

**FINAL**



# Town of Southern Shores

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## Planning Board Meeting

April 16, 2018

5:30 p.m., Pitts Center

### MEETING MINUTES

#### I. CALL TO ORDER:

Chairperson Sam Williams called the meeting to order at 5:30 pm. Planning Board Members Elizabeth Morey, David Neal, Sam Williams, Glenn Wyder, ETJ representative John Finelli, and Town Planner Wes Haskett were present.

#### II. PLEDGE OF ALLEGIANCE:

Chairperson Sam Williams led the Pledge of Allegiance.

#### III. APPROVAL OF AGENDA:

Glenn Wyder motioned to approve the agenda. Elizabeth Morey seconded the motion. The motion passed unanimously (5-0).

#### IV. PUBLIC COMMENT:

None.

#### V. OLD BUSINESS:

None.

#### VI. NEW BUSINESS:

A. ZTA-18-03. Zoning Text Amendment application submitted by the Southern Shores Volunteer Fire Department to amend the Southern Shores Town Code by amending Section 36-163, Section 36-165, and 36-205 to establish parking, signage, and setback requirements for Fire Stations

Chairperson Williams introduced the application and called on Wes Haskett to present the Staff Report (attached).

Chairperson Williams called on Fire Chief Ed Limbacher to address the application. Chief Limbacher explained that the site plan for a new fire station requires 11 parking spaces which would include spaces provided in the Town right-of-way to allow parallel parking. The proposed building also would encroach the current rear setback requirement.

Elizabeth Morey asked if allowing a zero side setback requirement would create a safety hazard. The Board reviewed a large copy of the site plan for a new fire station and determined that the proposed building does not extend up to the Town right-of-way. Wes Haskett noted that a Conditional Use Permit is required for fire stations and that public safety is one of the criteria that is to be considered.

To reflect their relative importance, Chairperson Williams suggested moving Part IV,(d) (4) (a) (on page 3) Part IV,(d) (4) (c) and renumber as appropriate. A similar shift was proposed for Part IV,(d) (5) (a).

Elizabeth Morey motioned to recommend approval of the ZTA, as amended, to the Town Council. Glenn Wyder seconded the motion. The motion passed unanimously (4-0). ETJ member John Finelli did not participate since the ZTA does not involve the Martins Point ETJ area.

Glenn Wyder motioned to recommend, to the Town Council, that the ZTA is consistent with the Town's currently adopted Land Use Plan. David Neal seconded the motion. The motion passed unanimously.

B. ZTA-18-04. Zoning Text Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Section 36-202 to establish new lot coverage requirements

Chairperson Williams introduced the application and called on Wes Haskett to present the Staff Report (attached).

David Neal asked why allowing up to 500 sq. ft. of the water area of swimming pools to not contribute to lot coverage was inconsistent with the Town's currently adopted Land Use Plan. Wes Haskett stated that he did not consider that as low impact development. Some have argued that swimming pools can overflow after a rain event causing more of a stormwater impact and some have argued that they can retain at least the rain from a 1½ inch stormwater event, as referenced in the stormwater section of the Town Code.

Chairperson Williams stated that the Board had previously recommended lot coverage changes (ZTA-17-03) to the Town Council. These changes were denied. The main reason that the Board recommended approval of the changes was to increase stormwater retention. Pervious materials will increase stormwater retention but cost property owners more than installation of a concrete driveway and/or parking area. Gravel/grass driveways also increase stormwater retention. However, one problem with gravel/grass driveways is that they could be paved over after approval is given and it would be difficult to administer such a program. Gravel walkways increase stormwater retention.

There are no proposed changes to the 30% maximum lot coverage requirement. However, the Board recognizes that, if the proposed changes are accepted, the size of house could increase.

New language in ZTA-18-05 allows open-slatted decks over pervious material, not exceeding 25% of the total footprint area of the attached single-family dwelling, to not contribute to lot coverage.

Glenn Wyder stated that the Land Use Plan Policies clearly state that low impact development should be encouraged and all of the proposed language except for subsection g. (swimming pools) are consistent with those Policies. His swimming pool fills up to the edge during a 1 inch or more rain event and he would be in favor of recommending approval of the ZTA with the exception of subsection g. Chairman Williams stated that his pool could accommodate more than a 1 ½ inch rainfall event, permitting the excess water to be pumped out when the soil was less saturated.

David Neal stated that it is important to consider what the maximum potential for development could be with a 6,000 sq. ft. house and 30% lot coverage. All rules in Dare County are pushed to the max.

The Board discussed the spacing between slats on open-slatted decks.

Chairperson Williams motioned to delete subsection e. (gravel/grass driveways) from the proposed language. David Neal seconded the motion.

Ann Sjoerdsma stated that she would like to reinforce the concern brought up by David Neal about the potential for larger homes and swimming pools. She stated that she is concerned with the ZTA because it was brought back up after the election which resulted in one new Town Council member. She asked what is the need and purpose. The survey conducted as part of the Town Code Update project asked about changing the maximum allowable 30% lot coverage and the responses indicated to leave it as is. The ZTA is premature and unnecessary. If the Board does recommend approval, the Board should consider establishing a definition for open-slatted decks. More public comment should be given.

Chairperson Williams stated that the Board is considering the ZTA because it was referred to the Board by the Town Council and that everyone understands Ann's concerns.

The Board discussed how the proposed language could encourage larger homes and indicated that the public would be given a chance to comment on the proposed ZTA when Town Council held a public hearing on the matter.

Chairperson Williams called for a vote on his motion to delete subsection e (gravel/grass driveways). David Neal seconded the motion. The motion passed (3-1).

Glenn Wyder motioned to delete subsection g (water area of swimming pools) from the proposed language. David Neal seconded the motion. The motion resulted in a tie vote (2-2), therefore the Board will make no recommendation to the Town Council on this.

Elizabeth Morey motioned to amend subsection h. (open slatted decks) as follows: Open-slatted decks that allow water to penetrate through to pervious material, not exceeding a total of 25% of the total footprint area of the attached single-family dwelling, shall not contribute to lot coverage. David Neal seconded the motion. The motion passed unanimously.

David Neal motioned to recommend approval of the ZTA to the Town Council as amended. Elizabeth Morey seconded the motion. The motion passed unanimously (4-0 with ETJ member John Finelli not participating since the ZTA does not involve the Martins Point ETJ area).

Chairperson Williams motioned to recommend that the ZTA is consistent with the Town's currently adopted Land Use Plan to the Town Council. David Neal seconded the motion. The motion passed (3-1).

C. ZTA-18-05. Zoning Text Amendment application submitted by 5415 OBX LLC to amend the Southern Shores Town Code by amending Section 36-57, Section 36-163, and Section 36-207 to establish ice cream shops as a Conditional Use in the C, General Commercial zoning district and applicable parking requirements

Chairperson Williams introduced the application and called on Wes Haskett to present the Staff Report (attached).

Chairperson Williams called on the applicant's representative, Mike Strader, P.E., Quible & Associates, to address the application. Mike Strader stated that the ZTA was prepared to be sensitive to the Town's vision of keeping a small commercial district. In the event of a change in use, the Town Council would have to consider awarding a new Conditional Use Permit.

Glenn Wyder asked if the proposed language had to be so specific to ice cream shops. Chairperson Williams agreed with Glenn Wyder. Chairperson Williams stated that over the years, it has been made clear that citizens do not want fast food drive-through restaurants. Chairperson Williams suggested revising the ZTA to delete ice cream shop and create a broader definition. This broader definition would distinguish a drive-through facility (small) and a drive-through facility (large). A drive-through facility or establishment (small) would be allowed only on lots that are less than 20,000 sq. ft.

John Finelli stated that the Board required drive-through facilities in a previous ZTA to be on lots that are greater than 2.5 acres because of the concern with drive-through establishments. He suggested adding language to the ZTA that allows drive-through facilities or establishments (small) only on lots that are adjacent to Hwy. 158.

David Neal motioned to recommend approval of the ZTA to the Town Council as amended. Glenn Wyder seconded the motion. The motion passed (4-1).

Elizabeth Morey motioned to recommend that the ZTA is consistent with the Town's currently adopted Land Use Plan to the Town Council. John Finelli seconded the motion. The motion passed unanimously.

D. CUP-18-01. Conditional Use Permit application submitted by 5415 OBX LLC to open an Ice Cream Shop at 5415 N. Croatan Hwy.

Chairperson Williams introduced the application and called on Wes Haskett to present the Staff Report (attached).

Chairperson Williams called on the applicant's representative, Mike Strader, P.E., Quible & Associates, to address the application.

Mike Strader stated that the lighting plan had been amended to meet the Town's lighting requirements and that the applicant is present if there are any questions for him.

Glenn Wyder asked if there were other Nu-Quality locations.

The applicant, Spiros Giannakopoulos, stated that there is one other location in Elizabeth City which has been open since the 60's. We are very involved with the community and we want the business to be consistent with it. We are also involved with the schools and on occasion provide free ice cream to third and fifth graders.

The Board asked about landscaping, parking, the loading berth, and signage illumination. Spiros Giannakopoulos confirmed that Japanese Pines will be planted in the buffer and that additional landscaping will be installed. The parking spaces on the north side of the building will mostly be used by employees and the loading berth will only be utilized by a Maola truck which is smaller than an 18 wheeler. A light will shine on the sign.

The Board agreed that the proposed design of the building looks great and the Board thinks that the business will be a good neighbor to the Town.

David Neal motioned to recommend approval of the application to the Town Council. Elizabeth Morey seconded the motion.

David Neal motioned to amend his original motion by recommending approval of the application with conditions to the Town Council. Elizabeth Morey seconded the motion.

Ann Sjoerdsma stated that the location is not a good location. Because of congestion, traffic will be impacted on Juniper Trl. and in the Marketplace shopping center. It is a very tight fit. Someone should say something about congestion.

David Neal noted that there are three lanes in front of the location and that NCDOT had approved ingress/egress.

Chairperson Williams called for a vote on the motion. The motion passed unanimously (4-0 with ETJ member John Finelli not participating since the application does not involve the Martins Point ETJ area).

**VII. PUBLIC COMMENT:**

None.

**VIII. PLANNING BOARD MEMBER COMMENTS:**

None.

**IX. ANNOUNCEMENTS:**

Chairperson Williams stated that a Special Meeting will be held on May 7, 2018 to continue discussion of the Module One footnotes. The following meeting will be held on May 21, 2018 to consider two ZTA's that address the development of 50 ft. wide lots and additional regulation of small cell wireless facilities.

**X. ADJOURNMENT:**

Glenn Wyder motioned to adjourn. David Neal seconded the motion. The motion passed unanimously and the meeting adjourned at 8:15 p.m.

ATTEST:

RESPECTFULLY SUBMITTED:

\_\_\_\_\_  
Sam Williams, Chairperson

\_\_\_\_\_  
Wes Haskett, Town Planner

**STAFF REPORT**

**To:** Southern Planning Board  
**Date:** April 13, 2018  
**Case:** ZTA-18-03  
**Prepared By:** Wes Haskett, Town Planner/Code Enforcement Officer

**GENERAL INFORMATION**

**Applicant:** Southern Shores Volunteer Fire Department  
 15 S. Dogwood Trl.  
 Southern Shores, NC 27949

**Requested Action:** Amendment of the Town Zoning Ordinance by amending Section 36-163, Off-street Parking Requirements; Section 36-165, Regulations Governing Signs; and Section 36-205, R-1, Low-density Residential District.

**ANALYSIS**

The applicant is proposing to amend the Town Zoning Ordinance by amending Section 36-163, Section 36-165, and 36-205 to establish new parking, signage, and setback requirements for Fire Stations. First, the applicant is proposing to amend Section 36-163, Off-street Parking Requirements by adding language to allow required parking spaces for Fire Stations that cannot be provided on the site of the fire station to be located on Town-owned property and/or within the Town right-of-way. Currently, all required parking spaces for any use must be provided on the site of the use and outside of any right-of-way. Second, the applicant is proposing to amend Section 36-163 to establish new parking requirements for Fire Stations which would require one parking space for each employee plus one space for each 4 seats in the training room. There are currently no specific parking requirements for Fire Stations and as a result, the current Fire Station being used at 15 S. Dogwood Trl. provides parking spaces based on the parking requirements for a municipal building which requires one parking space for each 200 square feet of net office area, plus one space for each two seats in municipal council chambers.

Third, the applicant is proposing to amend Section 36-165, Regulations Governing Signs, by exempting legal notices, identifications, directional and informational signs for Fire Stations from signage requirements. Currently, only governmental bodies, public utilities, or civic associations with the approval of Town Council are exempt from signage requirements. Finally, the applicant is proposing to amend Section 36-205, R-1, Low-density Residential District by establishing a 0 ft. side and rear setback requirement for Fire Stations when adjacent to Town-owned property or a Town right-of-way.

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

- **Policy 12:** The Town shall encourage and support the improvement of all of the public safety services [i.e., the TOSS Police Department and Southern Shores Volunteer Fire Department, Inc. (a Town contractor), ocean rescue (a Town contractor), and the Dare County EMS rescue services] to enhance the security and safety of the life and property of Southern Shores citizens.
- **Action Item 12-b:** The need for additional/new fire stations or improvements to existing

fire stations should be examined, in conjunction with the Southern Shores Volunteer Fire Department, Inc.

**RECOMMENDATION**

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan and Town Staff recommends that the Board consider this when making its recommendation to the Town Council. 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.

**STAFF REPORT**

**To:** Southern Shores Planning Board  
**Date:** April 13, 2018  
**Case:** ZTA-18-04  
**Prepared By:** Wes Haskett, Town Planner/Code Enforcement Officer

**GENERAL INFORMATION**

**Applicant:** Town of Southern Shores  
 5375 N. Virginia Dare Trl.  
 Southern Shores, NC 27949

**Requested Action:** Amendment of the Town Zoning Ordinance by amending Section 36-202, RS-1, Single-family Residential zoning district.

**ANALYSIS**

At the August 21, 2017 Planning Board meeting, the Town Planning Board unanimously recommended approval (4-0) of the proposed language to amend the Town Zoning ordinance to establish new lot coverage requirements which was subsequently denied (3-2) by the Town Council on September 5, 2017. On February 6, 2018, the Town Council voted (3-2) to send the proposed language back to the Planning Board for reconsideration with additional proposed language. The amendments would establish the following changes in how lot coverage is calculated in the RS-1, Single-family Residential zoning district:

- c. Pervious materials and turfstone/pavers for driveways and parking areas contribute 50% to lot coverage.
- d. Gravel walkways shall not contribute to lot coverage.
- e. Gravel or grass driveways with a pervious base shall not contribute to lot coverage.
- f. The outermost 4 feet of eaves shall not contribute to lot coverage.
- g. Up to 500 square feet of the water area of swimming pools shall not contribute to lot coverage.
- h. Open-slatted decks constructed over pervious material, not exceeding a total of 25% of the total footprint area of the attached single-family dwelling, shall not contribute to lot coverage.
- i. Those allowances and/or exemptions listed in sub-sections g. and h. of this-paragraph (6) shall be available only to an applicant for a building/zoning permit for a single-family dwelling, or adjacent swimming pool, or attached open-slatted deck over pervious material, upon presentation of a survey with all applicable requirements including plan certification, for a Lot Disturbance and Stormwater Management Permit as described in Sec. 36-171, (3) of the Town Code of Ordinances.

The Town’s currently adopted Land Use Plan contains the following Policies and Action Items that are applicable to the proposed amendments:

- **Policy 2:** The community values and the Town will continue to comply with the founder’s original vision for Southern Shores: a low density (1–3 units per acre) (see Map

13 Land Use Densities) residential community comprised of single family dwellings on large lots (20,000 square feet or larger) served by a small commercial district (56 acres out of 2,175 acres) 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.

- **Action Item 2-b:** The Town shall encourage the use of low impact development techniques and sound environmental preservation practices for all new development, remodeling and redevelopment within Southern Shores.
- **Policy 7:** Support stormwater management programs that reduce flooding and improve coastal water quality.
- **Action Item 7-b:** Encourage the use of Low Impact Development (LID), vegetative buffers to filter stormwater, impervious surface limits, and innovative stormwater management alternatives to reduce runoff and to improve water quality.

### **RECOMMENDATION**

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan and Town Staff recommends that the Board consider this when making its recommendation to the Town Council. However, allowing up to 500 square feet of the water area of swimming pools to not contribute to lot coverage may not be consistent with the aforementioned Land Use Plan Policies and Action Items. 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.

**STAFF REPORT**

**To:** Southern Shores Planning Board  
**Date:** April 13, 2018  
**Case:** ZTA-18-05  
**Prepared By:** Wes Haskett, Town Planner/Code Enforcement Officer

**GENERAL INFORMATION**

**Applicant:** 5415 OBX LLC  
 Attn: Spiros Giannakopoulos  
 800 North Hughes Blvd.  
 Elizabeth City, NC 27909

**Representative:** Michael W. Strader, Jr., P.E.  
 Quible & Associates, P.C.  
 P.O. Drawer 870  
 Kitty Hawk, NC 27949

**Requested Action:** Amendment of the Town Zoning Ordinance by amending Section 36-57, Definition of Specific Terms and Words; 36-163, Off-street Parking Requirements; and 36-207, C General Commercial District.

**ANALYSIS**

The applicant is proposing to amend the Town Zoning Ordinance by amending Section 36-57, Section 36-163, and Section 36-207 to establish Ice Cream Shops with or without a drive-through facility as a Conditional Use in the C, General Commercial zoning district. The proposed language defines an Ice Cream Shop with a drive-through facility or without a drive-through facility as a customer service facility located within the principal structure which serves frozen desserts or beverages over a general service counter for the customer to carry to a seating facility, to a motor vehicle, or off-premises. The proposed parking requirement for the proposed use is one parking space for each three customer seats, plus one additional parking space for each employee.

The proposed language also requires that Ice Cream Shops with or without a drive-through not exceed 2,500 sq. ft., the location of the drive-through facility must be a minimum of 100 ft. from any residentially zoned property, and it must allow stacking for a minimum of six (6) cars in the drive-through area. Finally, the language proposes to amend the Town’s current requirement that drive-through facilities must be located on lots greater than or equal to 2.5 acres by allowing only Ice Cream Shops to be located on Commercial lots of any size.

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

- **Policy 2:** The community values and the Town will continue to comply with the founder’s original vision for Southern Shores: a low density (1–3 units per acre) residential community comprised of single family dwellings on large lots (20,000 square feet or larger) served by a small commercial district (56 acres out of 2,175 acres) 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.

**RECOMMENDATION**

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan and Town Staff recommends that the Board consider this when making its recommendation to the Town Council. 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.

**STAFF REPORT**

**To:** Southern Shores Planning Board  
**Date:** April 13, 2018  
**Case:** CUP-18-01  
**Prepared By:** Wes Haskett, Town Planner/Code Enforcement Officer

**GENERAL INFORMATION**

**Applicant:** 5415 OBX LLC  
 Attn: Spiros Giannakopoulos  
 800 North Hughes Blvd.  
 Elizabeth City, NC 27909

**Representative:** Michael W. Strader, Jr., P.E.  
 Quible & Associates, P.C.  
 P.O. Drawer 870  
 Kitty Hawk, NC 27949

**Requested Action:** Conditional Use Permit application to construct an Ice Cream Shop with a drive-through facility.

**PIN #:** 986720803969  
**Location:** 5415 N. Croatan Hwy.  
**Zoning:** C, General Commercial District

**Existing Land Use:** “Commercial”

**Surrounding Land Use & Zoning:**

- North-** Commercial; C, General Commercial District
- South-** Highway 158, Town of Kitty Hawk
- East-** Commercial; C, General Commercial District
- West-** Commercial; C, General Commercial District

**Physical Characteristics:** Developed  
**Applicable Regulations:** Town Zoning Ordinance: Article III, Interpretation and Definition of Terms; Article IV, Application of Regulations; Article VI, General Provisions; Article VII, Schedule of District Regulations; Article X, Administration and Enforcement.

**ANALYSIS**

The applicant seeks a Conditional Use Permit to construct a 910 sq. ft. Ice Cream Shop with a drive-through at 5415 N. Croatan Hwy. The proposed Ice Cream Shop includes a walk-up service area, drive-through service area, and twelve outdoor seats under a canopy. The proposed improvements incorporate pervious pavement as established in Section 36-207, (d), 5 and a landscaping buffer which contains Japanese Black Pines planted 10 ft. on center. A detailed lighting plan has also been submitted which demonstrates compliance with the Town’s lighting requirements.

A Zoning Text Amendment application has been submitted concurrently with this application

which would establish Ice Cream shops with or without a drive-through facility as a permitted use in the C, General Commercial District provided that a Conditional Use Permit is granted by the Town Council following a recommendation made by the Town Planning Board. In granting any Conditional Use Permit, the Town Council may prescribe appropriate conditions and safeguards in conformity with Article X, Administration and Enforcement. Before granting any Conditional Use Permit, the Town Council shall make affirmative findings that:

- a. The applicant has met the requirements of the applicable provisions of the Town Chapter pertaining to Zoning, Subdivision Chapter, and all other applicable Ordinances.
- b. That the use as proposed will conform with the Town's Land Use Plan, and will be compatible with the area in which it is to be located, if developed in accordance with the conditions specified in the Chapter and additionally required by the Town Council as authorized by the Chapter.
- c. That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan submitted.
- d. That the use as proposed will not overburden the Town Volunteer Fire Department fire-fighting capabilities and the County water supply capacity to the Town, as said facilities and capabilities will exist on the completion date of the conditional use for which the application is made.

### **RECOMMENDATION**

The Land Use Plan identifies this area as Commercial in the C, General Commercial zoning district which is consistent with the improvements proposed in the application. All applicable regulations of the Town Zoning Ordinance and all of Town Staff's concerns that are applicable to this application have been identified or are addressed in the recommended conditions. Should the Board recommend approval of the application to the Town Council, Town Staff offers the following conditions for consideration:

1. The following permits shall be issued prior to submittal of a Building Permit application:
  - a. Stormwater Management Permit as issued by the NCDEQ;
  - b. NCDOT Encroachment Agreement for work within the ROW of Hwy 158 as issued by the NCDOT;
  - c. Improvement Permit and Authorization to Construct a new wastewater collection, treatment and disposal system as issued by the DCHD and reviewed and approved by the NCDHHS;
  - d. Review and approval of potable water distribution system modifications or extensions by the DCWD Engineer;
2. The applicant must strictly abide by all requirements of the Town Code and must also strictly comply with all other applicable local, State, and Federal requirements.