



Town of Southern Shores

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

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9 MEETING MINUTES

10 PLANNING BOARD-AUGUST 15, 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), John Finelli (ETJ), Jan Collins (alternate #1), Dan Fink (alternate #2) and Deputy
18 Town Manager/Planning Director Wes Haskett were present.

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20 II. PLEDGE OF ALLEGIANCE:

21 Chairperson Ward led the Pledge of Allegiance.

22

23 III. APPROVAL OF AGENDA:

24 Planning Board Vice Chairperson DiBernardo moved to approve the agenda as presented,
25 Seconded by Planning Board Member Burek. The motion passed unanimously (5-0).

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27 IV. APPROVAL OF MINUTES:

28 Chairperson Ward made the following suggestions to the minutes of July 18, 2022:

- 29 ○ Under Call to Order, Planning Board alternate Jan Collins sat in as voting member
- 30 for Planning Board Member McClendon.
- 31 ○ Appropriate to state that email referenced in minutes (page 3, line 133) to be
- 32 referenced as an attachment and made part of the official minutes.

33

34 Planning Board Member Lawler moved to approve the minutes of July 18, 2022, with
35 corrections, Seconded by Chairperson Ward. The motion passed unanimously (5-0).

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37 Vice Chairperson DiBernardo inquired about the minutes of May 19th that were deferred for
38 approval. Planning Director Haskett stated the minutes will on the September agenda with
39 requested addition/ corrections.

40

41 V. PUBLIC COMMENT

42 Leo Holland-23 Spindrift Trl-Council Member Holland addressed the Planning Board to clarify
43 the record. He stated he would like to comment on the discussion the Planning Board had on
44 the lack of response to the Chairman's emails of June 8th and June 14th. A Council Member
45 did respond to the 8th of June email. He did not respond to the June 8th email because he
46 interpreted it as not requiring a comment. The Chairman's email of June 14th he did respond

47 that evening and then the Chairman did respond back the next day regarding the comments
48 and since that time they have had some discussion. He just wants the record to get changed
49 because it got out that the Council was ignoring the Planning Board and that is not the intent.
50

51 **VI. Old Business-None**

52
53 **VII. New Business**

54 ZTA-22-09: Zoning Text Amendment application submitted by Mila Smith to amend Town Code
55 Sections 36-163 and 36-207(b)(3)

56
57 The applicant is proposing a Zoning Text Amendment (ZTA) to amend Town Code Sections 36-
58 163 and 36-207(b)(3) to allow group fitness-aerobics/dance/karate/yoga as a permitted use in
59 the C, General Commercial zoning district. The proposed amendments to Section 36-207(b)(3)
60 establish the proposed use which would allow various group fitness service establishments. The
61 proposed amendments to Section 36-163 establish the minimum parking requirement for the
62 proposed use which requires one parking space for each 250 square feet of gross floor space. As
63 a permitted use, such establishments could be approved administratively if they are proposed to
64 be located in an existing building and a site plan is not required. If a site plan is required, it would
65 have to be reviewed by the Planning Board and the Town Council.

66
67 The Town's currently adopted Land Use Plan contains the following Policy that is applicable to
68 the proposed ZTA:

- 69
70 • Policy 2: The community values and the Town will continue to comply with the
71 founder's original vision for Southern Shores: a low-density residential community
72 comprised of single-family dwellings on large lots (served by a small commercial district
73 for convenience shopping and services located at the southern end of the Town). This
74 blueprint for land use naturally protects environmental resources and fragile areas by
75 limiting development and growth.

76
77 Town Staff has determined that the proposed amendments are consistent with the Town's
78 currently adopted Land Use Plan and Town Staff recommends that the Planning Board
79 recommend approval of the application to the Town Council.

80
81 The applicant addressed the board. Mila Smith stated she was looking to relocate her dance
82 studio to Southern Shores as most of her clients live on this end of the beach. Her dance studio is
83 an afterschool program that starts after school and is open until 9:00 p.m.

84
85 Chairperson Ward did not have any resistance to Ms. Smith's request. He stated that he had a
86 previous question about parking which Planning Director Haskett had answered.

87
88 Chairperson Ward followed up with an additional parking question, asking if the studio was a
89 stand-alone building would the parking requirements be any different? Planning Director Haskett
90 stated they would not, same calculation and same requirement.

91
92 Chairperson Ward reviewed the proposed language of Group Fitness-
93 aerobics/dance/karate/yoga and asked if a weight training gym would fit into this language?

94 Planning Director Haskett stated you can apply similar uses and a gym would be similar to this
95 use. Chairperson Ward stated it could also just be added to the proposed language, ensuring the
96 gym and weight training facility are accounted for.

97
98 Vice Chairperson DiBernardo recommended the use of commas in the language, rather than
99 hyphens, to clarify the uses and allow it to make more sense.

100
101 Planning Board Member Finelli (EJ) suggested changing karate to martial arts.

102
103 Chairperson Ward allowed citizen comment on the proposed ZTA and the following citizen
104 spoke:

105
106 Ann Sjoerdsma 232 N. Dogwood Trail-suggested language should be group fitness and
107 dance and then define fitness in your definition section. She stated that she did not know
108 why this was not allowed as there was something similar in the Southern Shores Crossing
109 complex and asked if that was a conditional use permit. Ms. Sjoerdsma stated the parking
110 requirements did not make sense and more parking would be needed to accommodate
111 the parents waiting for their dancers.

112
113 **MOTION:** Vice Chairperson DiBernardo moved to approve ZTA-22-09 with the addition noted of
114 the commas between gym, and/or weight training and revising karate to martial arts, Seconded
115 by Planning Board Member Burek. The motion passed unanimously (6-0). (ETJ member vote
116 included)

117
118 As requested, due to a meeting conflict, Chairperson Ward excused Planning Board Member
119 Finelli (ETJ) from the rest of the meeting.

120
121 **PSP-22-01: 267 Hillcrest Dr. Preliminary Subdivision Plat**

122 Matthew & Allison Casella are requesting approval of a preliminary subdivision plat for 267
123 Hillcrest Dr., zoning district RS-1, Single-Family Residential District. The Town's Subdivision
124 Ordinance establishes a review process for subdivisions that requires Planning Board review and
125 recommendations on all preliminary and final subdivision plats (except for exempted
126 subdivisions). The applicant is requesting to subdivide the lot located at 267 Hillcrest Dr. into two
127 new lots. The existing single-family dwelling and other improvements currently situated at 267
128 Hillcrest Dr. are proposed to be located on new Lot 1-B with a lot size of 70,360 sq. ft. and the
129 remaining property is proposed to be located on new Lot 1-A with a lot size of 52,016 sq. ft. Both
130 lots as proposed meet the Town's minimum lot size requirement of 20,000 sq. ft. and lot width
131 of 100 ft. Both lots also meet the Town's frontage requirement by providing at least 30 ft. of
132 frontage that abuts a public right-of-way or private street.

133
134 Town Staff recommends approval of the preliminary plat with the following condition:

- 135 1. The exemption certificate shown on the preliminary plat shall be deleted.
136 2. A certificate of approval by the Planning Board shall be added to the final plat.
137 3. A certificate of approval by the Town Council shall be added to the final plat.

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139 The applicant Matthew Casella addressed the board. He stated he would like to do a
140 conservative subdivision of his property, leaving a parcel of land for his children in the future.

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Planning Board Member Lawler asked if the well shown on the plans was a functioning well? He stated that if it is not working, he would suggest it be abandoned according to state standards because if you decide to sell that lot there is some potential liability. Mr. Casella stated he has not had it looked at yet but believes it is not functioning at this time.

Chairperson Ward stated this is subdividing almost three acres and turning it into two lots which would still be large. The exemption certification would need to be taken off the plat, as noted by Planning Director Haskett in his report.

Hearing no concerns, Chairperson Ward called for a motion to recommend preliminary approval of the site plan to Town Council for their preliminary approval.

Planning Director Haskett stated assuming the preliminary plat is approved by Council, the final plat would then come to the Planning Board for approval.

MOTION: Vice Chairperson DiBernardo moved to approve the subdivision as stated with the recommended conditions and with the removal of the exempt information from Town of Southern Shores subdivision, then forwarded to Town Council for their preliminary approval, Seconded by Planning Board Member Burek. The motion passed unanimously (5-0).

Discussion of quasi-judicial procedure for consideration of appeals of administrative decisions

The Board of Adjustment has not met recently and in preparation of a potential hearing (appeal), Planning Board Director Haskett invited Attorney Jay Wheless to review the process.

Planning Board Attorney Jay Wheless reviewed the board's duty, provided guidelines, expectations on how the board should conduct themselves during a quasi-judicial procedure, and answered questions from the board. Ultimately it is the board's duty to review the record, hear testimony, consider documents and, in the end, hear arguments from the parties and/or their attorneys. All decisions require a 3/5ths vote, a simple majority. The board is to make one of the following decisions: Affirm (in whole or part) the Notice of Violation; Reverse (in whole or part) the Notice of Violation; or Modify the Notice of Violation.

Attorney Wheless stated the board's consideration of the appeal might necessarily mean that you need to interpret what certain language means in the ordinance. The primary objective is to determine what the Town Council meant when adopting what is at issue, members should listen carefully to the arguments and the applicant, examine the ordinance text itself, if it is clear, you should give it clear meaning.

Attorney Wheless further offered the following guidance:

1. Examine the ordinance text itself. If clear and unambiguous, apply the text as written.
2. If the ordinance provides definitions, consider the definition thoroughly.
3. If the ordinance provides other interpretive guidance, use it.
4. Contrast other provisions to provide meaning to the term or section at issue.
5. Apply a logical meaning to words.
6. Use the dictionary, if necessary.
7. Determine and give effect to the intent of the Board of Commissioners.

188 8. Avoid absurdity.
189 9. Ambiguity is resolved in favor of the property owner and in the free use of land.
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191 Following Attorney Wheless' s presentation, the board asked the following questions:
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193 Vice Chairperson DiBernardo inquired if hearsay evidence was permitted? Attorney Wheless
194 stated technically no.
195
196 Chairperson Ward asked if board members could discuss the appeal amongst themselves outside
197 of the meeting? Attorney Wheless stated members should not discuss the appeal amongst other
198 members outside of the hearing.
199
200 Vice Chairperson DiBernardo asked if another person could ask questions during the cross-
201 examination portion of the hearing, or if only attorneys could ask the questions? Attorney
202 Wheless stated the aggrieved party can ask all the questions they would like; it does not have to
203 be their attorney.
204
205 Vice Chairperson DiBernardo asked if chain of custody was applicable. Attorney Wheless stated
206 usually only criminal cases and unlikely to be applicable in this case.
207
208 Planning Board Member Lawler asked who is notified of these proceedings? Planning Director
209 Haskett stated the property owners and the adjoining property owners themselves; a public
210 notice is placed in the Coastland Times and a sign with notice is physically placed at the property.
211 Chairperson Ward stated all the materials and notices will be in the packet provided by Planning
212 Director Haskett.
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214 Planning Board Member McClendon asked about the party that has been denied and is
215 appealing the claim, is there any restriction for them contacting potential aggrieved parties?
216 Attorney Wheless stated no.
217
218 Planning Board Member McClendon asked Attorney Wheless to read the comment on ambiguity
219 again.
220
221 Attorney Wheless stated, the rules of law favor the free use of land and if there are ambiguities
222 they generally need to fall in favor of the right of free use.
223
224 Planning Board Member McClendon asked the other board members if they were aware of the
225 appeal that will come before them. Planning Board Member Lawler stated he is aware in a rough
226 way. Vice Chairperson DiBernardo and Lynda Burek were not aware of any information.
227 Attorney Wheless stated Mr. McClendon's question kind of falls on a recusal line of questioning.
228
229 Planning Board Member McClendon stated and the comment that was made about crosstalk.
230
231 Attorney Wheless stated one of the first things that will be done at that meeting is ask whether
232 anyone has reason to challenge any of the members, or a board member could say they have a
233 definitive opinion on this that is unlikely to be changed and therefore it is not fair to the
234 aggrieved party that I sit.

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VIII. Public Comment-None

IX. Planning Board Member Comments-None

X. Announcements

Planning Director Haskett stated the hearing that Attorney Jay Wheless was referencing has not been scheduled, all parties have not been able to agree on a date that works for all involved. The Planning Board's next scheduled meeting is September 19th. The agenda may contain the Pledger property text amendment and ZTA 21-08 Signage. At the last Council meeting, Council approved ZTA 22-07 and approval of board officer elections, Andy Ward as Chairperson and Tony DiBernardo as Vice Chairperson.

Chairperson Ward asked Planning Director Haskett to provide guidance on searching approved ZTA's through the Municode website.

XI. Adjourn

Hearing no further business, **motion** made by Vice Chairperson DiBernardo to adjourn, Seconded by Planning Board Member Burek. Motion passed unanimously. The time was 5:58 P.M.

ATTEST:



Andy Ward, Chairperson



Respectfully submitted,



Sheila Kane, Town Clerk