



# 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-MARCH 21, 2022, 5:00 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 5:00 pm. Planning Board Members Lynda Burek, Ed Lawler, Robert McClendon, Tony DiBernardo (Vice Chairperson), Andy Ward (Chairperson), Richard Galganski (alternate), Jan Collins (alternate) and Deputy Town Manager/Planning Director Wes Haskett were present.

### II. PLEDGE OF ALLEGIANCE:

Chairperson Ward led the Pledge of Allegiance.

### III. APPROVAL OF AGENDA:

Planning Director Haskett addressed the board with an amendment to the agenda. He requested ZTA-21-08 be removed due to staff not having enough time to finish the zoning text amendment. The second item, ZTA-22-02 is being withdrawn while the applicant makes some adjustments. Both items are anticipated to be on the April 18<sup>th</sup> agenda.

Vice Chairperson DiBernardo moved to amend the agenda by removing Old Business A. and New Business A for this month; New Business B and New Business C now become New Business A and New Business B respectively, Seconded by Planning Board Member Burek. The motion passed unanimously (5-0).

### IV. APPROVAL OF MINUTES:

Chairperson Ward moved to accept the minutes of February 22, 2022 as corrected, Seconded by Vice Chairperson DiBernardo. The motion passed unanimously (5-0).

### V. PUBLIC COMMENT

None

### VI. OLD BUSINESS

None

47 **VII. New Business**

48 Preliminary landscape plan submitted by Oakley Collier Architects, PA for a new Fire/EMS station  
49 located at 28 E. Dogwood Trl.  
50

51 Planning Director Haskett stated the applicant is looking for comments and input on a  
52 preliminary landscape plan for a new EMS/ Fire Station to be located at 28 East Dogwood Trail  
53 where there is an existing facility that has been since the 1970's. The county will demolish the  
54 existing facility and rebuild a new EMS/Fire Station. The property is owned by Fire Services Real  
55 Estate Inc., which is the non-profit for Southern Shores Volunteer Fire Department. The  
56 proposed station has two fire station bays and two EMS bays on East Dogwood Trail. A  
57 preliminary landscape plan has been prepared and the applicant is seeking boards input prior to  
58 moving forward with preparation for full site plan. One of the main requirements of the  
59 applicant is interested in is the proposed landscape buffer on the North side in the rear property  
60 lines. The proposed buffer shown on the plan is 10 feet wide with a six-foot-tall fence, which  
61 would be considered a type b buffer as establishing section 36-173 c.1. Since the Fire/EMS  
62 station is located in a residential zoning district, and because it was promoted to the issuance of  
63 the conditional use permit, Section 36- 173.C requires a buffer area that is a mixture of various  
64 trees and shrubs with a minimum width of 20 feet with two staggered rows of planting material  
65 placed 10 feet on center that are minimum of three feet in height when installed and are  
66 expected to achieve height of six feet within three years. However, Section 36-173. C2 states  
67 that buffering requirements and conditional uses shall be determined on a case-by-case basis, as  
68 part of the landscape landscaping.  
69

70 Town staff recommends approval, it has no objections to the use of a type b buffer, but would  
71 also encourage the retention of existing vegetation within the buffer areas. Along the rear  
72 property line on the east boundary there is an existing single-family dwelling. There is a lot of  
73 vegetation beside the house in their setback area with large trees and other vegetation. It is a  
74 good buffer today but there is little vegetation besides the northeast corner. We would  
75 encourage retaining them if that's at all possible.  
76

77 Planning Director Haskett stated he did look at the landscaping plan that was approved at the  
78 South Dogwood Fire Station. Being a conditional use, it was considered on a case-by-case basis.  
79 It was approved with a reduced buffer and a fence requirement.  
80

81 Planning Director Haskett repeated that this is not a full site plan review, the applicant is not  
82 asking for the board's approval, just input on the proposed buffer.  
83

84 Kim Hamby the engineer representing the applicant addressed the board. She stated the site is  
85 extremely tight and they are trying to work out an initial layout and what they can get by with.  
86 The topographic survey has not been completed yet, so she is unable to say exactly what falls on  
87 the property for certainty. There appears to be not much of any buffer on the north side, some  
88 on the east side and the septic is in the northeast corner. She stated ordinances have changes  
89 and they are trying to fit within the rules but still get everything on the site that is needed to  
90 keep that station operational.  
91

92 Chairperson Ward stated there are a good number of shrubs and live oaks buffering the adjacent  
93 homes form the site and asked Kim Hamby how much of the existing vegetation on the north

94 side and the east side would be viable to be left in? Ms. Hamby stated if there are any trees that  
95 fall on the property it would be difficult to keep, especially trying to ensure that they can be  
96 maintained once a fence is placed up. She said, even if they worked around them, trying to  
97 maintain the distance outside of the drip edge would be very difficult. They are proposing to  
98 replace the area with large shrubs because of putting the fence in and not wanting anything that  
99 is going to have too much of a spread, causing maintenance issues.

100  
101 Planning Board Member Lawler stated that intersection is subject to flooding.

102  
103 Vice Chairperson DiBernardo stated it has not flooded since the Town purchased the corner lot  
104 and installed a retention pond.

105  
106 Vice Chairperson DiBernardo stated there is a road, more of a path, on the north side of the  
107 property that connects to the utility/telephone company that is utilized by cars. Kim Hamby  
108 stated she was not aware of the path but if it falls on the site it will be cut off.

109  
110 Chairperson Ward asked to clarify that the fence was going on the north and east side. Kim  
111 Hamby stated that was correct.

112  
113 Chairperson Ward stated what needs to be discussed as a board is the buffer requirements and  
114 what the board is comfortable allowing for them to come close to what they are trying to do  
115 with the plan that we are being shown, coverage, parking spaces, ambulance, radius and so  
116 forth. He stated what is the disadvantage to allowing a 10-foot buffer.

117  
118 Planning Board Member McClendon stated the plan shows that the building will become closer  
119 to the street (NC12) and the current vegetative island which acts as a buffer will be removed. He  
120 stated it appears that the drain field will add a green buffer.

121  
122 Kim Hamby stated the drain field which will only be grass will add a green space as she has  
123 proposed moving it from the east side of the site to that area. She said there will be some trees  
124 that they can replace between the building and the street.

125  
126 Chairperson Ward stated he thought the planned plantings looked lean aesthetically in the island  
127 area and could they include some low plantings to buffer the building from the road but not  
128 create a sight line problem.

129  
130 Kim Hamby stated the problem is trying to find an area to fit everything and that is the only  
131 space they have available based on the layout for the septic field. They are strictly prohibited  
132 from planting anything but grass over a septic system. She stated even putting certain trees near  
133 a septic system could be detrimental because of the roots. The preliminary septic field plans are  
134 based off the size of the septic as it is today.

135  
136 Planning Board Member Lawler asked if the trucks only have one way in? Kim Hamby stated the  
137 Fire trucks will need to back into the bays when they return from an event. The EMS vehicles will  
138 be able to pull in off Highway 12.

139

Vice Chairperson DiBernardo asked about the maintenance of the buffer zone and if they planned on having irrigation. He stated some of the plants shown on the plan need constant water and upkeep. Kim Hamby stated she did not know and would have to discuss with the architectural team.

Planning Board Member McClendon did not like any of the plants specified. He stated none of them are native to North Carolina and most are not native to North America, and he respectfully request that they be changed. He stated especially the buffers that are adjacent to the residential properties. Planting such as Wax Myrtles would be more appropriate to grow in with what is currently growing there.

Kim Hamby stated the problem is Wax Myrtles tend to spread and take over. Her concern is more for the residential properties next to the property. Planning Board Member McClendon stated he did not think that would be an issue.

Kim Hamby stated they are trying to stick to the ten-foot buffer and would like the back of the building be septic repair area. That would mean planting of shrubs only. Planning Board Member McClendon stated take out the magnolia and crepe myrtle from the plan, they serve no purpose and put something attractive by the entrance.

Alternate Member Collins recommended an American Holly. Planning Board Member McClendon stated they get too big.

Planning Board Member McClendon stated he would be happy to send Ms. Hamby a list of plants he would recommend. He asked if we took out the four trees in the back setback, would they consider leaving the live oaks in the corner? Kim Hamby stated she did not think the live oaks in the corner were going to make it.

Planning Board Member McClendon stated he would go by the property to look before saying anything more. He would like to see native plants used and the preservation of the live oaks in the corner, if possible.

Vice Chairperson DiBernardo stated we do not know where the trunks of the oak trees are yet, they could be on the adjacent property. The topographic survey will show that.

Planning Board Member Lawler asked why they need to place a buffer if the adjacent properties already have a buffer? Kim Hamby stated it is a town requirement and they cannot control that site. It will ensure the adjacent properties are still buffered even if they come in and clear their site.

Planning Director Haskett stated buffers are required for separation of uses, it is common practice between uses.

Chairperson Ward stated North Carolina is relaxing parking in commercial areas, not making you have as much dedicated parking per square foot of specified criteria. He questioned if all that parking was necessary.

Chairperson Ward asked if the shed and generator could be moved to the side northeast corner?

Planning Director Haskett stated he has spoken with David Griffin of Oakley Collier Architects and on the plan it shows a 10-foot side yard setback. The side setback should be 15 feet, so that side setback will be larger. The only reason it is 10 feet on the other side is a text amendment submitted from the other fire department that allows for a 10-foot side setback for fire stations when adjacent to town owned property or right of way.

Kim Hamby stated that will affect the shed and the generator but asked about parking. Mr. Haskett stated parking can go in a setback area.

Chairperson Ward stated he felt that parking was excessive. Kim Hamby stated she believes the number is based off staffing.

Planning Director Haskett stated the requirements are based off the number of employees and the number of seats in the training room.

Planning Board Member McClendon asked if they could get both drain fields in the rear yard setback as that would give more space toward the street and be a little more generous to the bike path. Kim Hamby stated the septic tank needs to be five feet off the building and drain lines must be 10 feet off the building. She stated the building is really squeezed from setback to setback along East Dogwood.

Chairperson Ward stated the question at hand is, if the board is comfortable with a ten-foot buffer (landscape buffer)? This will be a conditional use, so it can be case by case basis.

It was **consensus** of the Planning Board that a ten-foot buffer would be adequate. They felt strongly about trying to save any of the existing vegetation in the northeast corner and the species of trees should be a consideration (NC native species); the vegetation needs to be maintained and kept alive for three years minimum.

Planning Director Haskett stated the boards requests were all reasonable. When the full site plan is submitted for approval, zoning requirements require the buffer to be maintained and it could be considered a violation if it isn't done, so the board's maintenance request may just be redundant.

Chairperson Ward asked Kim Hamby if they need anything else at this point. Ms. Hamby stated they just needed to know if they could work with the 10-foot buffer so that they could move forward with site planning.

Chairperson Ward stated **by consensus** the Planning Board would be okay with the ten-foot buffer rather than a larger buffer to accommodate this project.

Zoning Text Amendment application submitted by the Town of Southern Shores to amend Town Code Section 36-175, Wireless Telecommunications Sites, Facilities, and Towers

Planning Director Haskett presented the staff report which read as follows, he proposed amendments to Sections 36-175 are being proposed by Town Staff to prevent the installation of

utility facilities and structures above the ground in the town rights-of-way. In March, 2018, ZTA-18-02 was adopted which amended Section 36-175 to allow small wireless facilities and the use and installation of utility poles in accordance with Session Law 2017-159. Session Law 2017-159 declared that wireless services providers and wireless infrastructure providers must have access to the public rights-of-way and have the ability to attach to poles and structures in the public rights-of-way to densify their networks. It amended existing Statutes to include small cell infrastructure and wireless support structures to ensure that wireless providers have access to public rights-of-way. Recently, Town Staff learned that other jurisdictions have been prohibiting the installation of new utility poles for small wireless facilities in Town rights-of-way by adding them to undergrounding requirements. N.C.G.S. 160D-936(d) allows the prohibition as long as the undergrounding requirements are nondiscriminatory with respect to type of utility, do not prohibit the replacement of structures existing at the time of adoption of the requirements, and have a waiver process.

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.

Planning Director Haskett stated ZTA-22-03 is a very simple fix.

Sec. 36-175 2(e). Rights-of-way use to comply with other requirements: Applicants for use of a city rights-of-way shall comply with ~~chapter 28~~ the undergrounding requirements established in section 32-13 prohibiting the installation of above ground structures in the town's rights-of-way ~~without prior approval~~. In no instance in an area zoned single family residential where the existing utilities are installed underground may a utility pole, city utility pole, or wireless support structure exceed 40 feet above ground level, unless the town grants a waiver or variance approving a taller utility pole, city utility pole, or wireless support structure.

Town Code Amendment 22-03 new language proposed for Sec.32-13 -all but one line struck from Sec. 8-27 (TCA does not require approval from Planning Board)

Chapter 8. Sec. 8-27. Underground installation

All cable services shall follow the undergrounding provisions established in section 32-13. ~~In those areas within the town where cable television, telephone, or electrical facilities are currently placed underground, all cable system facilities shall remain or be placed underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, grantee may install its cable system facilities above ground, provided that at such time as both electric and telephone utility facilities are placed underground, grantee shall likewise place its cable system facilities underground without cost to the town. Nothing contained in this section shall require a grantee to construct, operate and maintain underground any ground-mounted appurtenances, except that grantee shall take steps to minimize the number and visual impact of such facilities. If the grantor reimburses any utility for such relocation, grantee shall be similarly reimbursed. This section shall not prevent the town or any of its agencies or joint agencies from requiring the installation or relocation of cable services facilities underground, pursuant to a separate ordinance or regulation or requirement imposed, in accordance with the exercise of the general police power or regulatory function of such agency or joint agency.~~

PART II. Chapter 32 Sec. 32-13. Undergrounding requirements. To be added as follows:  
Sec. 32-13. Undergrounding requirements.

All utility facilities and structures, including not but limited to poles, wiring, conduit, cables, small wireless facilities cabinets, boxes, panels, and related appurtenances shall be installed underground. This section shall apply to all forms of utility providers including, but not limited to providers of electricity, gas, cable, communications, telecommunications, broadband internet, and wireless utilities. All existing utility facilities and structures located above the ground as of XX-XX-XXXX may continue to be used, replaced and maintained, but shall not be expanded in size unless such expansion is required to be allowed by law. Utility providers may seek a waiver of this provision by following the variance procedure established in Section 36-367.

Planning Director Haskett stated the Town has approved pole locations at:

- One pole with wireless facilities attached is located at the intersection of Hickory and Wax Myrtle Trail in Town right-of-way (US Cellular)
- One pole with wireless facilities attached is located in town right-of-way adjacent to 28 9<sup>th</sup> Avenue.
- The town has received inquiries about installing a pole at 31 12<sup>th</sup> Avenue (town right-of-way).
- One pole is installed with wireless facilities in the state right-of-way at 291 Duck Rd. The town has received inquiries from a consultant representing Verizon about relocating this pole to a town right-of-way, as they are reporting operational issues with this site.

Planning Director Haskett stated other than the location just mentioned, the Town has not approved poles with facilities in the town-rights-of-way. The Town has approved a handful of co-locations to existing poles. Co-locations would still be allowed, it will just require undergrounding all utilities, not discriminating against any utility.

Planning Board Member Burek asked if there was a limit to the amount of cabinets they would put on a single pole? Planning Director Haskett stated there is not one in the ordinance.

Planning Board Member McClendon asked to clarify what the ordinance would do.

Planning Director Haskett stated going forward they would not be able to install new poles with wireless facilities attached in town right-of-way. They would only be able to co-locate or install new poles in NCDOT right-of-way. This would prohibit the installation of new poles all together in town right-of-way.

Chairperson Ward asked if the number of cabinets could be restricted? Planning Director Haskett stated they are exempt from zoning requirements in NCDOT rights-of-way. In town right of ways we do have the ability to adopt aesthetic requirements. If this ordinance is adopted, then the cabinets would only apply to co-locations. Staff has investigated other requirements, and we have some information that may help, but at this point staff wanted to bring this much forward first.

Planning Board Member McClendon asked if we prohibit these poles from being installed in the town, what services are our citizens not going to receive? What are we limiting from them? Planning Director Haskett stated it could potentially affect wireless service in certain areas, or limit. He stated this will only be wireless, all other utilities go underground.

Planning Board Member McClendon stated he did not like the poles popping up everywhere but at the same time he did not want to limit services to the town residents.

Planning Director Haskett stated there is a waiver process, a wireless provider would need to follow the variance procedure. They would need to present a strong case to the board.

Chairperson Ward asked how many potential co-locations are in the town? Planning Director Haskett stated off hand he knows there is the location on Skyline Rd. as well as poles at the end of the avenues.

Chairperson Ward stated the provision in N.C.G.S 160D allows the prohibition as long as the undergrounding requirements are nondiscriminatory with respect to type of utility, do not prohibit the replacement of structures existing at the time of adoption of the requirements, and have a waiver process (variance).

Vice Chairperson DiBernardo felt that is important for the providers to apply for a variance and prove the reasons why they would need to install a pole and wireless facility.

Planning Board Member Burek stated since there is a waiver process, she would support the underground utility requirement.

Chairperson Ward stated moving forward he would like to know how they could regulate the number of cabinets on co-locations.

Planning Director Haskett stated staff did have some language prepared for aesthetic requirements and will bring it to the board to discuss at a future meeting.

Vice Chairperson DiBernardo **moved** to approve ZTA-22-03 concerning the underground requirements of cable services as written, Seconded by Planning Board Member Burek. The motion passed unanimously (5-0).

Chairperson Ward stated he would once again like to reiterate that he would like to understand what the alternate forms of aesthetics are and how to limit by aesthetics the number of cabinets allowed on a pole. Planning Director Haskett stated they will have that discussion.

#### **VIII. Public Comment**

none

#### **IX. Planning Board Member Comments**

Vice Chairperson DiBernardo requested an update on the Solid Waste Ordinance and labeling trash/recycle cans and a Marketplace Shopping center update.



375 Planning Director Haskett stated 5000 stickers have been received to place on both trash and  
376 recycle cans. Public Works will be installing the stickers on cans along Ocean Blvd. up to Hickory  
377 Trail. They will also be distributed to property owners and property management companies.

378  
379 Vice Chairperson DiBernardo asked if the town has ever considered purchasing replacement  
380 parts for the receptacles in bulk. Planning Director Haskett stated that would put the town in the  
381 receptacle business and that discussion has not come up but will be considered. He also stated a  
382 town code amendment will be represented to Council at the April 5<sup>th</sup> meeting. This text  
383 amendment incorporates several of the Planning Board recommendations. He also stated there  
384 is a discussion of changing recycle service to Fridays.

385  
386 Planning Director Haskett stated there has been no further movement on the Marketplace, since  
387 staff has requested more information for the demolition permit. Staff has provided them a list of  
388 items required and a demolition permit will not be issued until staff is satisfied.

389  
390 Chairperson Ward asked about the lot coverage TCA. Planning Director Haskett stated he will try  
391 and get it added to Council's April 5<sup>th</sup> agenda.

392  
393  
394 **X. Announcements**

395 Planning Director Wes Haskett stated the next meeting is Monday, April 18th at 5:00 p.m.  
396 Items on the agenda may include ZTA 22-02 and ZTA 21-08 Town Code Section 36-165,  
397 Regulations Governing Signs.

398  
399  
400 **XI. Adjourn**

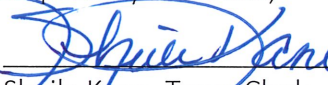
401 Hearing no further business, **motion** made by Vice Chairperson DiBernardo to adjourn, Seconded  
402 by Planning Board Member Burek. Motion passed unanimously. The time was 6:24 P.M.

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405  
406 ATTEST:

407   
408 Andy Ward, Chairperson



Respectfully submitted,

  
Sheila Kane, Town Clerk