Ward had reached out to his cousin David Owens with the NC School of
239 Government and received the following response:

240

241 *The statute you sent affects how you define a "lot" for purposes of a local development*
242 *regulation. MHW is usually the boundary line between the publicly owned ocean and the*
243 *privately owned upland. Nothing controversial about that. So the town cannot say a*
244 *privately owned area between MHW and the vegetation line is not part of the "lot."*
245 *However, and this is key, the town can use the vegetation line for regulatory purposes*
246 *other than the definition of a "lot line." For example, CAMA uses the vegetation line rather*
247 *than the property line to establish the oceanfront setback.*

248

249 *The town can similarly use the vegetation line in computing the maximum impervious*
250 *surface allowed. You just need to be very clear in the ordinance that you are not saying*
251 *that the area between MHW and the vegetation line is not a part of the lot, but rather*
252 *you are saying that portion of the lot is not included in the calculation of the allowed*
253 *amount of impervious surface.*

254

255 *It might help clarify matters if the rule did not use the term "lot" in this regulation. I do*
256 *not have an alternative term to suggest off hand, but for example you could use a term*
257 *like "gross building area," "potential building area," or the like. So the rule would then be*
258 *phrased something like:*

259

260 *The total impervious surface coverage shall not exceed 30% of the potential building area*
261 *of any lot of record. For the purposes of this regulation, the "potential building area" does*
262 *not include the following areas: (1) For lots bordering the Atlantic Ocean, that portion of*
263 *the lot that is seaward of the first line of stable natural vegetation or such other reference*
264 *line used to establish oceanfront setbacks in the ocean hazard AEC under the CAMA; (2)*
265 *areas of a lot covered by an easement for a public street right of way; (3) areas of a lot*
266 *covered by public waters or wetlands that are subject to regulatory jurisdiction under*
267 *Section 404 of the federal Clean Water Act.*

268

269 *Item 1 above may be all you would want to have, but I put (2) and (3) in just to illustrate*
270 *the concept that you are not saying these areas are not part of the lot, just that they are*
271 *not used when computing impervious surface allowances.*

272

273 Chairperson Ward asked if there were no objections from the board, could staff and the Town
274 Attorney work with Mr. Owen's suggestion, number one of the three suggestions? He stated the
275 ordinance would then be in the clear to comply with the state statute.

276

277 Planning Director Wes Haskett stated staff could certainly work with the guidance and bring a
278 zoning text amendment (ZTA) back to the Planning Board for consideration.

279

280 Planning Board Member McClendon asked to confirm that they are not changing anyone's lot
281 coverage, but just rephrasing the ordinance to comply.

282
283 Planning Director Wes Haskett stated it would just be more of a clarification if we move forward
284 with Mr. Owen's suggestion. We are not using the definition of lot or seaward boundary as
285 established in N.C.G.S. 77-20. The measuring point and the percentage will remain the same.

286
287 Vice Chairperson DiBernardo **moved** to direct staff to work on a zoning text amendment (ZTA)
288 using Mr. Owen's suggestion and wordsmithing for clarification, Seconded by Planning Board
289 Member Burek. The motion passed unanimously.

290
291 **IX. Public Comment**

292 None

293
294 **X. Planning Board Member Comments**

295 Vice Chairperson DiBernardo provided a summary of his request to Council to address the
296 outdated solid waste ordinance -chapter 26. The Town Council gave the approval for the
297 Planning Board to move forward updating chapter 26. He stated, once the Planning Board slows
298 down, they can work on suggestions for the ordinance. The increase in tourism brings an
299 increase in trash and something has got to be done to address the volume of trash on the
300 streets.

301
302 Chairperson Ward agreed that there is a problem with the unsightly garbage and will schedule a
303 meeting for the board to provide suggestions for a possible rewrite of the solid waste ordinance-
304 chapter 26.

305
306 **XI. Announcements**

307 Planning Director Wes Haskett provided the next meeting date of August 16th. He also stated he
308 would be sending an email about potential upcoming training. The School of Government will be
309 hosting some virtual workshops; two legislative workshops and two quasi-judicial procedure
310 workshops. He felt it would be beneficial to the board to participate in these online workshops.

311
312 Chairperson Ward asked Planning Director Wes Haskett if Aston Properties would be bringing
313 forward a site plan at the next meeting? Mr. Haskett replied that it appeared to be their
314 intention, but it was up to them to provide the material.

315
316 Planning Board Member McClendon asked if the board could meet sooner if needed to review
317 the plans since he knew Aston properties was on a deadline? Mr. Haskett stated the board could
318 certainly call a special meeting (48-hour notice) if they chose.

319
320 **XII. Adjourn**

321 Hearing no further business, **motion** made by Vice Chairperson DiBernardo to adjourn, Seconded
322 by Chairperson Ward. Motion passed unanimously. The time was 6:46 P.M.

323
324

325

326 ATTEST:

327

328

329

330



Andy Ward, Chairperson



Respectfully submitted,



Sheila Kane, Town Clerk