



Town of Southern Shores

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

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www.southernshores-nc.gov

MEETING MINUTES

PLANNING BOARD-APRIL 18, 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), John Finelli (ETJ), Richard Galinski (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 Board Member Burek moved to approve the agenda as presented, Seconded by Vice Chairperson DiBernardo. The motion passed unanimously (5-0).

IV. APPROVAL OF MINUTES:

Vice Chairperson DiBernardo moved to accept the minutes of March 21, 2022, as corrected, Seconded by Planning Board Member Burek. The motion passed unanimously (5-0).

V. PUBLIC COMMENT

None

VI. OLD BUSINESS

ZTA-22-02- Planning Director Wes Haskett presented the staff report for ZTA-22-02, stating the applicant is Ginguite, LLC and the applicant's representative is Michael Strader of Quible and Associates. The requested action is amendment of the zoning ordinance by amending Section 36-207.

The applicant is proposing a Zoning Text Amendment (ZTA) to amend Section 36-207 to allow the group development of commercial and residential buildings as a Conditional Use in the C, General Commercial zoning district. The use would be permitted through the issuance of a Conditional Use Permit (Special Use Permit per 160D Statutes). Section 36-207 currently allows the group development of commercial buildings only (the Marketplace and Southern Shores Crossing). Section 36-207 also currently allows residential uses including detached single- family dwellings, two-family (duplexes) dwellings, multifamily dwellings, and accessory

buildings, but such uses would be limited to only one principal building and its customary accessory building on any lot. If approved, the ZTA would allow group developments consisting of multiple principal commercial and residential buildings subject to the following requirements:

- a. Minimum size of any building shall be 2,500 square feet.
- b. All buildings constructed within 35 feet of another building within the development are to be connected by a breezeway or covered walkway.
- c. Lot shall have frontage along US Hwy 158.
- d. Lot shall be serviced by an existing wastewater treatment facility.
- e. Residential density shall be limited to RS-8 District allowances as established within Sec.36-203(a).

The following properties could potentially meet the proposed requirements for group developments consisting of commercial and residential buildings:

- 5391 N. Virginia Dare Trl. (Stone property): 7.9 acres
- 5500 N. Croatan Hwy. (Marketplace): 18.1 acres
- 5355 N. Croatan Hwy. (Southern Shores Realty Maintenance): 4.1 acres
- 6195 N. Croatan Hwy. (Ginguite, LLC): 5.2 acres

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.

During the board's consideration, questions and discussion should mainly focus on the ZTA and not on a potential site plan for the proposed use. Policy 2 of the Town's Land Use Plan establishes the commercial district as a small district for convenience shopping and services. The Land Use Plan also establishes that incompatible uses in the commercial area are limited to "residential (low density)", educational, and conservation activities. Since commercial and residential group developments will most likely consist of high-density residential development mixed with commercial development, Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends that the Planning Board recommend approval of the application to the Town Council.

Chairperson Ward called on the applicant Sumit Gupta representing Ginguite LLC to address the requested amendment. He stated the goal of the amendment is to allow some better development options within the town in the general commercial district. Currently the commercial district allows for group development which consists entirely of commercial buildings, or you can do residential development only. The residential must be done as one large

94 building and there is no current density cap on it. He stated they believe the text amendment
95 addresses some of these concerns and creates an option to do both commercial and residential
96 on one parcel as a group development. This would allow a developer to not do one large
97 residential building, allowing for a mixed use and it also adds a density cap on the residential.
98 The applicant has worked with town staff to minimize the impact. The parcel must have road
99 frontage on HWY 158, must have access to existing wastewater facility. He further stated town
100 staff supports the amendment and feels that the amendment will be good for the town.

101
102 Chairperson Ward asked the applicant and board to stay away from specifics and focus solely on
103 the zoning text amendment that is being presented by the applicant. He stated the board all
104 knows where the property is located but that does not apply to what the board is considering
105 this evening.

106
107 Planning Board Member Lawler asked how big was the parcel? Mr. Gupta stated this text
108 amendment is a general text amendment town wide. The property that they own in Southern
109 Shores is approximately 5.25-5.5 gross acres.

110
111 Planning Board Member Lawler referenced the residential density specified in section 36-203
112 and asked how many units that is? Mr. Gupta stated under the RS-8 it is eight (8) units per net
113 acre.

114
115 Vice Chairperson DiBernardo asked the applicant for the positive and the negative aspects of this
116 zoning text amendment on the impact. Mr. Gupta stated currently if they were to develop a
117 commercial district parcel using residential, there is no density cap and the town ordinance
118 requires it to be one building, not multiple buildings. The property they own currently in
119 Southern Shores, would enable them to get a lot more than eight (8) units per acre on there and
120 it would have to be one large building. This would be residential only as you cannot mix
121 commercial and residential. If they did commercial, they could only do commercial on that
122 property. This zoning text amendment would allow smaller residential buildings, mix with
123 commercial, and a limit on the residential density which would be a positive. Someone may see
124 the mix of residential and commercial as a negative. If the town's desire is not to have a true
125 mixed use, then that could be considered a negative.

126
127 Vice Chairperson DiBernardo asked how this zoning text amendment benefits the residents and
128 commercial properties in Southern Shores and why was a variance not considered? Mr. Gupta
129 replied they had not considered a variance option and had understood that a text amendment
130 was the required process. He further stated that by including the wastewater treatment facility
131 in the text amendment it narrows the number of commercial properties, reducing the impact of
132 the amendment. The benefit being a matter of perspective, limits the density in the commercial
133 district where currently there is none.

134
135 Planning Board Member Lawler asked who owns the wastewater facility and if there are any
136 notice of violations? Mr. Gupta stated they own the facility and there was a notice of violation.
137 They are working with the agency and have recently signed a half million-dollar contract to
138 substantially replace the majority of the wastewater facility. Before they took ownership of the
139 wastewater facility it was on emergency operations, and they are working with the agency to get
140 it off emergency operations.

141
142 Planning Board Member Lawler asked if they could move forward with the facility in the current
143 condition and on emergency operations? Planning Director Haskett stated this could move
144 forward because this is a legislative text amendment and does not apply to a site plan or
145 associated with any proposed physical development.

146
147 Chairperson Ward stated Mr. Lawler's concern was valid, but it did not apply to the zoning text
148 amendment. The wastewater facility would need to be remedied before a site plan or zoning
149 permit was approved.

150
151 Vice Chairperson DiBernardo asked Planning Director Haskett what was the lot coverage for
152 commercial? Mr. Haskett stated commercial is 60%, group developments or up to 67% if
153 permeable pavement is used.

154
155 Vice Chairperson DiBernardo stated then there is a limit to the density, 60% or 67% with
156 permeable for commercial. Planning Director Haskett stated 40% if residential as required in the
157 RS8 district. He further stated that the 60 or 67% lot coverage is not the same thing as density,
158 density is what is being proposed: 8 dwelling units per acre. The lot coverage for group
159 developments (what is being proposed) is 60% or 67% using permeable pavement.

160
161 Chairperson Ward stated that if it was all residential on a large track of land the lot coverage
162 would be 40%. How do you blend 40% residential with 67% commercial? Planning Director
163 Haskett stated if they were doing only residential the ordinance says that they follow the
164 dimensional requirements of the RS8 district.

165
166 Chairperson Ward asked if both commercial and residential are developed, does the residential
167 portion adhere to residential requirements? Planning Director Haskett stated they would be
168 subject to the group development requirements they are proposing. Group development is 60%
169 or 67% with permeable pavement.

170
171 Planning Board Member McClendon stated in the commercial zone there is a reference that
172 states if you are developing residential and commercial zone you follow the RS8. Planning
173 Director Haskett stated that is correct if you are following the residential use, this is a new use
174 being proposed, group development of residential and commercial buildings.

175
176 Chairperson Ward stated he considers this a mixed-use development. You are giving additional
177 lot coverage for residential because the uses are mixed. Planning Director Haskett stated the
178 board can recommend approval or denial of the zoning text amendment or provide suggestions
179 to the applicant, which he may or may not accept.

180
181 Planning Board Member Finelli (ETJ) stated if this is a good idea then why is it being restricted to
182 lots that have an existing wastewater treatment facility? Mr. Gupta stated the idea was to limit
183 the impact, limit the number of properties that could be impacted.

184
185 Mr. Finelli stated it appears that the applicant's proposed zoning text amendment applies only to
186 his property only. It appears it is not limiting; it is excluding. Mr. Gupta stated yes, currently so.

He further stated that this was based off conversations with town staff and their concerns. We consciously tried to limit that impact.

Mr. Gupta stated currently you can build out commercial property to 60-67%. The only thing you cannot do is mix in residential units. Commercial developments typically require more lot coverage and by the nature of this you would have to do commercial and residential mixtures together. He further stated they believe they still need the higher lot coverage; they are limiting the residential density, but it allows for some residential units in there and commercial. Planning Board Member Finelli (ETJ) stated that also opens the possibility that you could do 99% residential and only one small commercial stand.

Mr. Gupta stated Mr. Finelli had a fair point and some type of condition requiring a substantial amount of commercial would make sense.

Planning Board Member Finelli (ETJ) also stated he has traffic concerns. He said this property or any property fronting HWY 158 will bring heavy traffic use, people will get frustrated and turn right and go into the Martin's Point commercial area to use the lots as a turnaround area. He stated he understands this property will be developed and there will be some more traffic, but he is concerned with increasing that amount of traffic and making it worse in the Martin's Point commercial lots when they become a turnaround area.

Mr. Gupta stated that traffic will be there if they develop and max out as commercial. He stated for every residential added to that it would probably mitigate some of the traffic because commercial would tend to have higher vehicular traffic.

Planning Board Chair Ward stated he hears and understands the concerns, but the board needs to keep the concerns on the proposed zoning text amendment rather than the specific property.

Vice Chairperson DiBernardo stated this zoning text amendment is very site specific.

Chairperson Ward asked Mr. DiBernardo if he would be okay with striking the language that is making the ZTA site specific. Mr. DiBernardo stated he didn't know if he would be okay with changing it at all, stating the Town of Southern Shores original vision was commercial and residential low density. It is the beginning of an incremental change, and he does not support it.

Planning Board Member Burek stated she does not think it is consistent with the land use plan and agrees with Vice Chairperson DiBernardo. It will open the door to other commercial properties increasing density.

Planning Board Member Finelli (ETJ) stated he does not think it is fair to require an existing storm water treatment facility. If the proposal is to be good, it should be done to all the commercial lots and if it is bad, it should be denied. He further stated he is not in favor of it because it can really affect a residential group development. If Southern Shores likes the 40% residential coverage than someone can put up a produce stand and call it mixed use. He does not see a benefit to either Martin's Point or Southern Shores.

233 Planning Board Member McClendon asked Mr. Gupta if it would be a problem for him to strike
234 the language having frontage on US 158 and/or the language about existing wastewater
235 treatment facilities. Mr. Gupta stated it would not make a difference for them to strike that
236 language. Mr. McClendon stated both items should be stricken as they are limiting, not
237 necessary.

238
239 Planning Board Member McClendon stated his idea of mixed use is a different perspective that
240 what the other board members, where it is not individual buildings. His perspective is
241 commercial on the bottom and residential on the second floor and there is no language in this
242 proposal that would guarantee that kind of an arrangement. He recommended adding some
243 additional language that would specify that it would be all in the same building, that you could
244 not have all residential or all commercial only in the same building, and perhaps a suggestion
245 about an appropriate lot coverage amount. Mr. McClendon further stated he knows we need
246 more housing units on the Outer Banks and that is quite an opportunity. As presented, it needs
247 work.

248
249 Chairperson Ward stated Planning Board Member McClendon's perspective if commercial on the
250 bottom and residential on the top is one way to look at mix use. Another is to have an apartment
251 building on one end, condominium on the other end and commercial in the middle. His concern
252 is there is holes that do not particularly spell out how you could use the mixed use.

253
254 Chairperson Ward stated he is not particularly opposed to mixed use because it will afford a
255 different residential use for apartments. Southern Shores is 100% single family dwelling, at some
256 point our town must transition a little bit more towards apartments, possibly condominiums. He
257 stated his concern is switching over from residential lot coverage to commercial lot coverage and
258 allowing 99% residential under the commercial lot coverage percentage.

259
260 Planning Board Member McClendon stated perhaps place a percentage of square footage use so
261 that it does not become that situation of 99% residential.

262
263 Mike Strader of Quible and Associates addressed the board. He stated he heard a lot of good
264 points and there will be some refinement of the zoning text amendment. He asked for some
265 clarification. His understanding that multi-family housing must adhere to commercial building
266 code which pulls in all the additional lot coverage items; more parking, the loading zone
267 dumpster, therefore the 60% lot coverage because it must adhere to commercial codes. He
268 further stated that the Southern Shores Marketplace and Southern Shores Crossing both have
269 existing wastewater treatment facilities because he is familiar with both wastewater treatment
270 systems but if that is not the boards intent, they will address the language.

271
272 Planning Board Alternate Jan Collins stated that any project this large should have a wastewater
273 treatment facility. The board could recommend a percentage of commercial and what about a
274 percentage of low-income housing requirement so we can support our teachers and police and
275 those that need housing.

276
277 Planning Board Chair Ward reviewed the RS-8 requirements and asked Planning Director Haskett
278 how they could approach a ZTA like this with a percentage of commercial and residential.
279 Planning Director Haskett stated it is on the applicant to produce the language. They could add a

percentage of commercial and a percentage of residential to avoid the concern of having 99% residential only development.

Planning Board Member McClendon asked Mr. Gupta if he would like to withdraw his application and amend it or would he like the board to vote on it, as presented.

Mr. Gupta stated the board has made some good points with feedback. He stated mixing residential and commercial makes sense. Putting a percentage on each make sense. Multi use in most places is considered commercial and therefore up to 67% lot coverage. He said a consideration would be to not allow to go to the density bonus. He would like as much input so they can have the best approach with the next text amendment.

Michael Shrader of Quible and Associates asked the board what percentage they would like to see commercial and residential. He stated most towns are 50% split, but they can adjust that percentage. He would also encourage low impact development measures.

Chairperson Ward stated he would like to see the addition of a percentage added and what the board will need to consider will not be site specific. He would like to see somewhere in between the 40-67% lot coverage which would be more prudent for the town. He stated he is not opposed to mixed use; it just needs more clarity. He felt it would be a good move forward offering the mixed use. The town is evolving, and we cannot stay stagnant as we approach residents living to the point we need to start considering where we might possibly be able to put some apartments, condos, or townhouses that more people can feel like they can use without having to own a single family residential.

Mr. Gupta stated if he was to develop that property today with commercial, he can max the lot coverage out at 67%. He believes allowing each residential unit would be positive, not a negative. To address affordable housing which is something that is badly needed, they are currently building 112 units in Kill Devil Hills that will be at an affordable price point. No local or federal money was received for this, just simply the right thing to do. They are also working with some development across the bridge. This development in Southern Shores would only have 36 units and would not be affordable housing, it will be luxury. As far as the highway frontage and wastewater requirements, they were only trying to limit the impact and make it less scary, and they can certainly be removed.

Planning Board Chairperson Ward stated he had met with staff and Mr. Gupta and requiring an existing wastewater facility plan was a way to ease into this rather than throw the door open to the subject. He stated that is where this came from and wasn't anything nefarious, or spot zoning.

Planning Director Haskett stated since the board has discussed this zoning text amendment, he would recommend either approval or denial of the current ZTA. If denied, the applicant can either move forward with a public hearing and Council consideration or he can submit a new zoning text amendment for consideration to the Planning Board.

Planning Board Alternate Jan Collins recommended the future language include lots shall be serviced by engineered wastewater treatment facility. This would make it uniformed. She further

327 stated the board may want to consider requiring a service road to lower the traffic impact and
328 require a percentage of affordable housing. If they cannot give us affordable housing at this
329 development, we'll make them provide them someplace else.
330

331 **MOTION:** Vice Chairperson DiBernardo moved to deny ZTA 22-02 in its current form, and if the
332 applicant desires, resubmit a new ZTA at a future date with some of the items discussed this
333 evening, Seconded by Planning Board Member Lawler. The motion passed unanimously.
334

335 **AMENDED MOTION:** Vice Chairperson DiBernardo moved to recommend denial of ZTA 22-02 in
336 its current form, and if the applicant desires, resubmit a new ZTA at a future date with some of
337 the items discussed this evening, Seconded by Planning Board Member Lawler. The motion
338 passed unanimously.
339

340 VII. New Business

341 ZTA-22-04 Amendment of the Town Zoning Ordinance by amending Section 36-207(b)(4).

342 Planning Director reviewed the staff report which read as, the proposed amendments to Section
343 36-207(b)(4) are being proposed by Town Staff to establish a maximum density requirement of
344 eight dwelling units per acre in the C, General Commercial District. Currently, Section 36-
345 207(b)(4) establishes that detached single-family dwellings, two-family (duplexes) dwellings,
346 multifamily dwellings, and accessory buildings are permitted in the C, General Commercial
347 District according to the dimensional requirements of the RS-8 Multifamily Residential District.
348 The dimensional requirements of the RS-8 District are established in Section 36-203(d) and they
349 address yards (setbacks), lot coverage, lot width, building height, etc., but they do not address
350 density. The density requirement for the RS-8 District is established in Section 36-203(a) at eight
351 dwelling units per acre which should also be required for residential development in the C,
352 General Commercial District.
353

354 The Town's currently adopted Land Use Plan contains the following Policy that is applicable to
355 the proposed ZTA:
356

- 357 • Policy 2: The community values and the Town will continue to comply with the
358 founder's original vision for Southern Shores: a low-density residential community comprised of
359 single-family dwellings on large lots (served by a small commercial district for convenience
360 shopping and services located at the southern end of the Town. This blueprint for land use
361 naturally protects environmental resources and fragile areas by limiting development and
362 growth.
363

364
365 Vice Chairperson DiBernardo asked if there is a five (5) acre minimum requirement for
366 something concerning commercial and putting residential units on it? Planning Director Haskett
367 stated not that comes to mind.
368

369 Chairperson Ward stated that was for planned unit development.
370

371 Chairperson Ward Stated the zoning text amendment is being clarifying with three words and
372 most likely an oversight back in 1981.

373 Planning Board Member Finelli (ETJ) asked if a finding of consistency is needed in the motion?
374 Planning Director Haskett stated the statement of consistency is found in article 4 of the ZTA.
375
376

377 **MOTION:** Vice Chairperson DiBernardo moved to recommend approval of ZTA-22-04 as written,
378 Seconded by Planning Board Member Burek. The motion passed unanimously.
379

380

381 **VIII. Public Comment**
382 none
383

384 **IX. Planning Board Member Comments**
385 None
386

387 **X. Announcements**

388 Planning Director Wes Haskett stated the next meeting is Thursday, May 19th at 5:00 p.m.
389 Items on the agenda will include a text amendment from Ms. LeBlanc and possibly ZTA 21-08, to
390 amend Town Code Section 36-165, Regulations Governing Signs. Town Council at their April 5th
391 meeting approved the lot coverage ZTA and solid waste ordinance amendments. The town will
392 do its best on the educational aspect of the solid waste ordinance, newsletter, stickers, and
393 reaching out to the property management companies.
394

395

396 **XI. Adjourn**

397 Hearing no further business, **motion** made by Vice Chairperson DiBernardo to adjourn, Seconded
398 by Chairperson Ward. Motion passed unanimously. The time was 6:33 P.M.
399

400

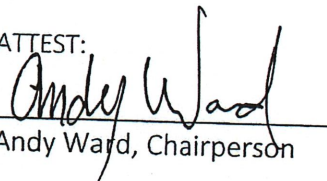
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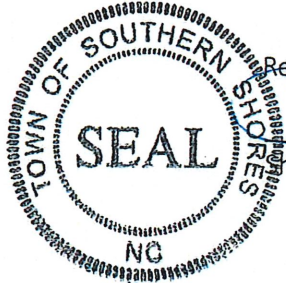
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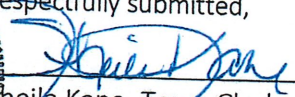
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ATTEST:


Andy Ward, Chairperson



Respectfully submitted,


Hejla Kane, Town Clerk