



Town of Southern Shores

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

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8

9 **MEETING MINUTES**

10 **PLANNING BOARD-AUGUST 16, 2021, 5:30 P.M.**

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

12

13

14 **I. CALL TO ORDER:**

15 Chairperson Andy Ward called the meeting to order at 5:30 pm. Planning Board Members Lynda
16 Burek, Ed Lawler, Robert McClendon, John Finelli (ETJ), Tony DiBernardo (Vice Chairperson),
17 Andy Ward (Chairperson), Deputy Town Manager/Planning Director Wes Haskett, Town Engineer
18 Joe Anlauf and Town Clerk Sheila Kane were present.

19

20 Planning Board Alternate Members Jan Collins and Richard Galganski were also in attendance.

21

22 **II. PLEDGE OF ALLEGIANCE:**

23 Chairperson Ward led the Pledge of Allegiance.

24

25 **III. APPROVAL OF AGENDA:**

26 Vice Chairperson DiBernardo moved to approve the agenda, Seconded by Planning Board
27 Member Burek. The motion passed unanimously.

28

29 **IV. APROVAL OF MINUTES**

30 Planning Board Member Lawler moved to approve the June 21, 2021 as amended, Seconded by
31 Vice Chairperson DiBernardo. The motion passed unanimously.

32

33 **V. PUBLIC COMMENT**

34 None

35

36 **VI. OLD BUSINESS**

37 **SPA-21-01: Site Plan Amendment application submitted by Aston Properties to amend the site**
38 **plan for the Marketplace shopping center**

39 Planning Director Wes Haskett read the staff report for a site plan amendment application
40 submitted by Aston Properties to amend the site plan for the Marketplace shopping center. The
41 staff report read as, the applicant seeks an amendment to the site plan for the Marketplace
42 shopping center by demolishing a portion of one building and construction of a new 24,000 sq.
43 ft. Marshalls, a new 6,000 sq. ft. retail space for a business to be determined, and parking lot
44 modifications. The proposed parking lot modifications include the use of permeable pavers in
45 order to be eligible for a maximum lot coverage of 67% instead of 60%. Currently, the proposed
46 lot coverage is 67.1%. As of today, we have not received documentation that addresses the

47 permeability of the proposed pavers which could affect the square footage of permeable pavers
48 required.

49
50 The proposed signage for Marshalls includes three wall signs, one under canopy sign, and one
51 name plate on the freestanding sign which are in compliance with the Town's sign requirements.
52 There are 150 proposed parking spaces with 102 of them being permeable and a total of 613
53 parking spaces for the site which are in compliance with the Town's parking requirements. A
54 lighting plan and required documentation have also been provided that demonstrate compliance
55 with the Town's outdoor lighting requirements.

56
57 The Land Use Plan identifies this area as Commercial in the C, General Commercial zoning district
58 which is consistent with the improvements proposed in the application. All applicable regulations
59 of the Town Zoning Ordinance and all of Town Staff's concerns that are applicable to this
60 application have been identified or are addressed in the recommended conditions. Town Staff
61 recommends conditional approval of the application and offers the following conditions for
62 consideration:

- 63 1. The following approvals shall be issued prior to submittal of a Building Permit application:
 - 64 a. Soil Erosion Sedimentation Control Plan Permit for land disturbance over 1 acre as
65 issued by the NCDEQ;
 - 66 b. Stormwater Management Permit as issued by the NCDEQ;
 - 67 c. Wastewater approval by the Dare County Health Dept. (tentative approval received
68 from N.C. Dept. of Health and Human Services).
 - 69 d. Review and approval of potable water distribution system modifications or extensions
70 by the Dare County Water Dept. (tentative approval received).
- 71 2. Lot coverage shall be reduced to not exceed 67% prior to submittal of a Building Permit
72 application.
- 73 3. Documentation showing the proposed permeable paver product and its permeability shall
74 be submitted prior to submittal of a Building Permit application.
- 75 4. The applicant must strictly abide by all requirements of the Town Code and must also
76 strictly comply with all other applicable local, State, and Federal requirements.

77
78 Chairperson Ward called on Town Engineer Joe Anlauf to address the conditions that are noted
79 in the staff report.

80
81 Town Engineer Joe Anlauf stated he did a preliminary review and two official reviews, and all his
82 review comments were documented in writing and were specific to what is obligated by the
83 Town of Southern Shores ordinance and by what is obligated by the NC Department of
84 Environmental Quality, as it pertains to portions of the site plan that meet their threshold for
85 permitting requirements. He addressed the specifics of each condition #1-4 that will need to be
86 addressed prior to submittal of a building permit.

87
88 Chairperson Ward asked how the stormwater plan would work with the state? Does the state
89 look at existing and suggest improvements to bring it up to a better standard, or do they
90 overlook it and look only at the new stuff?

91
92 Town Engineer Joe Anlauf said the state is regulated by NC Administrative Code and those
93 regulations, so the design engineer and the owner are going to have to comply with whatever is

94 stated in that ordinance. The area that is being redeveloped is going to get the heaviest scrutiny
95 because that is the area that is being worked on. Mr. Anlauf stated he could not speak on behalf
96 of the state and what they will require but he speculates since this area was developed before
97 stormwater rules were in place, if Aston Properties stays within the confines of the amount of
98 impervious coverage that is there today and does not exceed that amount, staying below that
99 threshold, the state will say they are okay and will not require or suggest a significant amount of
100 improvements because they are simply going to ask them to comply with the regulations.

101
102 Vice Chairperson DiBernardo asked about runoff and filtration on the plans, specifically what
103 filtration system is being used; the gutter buddy, the horseshoe inlet protection, the inlet
104 protection insert or the inlet protection? He also inquired if water testing should be done before
105 construction and after to measure if the system is working.

106
107 Town Engineer Joe Anlauf stated those are all soil erosion sediment control measures and are
108 not permanent. As for water testing, there are a lot of different factors that could compromise
109 water quality and it is difficult pinpointing the source because you have residential development
110 and commercial development around those receiving streams. Also, what exactly are you testing
111 for, bacteriological, motor oil and antifreeze? Without some guidance in the ordinance to say
112 pre-water quality and post water quality testing will be conducted for a specific criteria, it
113 becomes difficult to enforce.

114
115 Planning Board Member Lawler asked if there was an infiltration line?

116
117 Town Engineer Joe Anlauf said there is essentially a single pass ground sand filter. There are two
118 parallel perforated pipes in the bottom of the basin that connect to a precast concrete box.
119 Some stormwater infiltrates into the sand in the basin, some makes its way into the box which
120 has a weir in it, not allowing discharge until it goes up and over this barrier; forcing the
121 stormwater runoff to infiltrate into the groundwater table (single-pass sand filter).

122
123 Chairperson Ward asked if the system was in good working order and if there were any glaring
124 deficiencies.

125
126 Kimberly Hamby with Timmons Group stated the system appeared to be functioning and in good
127 condition, some sediment and old wood were noted in the box.

128
129 Planning Board Member Lawler asked about the removal of the grove of trees in the parking lot.
130 Kimberly Hamby stated due to the reconfiguration for access to the stores the trees needed to
131 be removed but they are trying to do a good job of replacing them.

132
133 Planning Board Member McClendon recommended replacing with native species trees.

134
135 Planning Board Member Lawler asked to confirm that the pervious pavers will be installed as
136 drawn on the plan. Kimberly Hamby confirmed they would.

137
138 Chairperson Ward said to meet the 67.00 % of lot coverage, they need to give more information
139 on the permeability of the paver and how they plan on getting to that 67.00 percent. Kimberly

140 Hamby said that last point one percent was not something she was aware she was dealing with
141 and will work with Planning Director Wes Haskett and Mr. Anlauf to resolve.

142
143 Planning Board Member Lawler asked where the stormwater from the tops of the buildings
144 drained? Kimberly Hamby stated they drain to the back of the buildings onto the pavement and
145 then down into the pipes in the basin.

146
147 Planning Board Member Lawler then stated when you get a stormwater permit, you are basically
148 permitting the box? Kimberly Hamby stated, from a permit standpoint she is expecting this to be
149 an exemption from DEQ. Erosion Control will have to issue a permit, but DEQ because it is a
150 redevelopment site, and we are reducing overall coverage they are not going to expect any
151 treatment.

152
153 Planning Board Member Lawler asked Kimberly Hamby to address the lighting. Ms. Hamby stated
154 they replaced the lighting two years ago and would not be changing the fixtures, perhaps
155 relocating some.

156
157 Vice Chairperson DiBernardo recommended installation of car charging station in the parking lot.

158
159 Chairperson Ward asked if it would be unreasonable to ask the Town Engineer to look at a few
160 more items that may be problematic, any glaring deficiencies with stormwater runoff?

161
162 Kimberly Hamby with the Timmons Group stated she didn't feel it would be unreasonable and if
163 there were potential problems for pollutants, she would think the Town would want Mr. Anlauf
164 to take a look.

165
166 Vice Chairperson DiBernardo **moved** to approve SPA-21-01 along with conditions #1-4 and an
167 adding a condition #5; prior to issuance of a building permit the Town Engineer and applicant's
168 representative shall evaluate the stormwater system for glaring deficiencies and address them,
169 Seconded by Planning Board Member Lawler. The motion passed unanimously (5-0).

170
171 Chairperson Ward asked Planning Director Haskett if the signage is within the maximum
172 allowable amount per the ordinance. Mr. Haskett stated all signage is complying.

173
174

175 **NEW BUSINESS**

176 **A. ZTA-21-08, a Zoning Text Amendment application submitted by the Town of**
177 **Southern Shores to amend Town Code 36-57, Definition of Specific Terms and**
178 **Words and Section 36-165, Regulations Governing Signage**

179
180 Planning Director Wes Haskett provided the staff report which read as, at the March 2, 2021
181 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of
182 the adoption draft of the Town Code Update written by CodeWright for review by the Planning
183 Board and the Town Council for future consideration. The proposed amendments to Section 36-
184 165, Regulations Governing Signs are a result of a U.S. Supreme Court ruling that signage
185 requirements should be content neutral (see attached comments on Reed vs. Town of Gilbert).
186 In an effort to make the Town's sign requirements content neutral, the proposed language

187 addresses signage based on the applicable zoning district the subject property lies within. Town
188 Staff has made a couple of revisions since you received the ZTA which include: Carrying forward
189 the prohibition of vehicle signs and separating the requirements for residential uses and
190 nonresidential uses in residential zoning districts.

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

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

199
200 Town Staff has determined that the proposed amendments are consistent with the Town's
201 currently adopted Land Use Plan but input from the Board will be requested. Discussion of the
202 number of temporary signs allowed and their duration will be required and revisions may be
203 necessary. Please note that prior to adopting or rejecting any zoning amendment, the Planning
204 Board shall adopt a statement describing whether its action is consistent with the adopted
205 Town Comprehensive Land Use Plan and explaining why the Planning Board considers the
206 action taken to be reasonable and in the public interest. That statement is not subject to
207 judicial review.

208
209 Chairperson Ward reviewed the CodeWright and Town Attorney analysis of Reed vs. Town of
210 Gilbert Case Comments.

211
212 *Reed vs. Town of Gilbert Case Comments*

213 *CodeWright:*

214 *This section is proposed to replace Section 36-165 of the current code. As mentioned in*
215 *the Code Assessment, federal laws with respect to the regulation of signs have changed*
216 *dramatically based on the US Supreme Court's ruling in the Reed vs. Town of Gilbert*
217 *case. Essentially, the holding from this case is that sign standards that require the*
218 *regulator to read the sign's message to determine which kind of sign standards to apply*
219 *are not content-neutral. Court precedent has indicated that sign standards must be*
220 *content neutral (to pass muster under the 1st Amendment to the Constitution), or must*
221 *withstand the strict scrutiny doctrine. To withstand strict scrutiny, standards must be*
222 *developed with a compelling governmental interest and must be narrowly tailored to*
223 *achieve that specific interest. In practice, most sign standards are focused on aesthetics,*
224 *and thus will NOT pass the test of strict scrutiny.*

225
226 *As a result, local governments across the country are now revising their sign standards in*
227 *two or three key ways: First, sign standards may not be structured in ways that require*
228 *the sign to be read to determine which set of standards to apply (in other words, no*
229 *longer may a community apply differential sign standards based on sign type – you may*
230 *not have special standards for "for rent" signs versus "directional signs"). Second, sign*
231 *standards may not distinguish between "commercial" signs versus "noncommercial"*
232 *signs (since doing so requires reading the sign's message). Third, the Court has ruled that*
233 *speaker-based standards (sign standards that relate to a particular kind of use, like signs*

234 for a restaurant or a signs for a vacation rental) are not content neutral, and must also
235 pass strict scrutiny.
236

237 One of the best ways to address this new court precedent is to maintain the time, place,
238 and manner provisions for signs that most communities (including Southern Shores)
239 already have, and revise any specific sign-type standards into a set of generic time,
240 place, and manner sign standards that differ by type of zoning district. Fortunately, the
241 Town's current sign standards are already organized in this fashion, and will only require
242 some moderate adjustment to avoid the strict scrutiny doctrine.
243

244 Town Attorney:

245 Prior to the 2015 Supreme Court case of *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 135
246 S. Ct. 2218, 192 L. Ed. 2d 236 (2015), there was a substantial body of law, much from the
247 USSCT, which allowed for a distinction between commercial and non-commercial
248 signage and allowed for a lowered standard of review for commercial speech. The *Reed*
249 case itself did not address this line of cases, but on its face seemed to say that if you
250 have to look at the content to regulate then strict scrutiny applied. Federal appellate
251 courts interpreting the *Reed* case have come to differing conclusions whether or not a
252 distinction can still be made between commercial signage and other signage. A
253 significant body of conflicting case law has developed since *Reed* was decided in 2015
254 (As of September 4, 2020 Westlaw shows that 669 cases have cited *Reed* since it's
255 publication in 2015), and I am unaware of the USSCT revisiting the issue directly.
256

257 However, a handful of opinions have mentioned these distinctions without giving
258 definitive analysis. See *Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335,
259 2347 (2020) (Noting without a clear majority that the "decision is not intended to
260 expand existing First Amendment doctrine or to otherwise affect traditional or ordinary
261 economic regulation of commercial activity..." but also limiting that to "traditional or
262 ordinary economic regulation of commercial activity that imposes incidental burdens on
263 speech."); *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2374, 201 L.
264 Ed. 2d 835 (2018) (finding no exception to content neutral analysis for professional
265 services, while also referencing noncommercial speech). Where the courts have allowed
266 the distinction, a lower standard of review has been applied to commercial speech.
267 Generally, it is probably best practice to avoid the issue all together by having content
268 neutral sign regulations.
269

270 Also, while it is possible that the author is correct that determining the signage
271 regulation based on use is considered to be content based, I am not aware of any courts
272 holding that and would have to research the issue more thoroughly to determine the
273 answer. See *Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2347 (2020)
274 (confirming that "laws favoring some speakers over others demand strict scrutiny when
275 the legislature's speaker preference reflects a content preference") (citing *Reed*).
276 However, again, it's easy enough to avoid the issue entirely by having regulations which
277 do not address the use of the property and instead rely on the zoning district designation
278 of the property as the new ordinance provisions seem to do.
279
280

281 Chairperson Ward stated he went through ZTA 21-08 and noted the following:
282 • A temporary sign is defined but not a permanent sign.
283 • (Finelli comment) Item J, page 5-Vehicle sign, clarify that it did not apply to signs on vehicles
284 that are properly registered and used in the course of a business, it only applies to those
285 vehicles that meet that definition under 36-57.
286 • Page 3, 36-165 the first sentence encapsulates what we would want to do as a town, and
287 only two exclusions will remain, all others stricken.

288
289 Planning Director Wes Haskett stated in the revised version (ZTA) the definition of vehicle sign
290 clarifies the circumstances.

291
292 Vice Chairperson DiBernardo commented that he would think permanent signs would be more
293 of a commercial area and a temporary sign would be more of a residential area.

294
295 Planning Director Haskett stated typically your permanent signs are related to a non-residential
296 use and your temporary signs are usually affiliated with a residential use.

297
298 Chairperson Ward stated in Section 36-165 *Regulations Governing Signs* we start striking
299 everything from page four through page nine, except for the table. It is a big takeaway from
300 what we have had but we must comply with what the Supreme Court has ruled as far as
301 signage goes.

302
303 Chairperson Ward asked where the fence wrap signs came from? Planning Director Wes
304 Haskett stated it is not common that we will see this but was recommended by the Town
305 Attorney to include the language.

306
307 TABLE A

308 Chairperson Ward stated he went through the current ordinance for temporary signs as it is
309 probably the biggest item that we need to make equitable for all signs, time, place, and
310 manner. The amount of time a temporary sign can be installed is up to 90 days and cannot be
311 installed in the right of way. NC12 is a state-owned road which we have no jurisdiction over and
312 they have different regulations. A typical temporary campaign sign does not exceed three
313 square feet. The current ordinance states anything larger requires a permit. The table in the
314 revised ZTA allows temporary and permanent signs larger than three square feet.

315
316 Planning Director Wes Haskett reviewed the revised tables with the board, categorized into
317 residential uses in residential districts and non-residential uses in residential districts.

318
319 Chairperson Ward asked for clarification of what a sign in a residential district for non-
320 residential use. Planning Director Haskett stated an example is a country club, church, and
321 school. Table A requirements would apply to these examples.

322
323 Chairperson Ward said in Table A, a freestanding sign could lend itself to maybe something that
324 wasn't permanent and needs to be clarified. Planning Director Haskett stated there is already
325 language in there, a permanent sign is the opposite of temporary sign-permanently imbedded
326 in the ground, permanently affixed to a building or sign structure that is permanently
327 embedded in the ground. That definition could be used for permanent.

328 TABLE B

329 Chairperson Ward asked the board if they had any comment on Table B. Table B has the
330 maximum number of signs per lot on a construction site as three, there is no number in the
331 current code. He stated he felt it has not typically been abused. Mr. Ward did say the size of
332 five square feet seems a little large. He stated he would be okay with the entire size column on
333 Table B being three square feet.

334
335 Planning Board Member McClendon said that number of signs could easily be increased to five.

336
337 Vice Chairperson DiBernardo stated the contractor and subcontractor signs are only up for a
338 limited amount of time and normally only two or three. As far as size, whatever the number is
339 people will adjust to what is allowed. Some signs listed for a particular reason, depending on
340 where the property is located, five square feet may be needed for visibility.

341
342 Planning Board Member McClendon stated the five square feet probably came from the real
343 estate sale signs. They will use the largest one allowable, but he didn't want to get so restrictive
344 that would require the real estate to order new signs or be in violation.

345
346 Chairperson Ward asked where the five feet height came from, CodeWright? Planning Director
347 Wes Haskett stated there is no height currently in the code.

348
349 Alternate Member Jan Collins said an example is the post with the hanging signs. They are
350 probably six feet and then a foot in the ground, leaving five feet in height.

351
352 TABLE C

353 Chairperson Ward stated Table C captures the intent and we can move forward with no
354 changes.

355
356 TABLE D

357 Planning Director Haskett stated Table D should be pretty much the same thing that we require
358 now in the Government-Institutional District.

359
360 TABLE E

361 Planning Director Wes Haskett said Table E Temporary Signage is broken down into residential
362 and all other districts. He thinks this table needs some more work. It carried forward the ninety
363 days.

364
365 Chairperson Ward asked for an example of a temporary sign in a non-residential district, as
366 related to Table E. Vice Chairperson DiBernardo provided the example of Southern Shores
367 Realty's annual open house for property owners.

368
369 Chairperson Ward asked the board to look into the numbers in the tables for discussion at the
370 next meeting. He stated it is a complex issue and a lot of how we treat signs moving forward in
371 our Town.

372
373
374

B. Discussion of potential requirements for Produce Stands in the Commercial zoning district

No discussion or action taken.

VIII. Public Comment

None

IX. Planning Board Member Comments

Chairperson Ward requested ZTA-21-08 be placed on next month's agenda for further discussion.

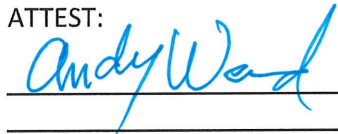
X. Announcements

None

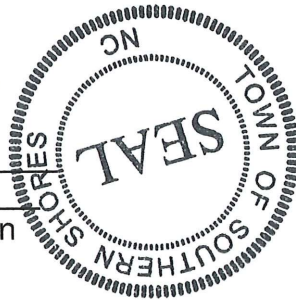
XI. Adjourn

Hearing no further business, **motion** made by Planning Board Member McClendon to adjourn, Seconded by Chairperson Ward. Motion passed unanimously. The time was 7:55 P.M.

ATTEST:



Andy Ward, Chairperson



Respectfully submitted,



Sheila Kane, Town Clerk