

**FINAL**



## **Town of Southern Shores**

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### **Special Planning Board Meeting**

**January 7, 2019**

**5:00 p.m., Pitts Center**

### **MEETING MINUTES**

#### **I. CALL TO ORDER:**

Vice Chairperson Morey called the recessed Special Meeting back to order at 5:00 pm. Planning Board Members Joe McGraw, Elizabeth Morey, David Neal, Andy Ward, Alternate Member Michael Basilone, Town Attorney Ben Gallop, and Deputy Town Manager/Planning Director Wes Haskett were present.

Vice Chairperson Morey welcomed everyone back to the recessed Special Planning Board meeting and called on Homebuilders Association President Matt Neal to continue explaining the Homebuilders Association's proposal.

Matt Neal explained that the septic capacity requirements would apply if someone builds a house with a septic capacity of more than 14 occupants. The owner would have to apply for a Conditional Use Permit and a condition in the permit would prohibit rental of the house and if it becomes a rental, the occupancy permit would be revoked.

Vice Chairperson Morey asked Wes Haskett how non-rental property converted to rental property would be discovered. Wes Haskett stated that Town Staff would have to monitor rental company publications, web sites, and signage.

Matt Neal stated that if allowed, houses with a septic capacity of more than 14 occupants would be high profile and that it would be a high risk for someone to apply for the Conditional Use Permit and violate the condition. The Town would not have to monitor properties.

Elizabeth Morey stated that Ann Sjoerdsma had submitted three proposals and called on her to explain the proposals.

Ann Sjoerdsma stated that she is concerned someone can build a 6,000 sq. ft. house on a nonconforming lot. She stated that she wanted to stress occupancy more than house size and that she is a supporter of using septic capacity which is less complicated. One of the proposals also addresses the definition of a single-family dwelling which was inadvertently changed in 2016 by changing the definition of family. The current definition of family is open ended and allows for abuse. Before January, 2016, the definition of family did not refer to the Vacation Rental Act. It defined family as one or more persons occupying a single-family dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain more than five persons. There was an attempt to alter family by referring to the Vacation Rental Act which is not about single-

family dwellings. The Town should not be defining it. The new definition allows high occupancy and the language before 2016 was from the North Carolina State Residential Code. She suggested deleting the Vacation Rental Act reference and stated that it is a separate animal.

Vice Chairperson Morey suggested that the Board postpone discussion of the definition of family since it's not directly related to the large single-family dwelling issue. Ann Sjoerdsma stated that the structures at 98 Ocean Blvd. and 134 Ocean Blvd. were allowed as single-family dwellings.

Vice Chairperson Morey called on Town Attorney Ben Gallop to explain the proposed language he submitted that was suggested by Professor David Owens.

Ben Gallop stated that the language was not submitted, it was just another suggestion from David Owens which is similar to the Homebuilders Association's proposal. With the use concept, the Town can look at policy. There is less risk with use than there is with regulating occupancy. This is a big issue, and if not done right, it can cause other problems.

Andy Ward asked Ben Gallop to explain the how the Vacation Rental Act was included in the definition of family.

Ben Gallop stated that at the time, Town Staff was focused on event houses and went to single-family dwellings. The Vacation Rental Act is related to a vacation rental. When considering single-family residences and the North Carolina Building Code, the LeTendre House (court case in Currituck County) is a single-family dwelling based on the definition that Ms. Sjoerdsma wants. What Ms. Sjoerdsma wants is an occupancy limitation. An occupancy limitation is cleaner to have somewhere else in the Town Code which would say no more than 14 people are allowed and it would be better. The Homebuilders Association's proposal has a 14 person limit and Professor Owens's capacity proposal has a 14 person limit, which all can be done outside of the single-family dwelling requirements. He stated that he had looked at definitions from other coastal communities and that there was no conspiracy to allow something that should not be allowed by amending the definition of family.

Vice Chairperson Morey asked if Professor Owens's other suggested language applied to renters. Ben Gallop stated that he needed to research that because there is no case law on regulating use. Unlike septic, there is clear statutory authority to regulate use but both have risk. After scanning the requirements along the coast, the Town would be one of the first, if not the first, to regulate use. Wilmington and Ashville are both cities where rentals came to the area. Both have registration processes and specific areas for rentals. If rentals were only on the oceanfront in the Town, regulating use would be more useful but it is not uncommon to have rentals anywhere in the Town.

Andy Ward asked Ben Gallop when he received the recently submitted proposed language from Professor Owens. Ben Gallop stated November 20, 2018 and that it was considered a concept.

Vice Chairperson Morey stated that she had hard copies of the requirements for the RS-1 and R1 zoning districts and both only have detached single-family dwelling as a permitted use. Ben Gallop suggested that if use is what the Board wants to regulate, the Board can tell Town Staff and it will be drafted.

David Neal stated that Professor Owens's recently submitted proposal is very thoughtful with two options. One is to limit septic capacity and the other is to define use. Professor Owens has combined use and septic.

Mike Stone asked if the Board is trying to regulate the use or the size of houses.

David Neal stated that the Board is not limiting bedrooms. The Town already has a 6,000 sq. ft. limit on houses and does not limit rentals. The Board is trying to limit the number of people on rental property.

Vice Chairperson Morey stated that the Board is trying to limit the number of people in any single-family dwelling. If the Town issued a Conditional Use Permit for more than 7 bedrooms and rent the house, it would be a violation

David Neal stated that he liked Professor Owens's suggestion that was recently submitted.

Matt Neal stated that the Homebuilders Association explored the Conditional Use Permit proposal and just prohibiting more than 7 bedrooms which would not be regulating directly or indirectly.

Ben Gallop stated that there is a lot less risk related to regulating use versus owner/occupancy. The Conditional Use Permit proposal does not stop large single-family dwellings and the Town cannot have a condition to not rent them.

Andy Ward stated that each of the proposals have risk. The Board is trying to see what to do with what the Board is trying to achieve. The Board is paralyzed trying to weigh out risk. He stated that he was prepared to make a motion and send it to the Town Council.

Vice Chairperson Morey stated that the options were down to occupancy limit with or without septic or regulating by use.

David Neal stated that he liked both ideas. Both accomplish what the Board needs to do. The Town does not want large rental properties which are not consistent with the rest of the Town's ambience.

Andy Ward stated that he and Professor Owens are first cousins and that the morning of the meeting when it was sent was the first time he had heard of the suggested language. He stated that he had talked to Professor Owens as recently as the previous Saturday afternoon about the issue.

Mayor Bennett asked how anyone would know if a house is a rental.

Ben Gallop stated mostly from complaints.

Vice Chairperson Morey opened the floor for Public Comments.

Mark Martin commented on the distinction between rental houses and permanent residences.

Ann Sjoerdsma stated that she wished she had seen the recently submitted language suggested by Professor Owens. She stated that she is concerned that the Board wants to restore things to the way they were before the legislation was adopted. She asked

the Board why it had to be complicated. She suggested swapping out the bedroom restriction and putting in the septic restriction. The changes to the legislation were made in favor of the builders. The best way to go is septic capacity and if that does not work, go to use.

Matt Neal stated that every Town revised their ordinances after the legislation was adopted and the Town of Duck is revising its ordinance again because what they adopted did not work.

Mike Stone stated that it is not really about septic. If the Town wants to reduce the number of bedrooms in a house, pick a number of rooms then decrease the allowed square footage for each additional room. The Town needs to decide if it wants to regulate the size of a house, or the number of people in a house.

Ursula Bateman stated that Ben Gallop has stated that limiting septic will not work and asked if there have been any challenges that show why it will not work.

Ben Gallop explained that in the Town of Duck, an applicant received a permit from the Health Dept. for a higher number of occupants than was allowed and was denied by the Town. The applicant went back to the Health Dept. and changed the reference to a bedroom on the plans to ping pong room and other room changes. He stated that an applicant could come to the Town and apply for a number of occupants less than the limit and the Town would have to allow it. The other problem with regulating with septic is the direct/indirect problem. Almost every person who has spoken has mentioned the word "bedroom". There are three things being considered: The size of the house, the number of people, or how it is being used. If septic is used, it is possible that the Town could never be challenged.

Gerri Sullivan asked if an applicant can receive a permit from the Health Dept. for a larger septic system. Ben Gallop stated yes.

Andy Ward stated that three years ago, the Board voted in favor 5-0 of ZTA-16-02 that would have limited septic capacity to 14 people. That ZTA went to the Town Council two day later and the Town Council adopted ZTA-16-03 that restricted house size to 6,000 sq. ft. instead which went against the Planning Board's recommendation. That was wrong, but it is the Town Council's right. The preamble in ZTA-16-03 invokes the term "density" numerous times and also refers to maintaining the character of the Town. The original language suggested by Professor Owens was slightly revised and sent to the Board and it limits sleeping capacity and that is the crux. The Town can choose 14, 24, or 30. He stated that he wants 14.

Joe McGraw stated that he was kind of in favor of that and suggested reducing the current 6,000 sq. ft. limit to 5,000 sq. ft. Andy Ward stated that he is not in favor of that and that reducing the limit to 5,000 sq. ft. penalizes those who can afford or have enough property to build a larger house.

Joe McGraw stated that the 6,000 sq. ft. limit opened the door for 98 Ocean Blvd.

Michael Basilone stated that occupancy may be the way to go as well as reducing the square footage from 6,000 sq. ft. to 5,000 sq. ft.

Vice Chairperson Morey stated that she liked 5,000 sq. ft. instead of 6,000 sq. ft. but it may not solve the problem. The problem is density and the public health and safety.

David Neal asked what the Town Code used to restrict with respect to septic capacity. Wes Haskett stated no more than 7 bedrooms or 14 occupants.

Vice Chairperson Morey referred to the 2015 legislation and stated that the Town can still regulate density and occupancy.

Joe McGraw stated that he had seen Health Dept. applicants obtain septic permits for higher capacity. Doing so makes the system work better and the Health Dept. likes that. Adding rooms is what creates the problem.

Andy Ward explained a scenario where a permit was issued for more than the maximum allowed occupants in 2014.

Wes Haskett stated that the Town received official complaints regarding occupancy on Seventh Ave. prior to 2016 which resulted in requesting local realty companies to change the advertised occupancy on their websites.

Andy Ward motioned to direct Town Staff to insert the language suggested by Professor Owens to control high occupancy dwellings verbatim into Section 36-202 and Section 36-205. Vice Chairperson Morey seconded the motion. The motion failed (2-3 with Basilone, McGraw, and Neal opposed).

David Neal motioned to accept the other language suggested by Professor Owens with the high occupancy limit, not verbatim, that limits occupancy to 14 and send it to Town Staff for drafting a ZTA to address large single-family dwellings.

Joe McGraw stated that he would like to see the 5,000 sq. ft. limit included. David Neal stated that he was opposed to the 5,000 sq. ft. limit because there are others that can be built and not be a problem.

Vice Chairperson Morey and Michael Basilone both agreed that they were in favor of the 5,000 sq. ft. limit.

Joe McGraw seconded David Neal's motion.

Andy Ward asked David Neal if he thought that what was submitted by Professor Owens would work with the Homebuilders Association's language. David Neal stated that he thinks it does.

Andy Ward asked about the optional standard in the language that states that vacation cottages with a maximum overnight occupancy of more than 14 persons may be permitted with a Conditional Use Permit if the minimum lot size is 80,000 sq. ft.

Ben Gallop stated the he could draft a ZTA with the Conditional Use Permit language or without it. He stated that he could look at the Homebuilders suggested language as well. The ZTA would be a comprehensive use ordinance.

Andy Ward stated that his relatives own 4 contiguous lots that equal to around 175,000 sq. ft and that there are other properties that could meet the 80,000 sq. ft. minimum requirement which would allow for a very large house.

Wes Haskett stated that the optional standard would allow what the Town is trying to prevent.

Ben Gallop stated that Professor Owens is trying to get around prohibiting single-family dwellings with more than 14 persons and that the purpose is to try to make it hard to meet.

Andy Ward stated that the Town could also look at using the first line of stable natural vegetation on oceanfront properties for lot area.

David Neal suggested leaving the 80,000 sq. ft. suggestion in the language and letting Town Staff address it.

Vice Chairperson Morey called for a vote on David Neal's motion and the motion passed (3-2 with Basilone and Ward opposed).

Vice Chairperson Morey motioned to add a 5,000 sq. ft. limit to the language for Town Staff to draft a ZTA. Joe McGraw seconded the motion.

Andy Ward stated that he is opposed to including the 5,000 sq. ft. limit. He explained that his family owns three properties that would become nonconforming. They pay more taxes than a house with 12 bedrooms. The 5,000 sq. ft. limit would deny the next person in line the right. He stated that he is not taking that position so that he can make more money.

Vice Chairperson Morey called for a vote on her motion and the motion passed (3-2 with Neal and Ward opposed).

**II. PUBLIC COMMENT:**

Ursula Bateman stated that she agreed with Andy Ward to not limit house size to 5,000 sq. ft.

Gerri Sullivan stated that she would support looking into lot sizes.

**III. PLANNING BOARD MEMBER COMMENTS:**

David Neal thanked everyone for attending and stated that Andy Ward has worked really hard to do what he thinks is right.

Joe McGraw agreed with David Neal and stated that everyone wants what is best for the Town.

**IV. ANNOUNCEMENTS:**

Wes Haskett announced that the next scheduled Planning Board meeting is January 22, 2019.

**V. ADJOURNMENT:**

Vice Chairperson Morey adjourned the meeting at 6:50 p.m.

ATTEST:

  
Elizabeth Morey, Vice Chairperson

RESPECTFULLY SUBMITTED:

  
Wes Haskett, Deputy Town  
Manager/Planning Director