



# Town of Southern Shores

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

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[www.southernshores-nc.gov](http://www.southernshores-nc.gov)

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8

9 **MEETING MINUTES**

10 **PLANNING BOARD-APRIL 18, 2022, 5:00 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 5:00 pm. Planning Board Members Lynda  
16 Burek, Ed Lawler, Robert McClendon, Tony DiBernardo (Vice Chairperson), Andy Ward  
17 (Chairperson), John Finelli (ETJ), Richard Galinski (alternate), Jan Collins (alternate) and Deputy  
18 Town Manager/Planning Director Wes Haskett were present.

19

20 **II. PLEDGE OF ALLEGIANCE:**

21 Chairperson Ward led the Pledge of Allegiance.

22

23 **III. APPROVAL OF AGENDA:**

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

26

27 **IV. APPROVAL OF MINUTES:**

28 Vice Chairperson DiBernardo moved to accept the minutes of March 21, 2022, as corrected,  
29 Seconded by Planning Board Member Burek. The motion passed unanimously (5-0).

30

31 **V. PUBLIC COMMENT**

32 None

33

34 **VI. OLD BUSINESS**

35 ZTA-22-02- Planning Director Wes Haskett presented the staff report for ZTA-22-02, stating the  
36 applicant is Ginguite, LLC and the applicant's representative is Michael Strader of Quible and  
37 Associates. The requested action is amendment of the zoning ordinance by amending Section  
38 36-207.

39

40 The applicant is proposing a Zoning Text Amendment (ZTA) to amend Section 36-207 to allow  
41 the group development of commercial and residential buildings as a Conditional Use in the C,  
42 General Commercial zoning district. The use would be permitted through the issuance of a  
43 Conditional Use Permit (Special Use Permit per 160D Statutes). Section 36-207 currently  
44 allows the group development of commercial buildings only (the Marketplace and Southern  
45 Shores Crossing). Section 36-207 also currently allows residential uses including detached  
46 single- family dwellings, two-family (duplexes) dwellings, multifamily dwellings, and accessory

47 buildings, but such uses would be limited to only one principal building and its customary  
48 accessory building on any lot. If approved, the ZTA would allow group developments  
49 consisting of multiple principal commercial and residential buildings subject to the following  
50 requirements:

- 51
- 52 a. Minimum size of any building shall be 2,500 square feet.
  - 53 b. All buildings constructed within 35 feet of another building within the  
54 development are to be connected by a breezeway or covered walkway.
  - 55 c. Lot shall have frontage along US Hwy 158.
  - 56 d. Lot shall be serviced by an existing wastewater treatment facility.
  - 57 e. Residential density shall be limited to RS-8 District allowances as established  
58 within Sec.36-203(a).
- 59

60 The following properties could potentially meet the proposed requirements for  
61 group developments consisting of commercial and residential buildings:

- 62
- 63 • 5391 N. Virginia Dare Trl. (Stone property): 7.9 acres
  - 64 • 5500 N. Croatan Hwy. (Marketplace): 18.1 acres
  - 65 • 5355 N. Croatan Hwy. (Southern Shores Realty Maintenance): 4.1 acres
  - 66 • 6195 N. Croatan Hwy. (Ginguite, LLC): 5.2 acres
- 67

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

- 70
- 71 • **Policy 2:** The community values and the Town will continue to comply with the  
72 founder's original vision for Southern Shores: a low-density residential community  
73 comprised of single-family dwellings on large lots (served by a small commercial  
74 district for convenience shopping and services located at the southern end of the  
75 Town. This blueprint for land use naturally protects environmental resources and  
76 fragile areas by limiting development and growth.
- 77

78 During the board's consideration, questions and discussion should mainly focus on the ZTA and  
79 not on a potential site plan for the proposed use. Policy 2 of the Town's Land Use Plan  
80 establishes the commercial district as a small district for convenience shopping and services.  
81 The Land Use Plan also establishes that incompatible uses in the commercial area are limited  
82 to "residential (low density)", educational, and conservation activities. Since commercial and  
83 residential group developments will most likely consist of high-density residential development  
84 mixed with commercial development, Town Staff has determined that the proposed  
85 amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff  
86 recommends that the Planning Board recommend approval of the application to the Town  
87 Council.

88

89 Chairperson Ward called on the applicant Sumit Gupta representing Ginguite LLC to address the  
90 requested amendment. He stated the goal of the amendment is to allow some better  
91 development options within the town in the general commercial district. Currently the  
92 commercial district allows for group development which consists entirely of commercial  
93 buildings, or you can do residential development only. The residential must be done as one large

94 building and there is no current density cap on it. He stated they believe the text amendment  
95 addresses some of these concerns and creates an option to do both commercial and residential  
96 on one parcel as a group development. This would allow a developer to not do one large  
97 residential building, allowing for a mixed use and it also adds a density cap on the residential.  
98 The applicant has worked with town staff to minimize the impact. The parcel must have road  
99 frontage on HWY 158, must have access to existing wastewater facility. He further stated town  
100 staff supports the amendment and feels that the amendment will be good for the town.

101  
102 Chairperson Ward asked the applicant and board to stay away from specifics and focus solely on  
103 the zoning text amendment that is being presented by the applicant. He stated the board all  
104 knows where the property is located but that does not apply to what the board is considering  
105 this evening.

106  
107 Planning Board Member Lawler asked how big was the parcel? Mr. Gupta stated this text  
108 amendment is a general text amendment town wide. The property that they own in Southern  
109 Shores is approximately 5.25-5.5 gross acres.

110  
111 Planning Board Member Lawler referenced the residential density specified in section 36-203  
112 and asked how many units that is? Mr. Gupta stated under the RS-8 it is eight (8) units per net  
113 acre.

114  
115 Vice Chairperson DiBernardo asked the applicant for the positive and the negative aspects of this  
116 zoning text amendment on the impact. Mr. Gupta stated currently if they were to develop a  
117 commercial district parcel using residential, there is no density cap and the town ordinance  
118 requires it to be one building, not multiple buildings. The property they own currently in  
119 Southern Shores, would enable them to get a lot more than eight (8) units per acre on there and  
120 it would have to be one large building. This would be residential only as you cannot mix  
121 commercial and residential. If they did commercial, they could only do commercial on that  
122 property. This zoning text amendment would allow smaller residential buildings, mix with  
123 commercial, and a limit on the residential density which would be a positive. Someone may see  
124 the mix of residential and commercial as a negative. If the town's desire is not to have a true  
125 mixed use, then that could be considered a negative.

126  
127 Vice Chairperson DiBernardo asked how this zoning text amendment benefits the residents and  
128 commercial properties in Southern Shores and why was a variance not considered? Mr. Gupta  
129 replied they had not considered a variance option and had understood that a text amendment  
130 was the required process. He further stated that by including the wastewater treatment facility  
131 in the text amendment it narrows the number of commercial properties, reducing the impact of  
132 the amendment. The benefit being a matter of perspective, limits the density in the commercial  
133 district where currently there is none.

134  
135 Planning Board Member Lawler asked who owns the wastewater facility and if there are any  
136 notice of violations? Mr. Gupta stated they own the facility and there was a notice of violation.  
137 They are working with the agency and have recently signed a half million-dollar contract to  
138 substantially replace the majority of the wastewater facility. Before they took ownership of the  
139 wastewater facility it was on emergency operations, and they are working with the agency to get  
140 it off emergency operations.

141  
142 Planning Board Member Lawler asked if they could move forward with the facility in the current  
143 condition and on emergency operations? Planning Director Haskett stated this could move  
144 forward because this is a legislative text amendment and does not apply to a site plan or  
145 associated with any proposed physical development.

146  
147 Chairperson Ward stated Mr. Lawler's concern was valid, but it did not apply to the zoning text  
148 amendment. The wastewater facility would need to be remedied before a site plan or zoning  
149 permit was approved.

150  
151 Vice Chairperson DiBernardo asked Planning Director Haskett what was the lot coverage for  
152 commercial? Mr. Haskett stated commercial is 60%, group developments or up to 67% if  
153 permeable pavement is used.

154  
155 Vice Chairperson DiBernardo stated then there is a limit to the density, 60% or 67% with  
156 permeable for commercial. Planning Director Haskett stated 40% if residential as required in the  
157 RS8 district. He further stated that the 60 or 67% lot coverage is not the same thing as density,  
158 density is what is being proposed: 8 dwelling units per acre. The lot coverage for group  
159 developments (what is being proposed) is 60% or 67% using permeable pavement.

160  
161 Chairperson Ward stated that if it was all residential on a large track of land the lot coverage  
162 would be 40%. How do you blend 40% residential with 67% commercial? Planning Director  
163 Haskett stated if they were doing only residential the ordinance says that they follow the  
164 dimensional requirements of the RS8 district.

165  
166 Chairperson Ward asked if both commercial and residential are developed, does the residential  
167 portion adhere to residential requirements? Planning Director Haskett stated they would be  
168 subject to the group development requirements they are proposing. Group development is 60%  
169 or 67% with permeable pavement.

170  
171 Planning Board Member McClendon stated in the commercial zone there is a reference that  
172 states if you are developing residential and commercial zone you follow the RS8. Planning  
173 Director Haskett stated that is correct if you are following the residential use, this is a new use  
174 being proposed, group development of residential and commercial buildings.

175  
176 Chairperson Ward stated he considers this a mixed-use development. You are giving additional  
177 lot coverage for residential because the uses are mixed. Planning Director Haskett stated the  
178 board can recommend approval or denial of the zoning text amendment or provide suggestions  
179 to the applicant, which he may or may not accept.

180  
181 Planning Board Member Finelli (ETJ) stated if this is a good idea then why is it being restricted to  
182 lots that have an existing wastewater treatment facility? Mr. Gupta stated the idea was to limit  
183 the impact, limit the number of properties that could be impacted.

184  
185 Mr. Finelli stated it appears that the applicant's proposed zoning text amendment applies only to  
186 his property only. It appears it is not limiting; it is excluding. Mr. Gupta stated yes, currently so.

187 He further stated that this was based off conversations with town staff and their concerns. We  
188 consciously tried to limit that impact.  
189

190 Mr. Gupta stated currently you can build out commercial property to 60-67%. The only thing you  
191 cannot do is mix in residential units. Commercial developments typically require more lot  
192 coverage and by the nature of this you would have to do commercial and residential mixtures  
193 together. He further stated they believe they still need the higher lot coverage; they are limiting  
194 the residential density, but it allows for some residential units in there and commercial. Planning  
195 Board Member Finelli (ETJ) stated that also opens the possibility that you could do 99%  
196 residential and only one small commercial stand.  
197

198 Mr. Gupta stated Mr. Finelli had a fair point and some type of condition requiring a substantial  
199 amount of commercial would make sense.  
200

201 Planning Board Member Finelli (ETJ) also stated he has traffic concerns. He said this property or  
202 any property fronting HWY 158 will bring heavy traffic use, people will get frustrated and turn  
203 right and go into the Martin's Point commercial area to use the lots as a turnaround area. He  
204 stated he understands this property will be developed and there will be some more traffic, but  
205 he is concerned with increasing that amount of traffic and making it worse in the Martin's Point  
206 commercial lots when they become a turnaround area.  
207

208 Mr. Gupta stated that traffic will be there if they develop and max out as commercial. He stated  
209 for every residential added to that it would probably mitigate some of the traffic because  
210 commercial would tend to have higher vehicular traffic.  
211

212 Planning Board Chair Ward stated he hears and understands the concerns, but the board needs  
213 to keep the concerns on the proposed zoning text amendment rather than the specific property.  
214

215 Vice Chairperson DiBernardo stated this zoning text amendment is very site specific.  
216

217 Chairperson Ward asked Mr. DiBernardo if he would be okay with striking the language that is  
218 making the ZTA site specific. Mr. DiBernardo stated he didn't know if he would be okay with  
219 changing it at all, stating the Town of Southern Shores original vision was commercial and  
220 residential low density. It is the beginning of an incremental change, and he does not support it.  
221

222 Planning Board Member Burek stated she does not think it is consistent with the land use plan  
223 and agrees with Vice Chairperson DiBernardo. It will open the door to other commercial  
224 properties increasing density.  
225

226 Planning Board Member Finelli (ETJ) stated he does not think it is fair to require an existing storm  
227 water treatment facility. If the proposal is to be good, it should be done to all the commercial  
228 lots and if it is bad, it should be denied. He further stated he is not in favor of it because it can  
229 really affect a residential group development. If Southern Shores likes the 40% residential  
230 coverage than someone can put up a produce stand and call it mixed use. He does not see a  
231 benefit to either Martin's Point or Southern Shores.  
232

233 Planning Board Member McClendon asked Mr. Gupta if it would be a problem for him to strike  
234 the language having frontage on US 158 and/or the language about existing wastewater  
235 treatment facilities. Mr. Gupta stated it would not make a difference for them to strike that  
236 language. Mr. McClendon stated both items should be stricken as they are limiting, not  
237 necessary.

238  
239 Planning Board Member McClendon stated his idea of mixed use is a different perspective that  
240 what the other board members, where it is not individual buildings. His perspective is  
241 commercial on the bottom and residential on the second floor and there is no language in this  
242 proposal that would guarantee that kind of an arrangement. He recommended adding some  
243 additional language that would specify that it would be all in the same building, that you could  
244 not have all residential or all commercial only in the same building, and perhaps a suggestion  
245 about an appropriate lot coverage amount. Mr. McClendon further stated he knows we need  
246 more housing units on the Outer Banks and that is quite an opportunity. As presented, it needs  
247 work.

248  
249 Chairperson Ward stated Planning Board Member McClendon's perspective if commercial on the  
250 bottom and residential on the top is one way to look at mix use. Another is to have an apartment  
251 building on one end, condominium on the other end and commercial in the middle. His concern  
252 is there is holes that do not particularly spell out how you could use the mixed use.

253  
254 Chairperson Ward stated he is not particularly opposed to mixed use because it will afford a  
255 different residential use for apartments. Southern Shores is 100% single family dwelling, at some  
256 point our town must transition a little bit more towards apartments, possibly condominiums. He  
257 stated his concern is switching over from residential lot coverage to commercial lot coverage and  
258 allowing 99% residential under the commercial lot coverage percentage.

259  
260 Planning Board Member McClendon stated perhaps place a percentage of square footage use so  
261 that it does not become that situation of 99% residential.

262  
263 Mike Strader of Quible and Associates addressed the board. He stated he heard a lot of good  
264 points and there will be some refinement of the zoning text amendment. He asked for some  
265 clarification. His understanding that multi-family housing must adhere to commercial building  
266 code which pulls in all the additional lot coverage items; more parking, the loading zone  
267 dumpster, therefore the 60% lot coverage because it must adhere to commercial codes. He  
268 further stated that the Southern Shores Marketplace and Southern Shores Crossing both have  
269 existing wastewater treatment facilities because he is familiar with both wastewater treatment  
270 systems but if that is not the boards intent, they will address the language.

271  
272 Planning Board Alternate Jan Collins stated that any project this large should have a wastewater  
273 treatment facility. The board could recommend a percentage of commercial and what about a  
274 percentage of low-income housing requirement so we can support our teachers and police and  
275 those that need housing.

276  
277 Planning Board Chair Ward reviewed the RS-8 requirements and asked Planning Director Haskett  
278 how they could approach a ZTA like this with a percentage of commercial and residential.

279 Planning Director Haskett stated it is on the applicant to produce the language. They could add a

280 percentage of commercial and a percentage of residential to avoid the concern of having 99%  
281 residential only development.

282  
283 Planning Board Member McClendon asked Mr. Gupta if he would like to withdraw his application  
284 and amend it or would he like the board to vote on it, as presented.

285  
286 Mr. Gupta stated the board has made some good points with feedback. He stated mixing  
287 residential and commercial makes sense. Putting a percentage on each make sense. Multi use in  
288 most places is considered commercial and therefore up to 67% lot coverage. He said a  
289 consideration would be to not allow to go to the density bonus. He would like as much input so  
290 they can have the best approach with the next text amendment.

291  
292 Michael Shrader of Quible and Associates asked the board what percentage they would like to  
293 see commercial and residential. He stated most towns are 50% split, but they can adjust that  
294 percentage. He would also encourage low impact development measures.

295  
296 Chairperson Ward stated he would like to see the addition of a percentage added and what the  
297 board will need to consider will not be site specific. He would like to see somewhere in between  
298 the 40-67% lot coverage which would be more prudent for the town. He stated he is not  
299 opposed to mixed use; it just needs more clarity. He felt it would be a good move forward  
300 offering the mixed use. The town is evolving, and we cannot stay stagnant as we approach  
301 residents living to the point we need to start considering where we might possibly be able to put  
302 some apartments, condos, or townhouses that more people can feel like they can use without  
303 having to own a single family residential.

304  
305 Mr. Gupta stated if he was to develop that property today with commercial, he can max the lot  
306 coverage out at 67%. He believes allowing each residential unit would be positive, not a  
307 negative. To address affordable housing which is something that is badly needed, they are  
308 currently building 112 units in Kill Devil Hills that will be at an affordable price point. No local or  
309 federal money was received for this, just simply the right thing to do. They are also working with  
310 some development across the bridge. This development in Southern Shores would only have 36  
311 units and would not be affordable housing, it will be luxury. As far as the highway frontage and  
312 wastewater requirements, they were only trying to limit the impact and make it less scary, and  
313 they can certainly be removed.

314  
315 Planning Board Chairperson Ward stated he had met with staff and Mr. Gupta and requiring an  
316 existing wastewater facility plan was a way to ease into this rather than throw the door open to  
317 the subject. He stated that is where this came from and wasn't anything nefarious, or spot  
318 zoning.

319  
320 Planning Director Haskett stated since the board has discussed this zoning text amendment, he  
321 would recommend either approval or denial of the current ZTA. If denied, the applicant can  
322 either move forward with a public hearing and Council consideration or he can submit a new  
323 zoning text amendment for consideration to the Planning Board.

324  
325 Planning Board Alternate Jan Collins recommended the future language include lots shall be  
326 serviced by engineered wastewater treatment facility. This would make it uniformed. She further

327 stated the board may want to consider requiring a service road to lower the traffic impact and  
328 require a percentage of affordable housing. If they cannot give us affordable housing at this  
329 development, we'll make them provide them someplace else.  
330

331 **MOTION:** Vice Chairperson DiBernardo moved to deny ZTA 22-02 in its current form, and if the  
332 applicant desires, resubmit a new ZTA at a future date with some of the items discussed this  
333 evening, Seconded by Planning Board Member Lawler. The motion passed unanimously.  
334

335 **AMENDED MOTION:** Vice Chairperson DiBernardo moved to recommend denial of ZTA 22-02 in  
336 its current form, and if the applicant desires, resubmit a new ZTA at a future date with some of  
337 the items discussed this evening, Seconded by Planning Board Member Lawler. The motion  
338 passed unanimously.  
339

## 340 VII. New Business

### 341 ZTA-22-04 Amendment of the Town Zoning Ordinance by amending Section 36-207(b)(4).

342 Planning Director reviewed the staff report which read as, the proposed amendments to Section  
343 36-207(b)(4) are being proposed by Town Staff to establish a maximum density requirement of  
344 eight dwelling units per acre in the C, General Commercial District. Currently, Section 36-  
345 207(b)(4) establishes that detached single-family dwellings, two-family (duplexes) dwellings,  
346 multifamily dwellings, and accessory buildings are permitted in the C, General Commercial  
347 District according to the dimensional requirements of the RS-8 Multifamily Residential District.  
348 The dimensional requirements of the RS-8 District are established in Section 36-203(d) and they  
349 address yards (setbacks), lot coverage, lot width, building height, etc., but they do not address  
350 density. The density requirement for the RS-8 District is established in Section 36-203(a) at eight  
351 dwelling units per acre which should also be required for residential development in the C,  
352 General Commercial District.  
353

354 The Town's currently adopted Land Use Plan contains the following Policy that is applicable to  
355 the proposed ZTA:  
356

- 357 • Policy 2: The community values and the Town will continue to comply with the  
358 founder's original vision for Southern Shores: a low-density residential community comprised of  
359 single-family dwellings on large lots (served by a small commercial district for convenience  
360 shopping and services located at the southern end of the Town. This blueprint for land use  
361 naturally protects environmental resources and fragile areas by limiting development and  
362 growth.  
363

364  
365 Vice Chairperson DiBernardo asked if there is a five (5) acre minimum requirement for  
366 something concerning commercial and putting residential units on it? Planning Director Haskett  
367 stated not that comes to mind.  
368

369 Chairperson Ward stated that was for planned unit development.  
370

371 Chairperson Ward Stated the zoning text amendment is being clarifying with three words and  
372 most likely an oversight back in 1981.

373 Planning Board Member Finelli (ETJ) asked if a finding of consistency is needed in the motion?  
374 Planning Director Haskett stated the statement of consistency is found in article 4 of the ZTA.  
375  
376

377 **MOTION:** Vice Chairperson DiBernardo moved to recommend approval of ZTA-22-04 as written,  
378 Seconded by Planning Board Member Burek. The motion passed unanimously.  
379

380

381 **VIII. Public Comment**

382 none

383

384 **IX. Planning Board Member Comments**

385 None

386

387 **X. Announcements**

388 Planning Director Wes Haskett stated the next meeting is Thursday, May 19th at 5:00 p.m.  
389 Items on the agenda will include a text amendment from Ms. LeBlanc and possibly ZTA 21-08, to  
390 amend Town Code Section 36-165, Regulations Governing Signs. Town Council at their April 5<sup>th</sup>  
391 meeting approved the lot coverage ZTA and solid waste ordinance amendments. The town will  
392 do its best on the educational aspect of the solid waste ordinance, newsletter, stickers, and  
393 reaching out to the property management companies.  
394

395

396 **XI. Adjourn**

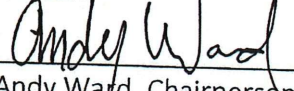
397 Hearing no further business, motion made by Vice Chairperson DiBernardo to adjourn, Seconded  
398 by Chairperson Ward. Motion passed unanimously. The time was 6:33 P.M.  
399

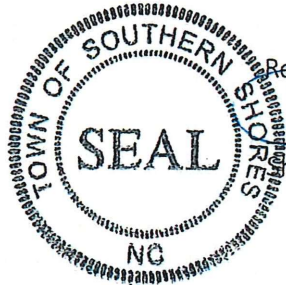
400

401

402

ATTEST:

403   
404 Andy Ward, Chairperson



Respectfully submitted,

  
Hejla Kane, Town Clerk