



Town of Southern Shores

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9 MEETING MINUTES

10 PLANNING BOARD-JULY 18, 2022, 5:00 P.M.

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

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14 I. CALL TO ORDER:

15 Chairperson Andy Ward called the meeting to order at 5:00 pm. Planning Board Members Lynda
16 Burek, Ed Lawler, Robert McClendon, Tony DiBernardo (Vice Chairperson), Andy Ward
17 (Chairperson), Jan Collins (alternate), John Finelli (ETJ) and Town Manager Cliff Ogburn. Jan
18 Collins sat as a voting member for Robert McClendon.

19

20 II. PLEDGE OF ALLEGIANCE:

21 Chairperson Ward led the Pledge of Allegiance.

22

23 III. APPROVAL OF AGENDA:

24 Chairman Ward stated the applicant Casey Varnell on behalf of Pledger Palace, CDEC, Inc. to
25 amend Town Code Sections 36-57, 36-207(b), and 36-209(a) has requested to be removed from
26 the agenda. Planning Board Vice Chairperson DiBernardo moved to approve the agenda as
27 amended with the deletion of ZTA-22-08, Seconded by Planning Board Member Burek. The
28 motion passed unanimously (5-0).

29

30 IV. ELECTION OF OFFICERS

31 Chairman Ward opened the floor for nominations for Chairperson and Vice Chairperson.

32

33 Vice Chairperson DiBernardo moved to nominate Andy Ward for Chairperson, Seconded by
34 Planning Board Member Burek. The motion passed unanimously (5-0).

35

36 Planning Board Member Burek moved to nominate Tony DiBernardo for Vice Chairperson,
37 Seconded by Chairperson Ward. The motion passed unanimously (5-0).

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39 V. APPROVAL OF MINUTES:

40 Chairperson Ward stated the minutes of May 19th were missing a relevant segment and he
41 would like to rework the minutes to include this. Vice Chairperson DiBernardo moved to defer
42 approval of the minutes of May 19, 2022, until August, Seconded by Planning Board Member
43 Burek. The motion passed unanimously (5-0).

44

45 V. PUBLIC COMMENT

46 None

47
48 VI. OLD BUSINESS

49 None

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51 VII. New Business

52 ZTA-22-07, a Zoning Text Amendment application submitted by the Town of Southern Shores to
53 amend multiple Articles in Chapter 36, Zoning to be consistent with N.C.G.S. 160D.

54
55 *In 2019, the N.C. General Assembly enacted North Carolina General Statutes Chapter 160D, Local*
56 *Planning and Development Regulation, which consolidated and clarified former Chapters 160A*
57 *and 153A that addressed development regulations for Municipalities and Counties. The Chapter*
58 *became effective January 1, 2021 with the requirement that all Municipalities and Counties*
59 *update their ordinances to be compliant with it by July 1, 2021. Due to the Town Code Update*
60 *project, Town Staff chose to postpone amending the Town Code to be compliant with Chapter*
61 *160D until the amendments from the Town Code Update project were complete.*

62 *As a result of that postponement, and in an effort to bring the Town Code into compliance with*
63 *Chapter 160D without making numerous amendments, the Town Council adopted Town Code*
64 *Amendment TCA-21-05 on July 6, 2021 that clarified that the North Carolina General Statutes (in*
65 *particular Chapter 160D) must be satisfied whenever the Town Code conflicts with; contradicts or*
66 *is otherwise inconsistent with the North Carolina General Statutes. At this point, we are moving*
67 *forward with updating Chapter 36, Zoning to be consistent with N.C.G.S. 160D. The first of several*
68 *ZTAs is ZTA-22-07 which includes amendments to multiple Articles in Chapter 36 that remove all*
69 *references to Conditional Use Permits and replaces them with Special Use Permits.*

70 *The proposed language also defines Special Use Permit as a permit issued to authorize*
71 *development or land uses in a particular zoning district upon presentation of competent,*
72 *material, and substantial evidence establishing compliance with one or more general standards*
73 *requiring that judgment and discretion be exercised as well as compliance with specific*
74 *standards. The term includes permits previously referred to as conditional use permits or special*
75 *exceptions. Like Conditional Use Permits, Special Use Permits require a recommendation from the*
76 *Town Planning Board and Town Council approval following a quasi-judicial public hearing.*

77
78 *The Town's currently adopted Land Use Plan contains the following Policy that is applicable to the*
79 *proposed ZTA:*

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

85
86 Chairperson Ward stated the main change in the 137-page ZTA is wording, "conditional"
87 replaced with "special". On page 14 the largest part of the ZTA that appears comes directly from
88 160D, as far as what the town must adhere to comply with state statute. Nothing is changing, it
89 must stay in.

90
91 Chairperson Ward stated on page 90, top plate should be removed from every ordinance in the
92 town.

Planning Board Alternate Collins stated produce stands were still listed as not allowed (page 105) in the version they have received. Chairperson Ward stated produce stands were removed from that section by Town Council action.

Planning Board Member Finelli (ETJ) stated page 121 reads, that the Planning Board shall review the application for special use permits. He has been told by the Dare County Planning Director and Dare County Attorney that per 160D the Planning Board can comment that they find the recommendations by staff to be reasonable and appropriate, but the board can no longer make recommendations. Staff may want to talk to the Town Attorney about that interpretation. Mr. Finelli stated the conditional use permit process worked fine and now the board cannot provide recommendations.

Vice Chairperson DiBernardo stated if you don't make a recommendation what is the purpose of having an evidentiary hearing? You voice your finding but not a recommendation?

Town Manager Ogburn will follow up the boards concerns with the Planning Director.

Planning Board Member McClendon stated Council needs to be aware of some of the items which have previous action taken on them before approval, such as, produce stands and top plate.

Chairperson Ward stated what the board is recommending is that we adhere to special use as it is defined and changing conditional to special.

MOTION: Planning Board Member Finelli (ETJ) moved to forward ZTA-22-07 to the Town Council with a favorable recommendation, subject to clarification of those items discussed at tonight's Planning Board meeting and the motion includes a finding of consistency with the Land Use Plan, Seconded by Chairperson Ward. The motion passed unanimously (6-0).

VIII. Public Comment

None

IX. Planning Board Member Comments

Chairperson Ward sent the following email to the Mayor and all Council members in reference to ZTA 22-06. He read the board his email which summarized the Planning Board's recommendations and reasoning of ZTA-22-06, his email to Council was not acknowledged. Mr. Ward provided an update that he has spoken with the mayor and they both agreed that there is a disconnect between the two boards and it would be beneficial for the two boards to be brought together and have a workshop to discuss and rectify the issues.

Good afternoon Mayor and Council members,

I am writing to you in regard to last night's discussion and ultimately a motion and the vote on ZTA-22-06.

I spoke with Wes this morning to clarify the calculations I am sharing with you. As you know, the Planning Board was strongly in favor of using the 50% lot coverage (or 55% for pervious pavement) for the proposed Mixed Use Group Development ZTA put forth by Ginguite, LLC. The PB also advocated for that same lot coverage to be calculated using the net parcel area, which would not include "any area covered by waterways, marshes or wetlands". At our May PB meeting and again last night, Sumit Gupta told us that he would be willing to accept the 50% (or 55% for pervious allowance) total lot coverage as well as the dimensional requirements the PB recommended. However, he stressed that he would only agree to this if the net parcel area were removed from PB ZTA-22-06 recommendations (see item I.)

The SAGA parcel that is the impetus of the mixed use concept for our town is listed at 5.2 acres, which includes more than an acre of marsh and wetlands. The gross area of that 5.2 acres equals 226,512 sq. feet. Assuming full use of the gross parcel, with the 67% allowance for pervious pavement, a hard structure footprint of 151,763 sq. feet is attainable, based on the Town Council action last night. Conversely, Mr. Gupta was amenable to accepting a 55% lot coverage (with the pervious pavement allowance) of the gross parcel. Using the same gross parcel area of 226,512 sq. feet at the 55% allowance that Mr. Gupta publicly stated would work for his business model, produces a hard structure footprint of 124,581 sq. feet. The 12% increase in allowable hard structure lot coverage equals 27,182 sq. more hard structure coverage than what the applicant was willing to accept. Given the fragility of this particular parcel and the gateway into our town, I feel we have strayed from our founders' original vision of Southern Shores which speaks to "land use that naturally protects environmental resources and fragile areas by limiting development and growth".

No member of the Planning Board is against incremental, thoughtful growth and development. All of our board members are in favor of the mixed use concept. We will continue to work diligently to be protective of the density of both structure and population in our town without being overly restrictive. But, sometimes, less is more.

Allowing 27,182 sq. feet of lot coverage over-and-beyond what the applicant stated he would accept, is a giveaway I find hard to reckon with. Sometimes, less is more.

Vice Chairperson DiBernardo also sent an email voicing his disappointment to which he did receive a call from the mayor which was appreciated. He is disappointed in the past three ZTA decisions. If you look at it individually it doesn't mean much, but if you look at them as an aggregate there is a trend. Mr. DiBernardo stated we as a Planning Board will make a recommendation and whether the Town Council goes along with our recommendation and approves or disapproves, we never find out. The Planning Board should be sent a copy of the final ZTA.

Planning Board Alternate Collins back tracked by stating her understanding that the net parcel area has always been used in the commercial/residential calculations? Chairperson Ward stated the Planning Board recommendation for ZTA-22-06 was 55% of the net parcel area, and Mr. Gupta ultimately received 60-67% gross area.

Chairperson Ward stated we cannot expect everything that we recommend getting approval but our expectations as a board is to not get hopped over to make a decision. He supported the

mayor's recommendation to have a workshop with both boards and stated in the end it will work out for the best.

Planning Board Member Burek stated we need to understand our relevance in the process and if we get nothing back from the Town Council except maybe a perfunctory from the mayor, that tells a lot.

Planning Board Alternate Collins mentioned earlier but to be included under comments, commercial development aesthetics. She asked if the board should be thinking about how we would like to see the mixed use development look aesthetically. Chairperson Ward stated it was good to be proactive and that would need to be addressed in the Land Use Plan update.

Planning Board Member Burek asked who is the gatekeeper of the Land Use Plan?

Town Manager Ogburn stated that a consultant will take a lead in the process.

The Planning Board requested a Town Council action update on future Planning Board agendas or an email with update and approved ZTA attached.

Planning Board Member Lawler asked for a Marketplace update? Town Manager Ogburn stated permits were issued last week for both Marshals and Rackroom Shoes.

Planning Board Member McClendon asked if the board could regulate or suggest aesthetics for commercial areas. Town Manager Ogburn stated the Planning Board could make suggestions and then the Council would approve or disapprove.

Chairperson Ward stated he would like to add that to a future agenda, commercial aesthetics and what we may or may not be able to do as a town. He stated residential aesthetics are covered by covenants.

X. Announcements

Chairperson Ward stated the next meeting of the Planning Board is August 15th. The board will potentially look at ZTA 22-09 Group Fitness.

XI. Adjourn

Hearing no further business, motion made by the Chairperson DiBernardo to adjourn, Seconded by Planning Board Alternate Collins. Motion passed unanimously. The time was 5:56 P.M.

ATTEST:

Andy Ward, Chairperson



Respectfully submitted,

Sheila Kane, Town Clerk