

**FINAL**



## **Town of Southern Shores**

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

Phone 252-261-2394 / Fax 252-255-0876

[info@southernshores-nc.gov](mailto:info@southernshores-nc.gov)

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

**Planning Board Meeting**

**March 18, 2019**

**5:30 p.m., Pitts Center**

### **MEETING MINUTES**

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

Chairperson Elizabeth Morey called the meeting to order at 5:30 pm. Planning Board Members Ed Lawler, Joe McGraw, Elizabeth Morey, David Neal, Andy Ward, Town Attorney Ben Gallop, Planning Board Attorney Jay Wheless, Permit Officer Dabni Shelton, and Deputy Town Manager/Planning Director Wes Haskett were present.

#### **II. PLEDGE OF ALLEGIANCE:**

Chairperson Morey led the Pledge of Allegiance.

#### **III. APPROVAL OF AGENDA:**

Joe McGraw motioned to approve the agenda. Ed Lawler seconded the motion. The motion passed unanimously (5-0).

#### **IV. APPROVAL OF MINUTES:**

Andy Ward suggested two minor revisions to the January 22, 2019 Planning Board meeting minutes and motioned to approve them as amended. David Neal seconded the motion. The motion passed unanimously.

Joe McGraw motioned to approve the February 19, 2019 Planning Board meeting minutes. Ed Lawler seconded the motion. The motion passed unanimously.

#### **V. PUBLIC COMMENT:**

None.

#### **VI. NEW BUSINESS:**

- A. VA-19-01, a Variance application submitted by Starkey Sharp for a Variance from Section 36-132 of the Southern Shores Town Code for the property located at 64 Ocean Blvd.

Variance requests are heard by the Board of Adjustment. Chairperson Morey indicated that the Planning Board was now acting as the Board of Adjustment.

Chairperson Morey explained the quasi-judicial public hearing procedure and rules and stated all witnesses wishing to give testimony will need to be sworn in. Chairperson Morey then reviewed several areas of possible conflicts of interest and asked the Planning Board members if they had any conflicts of interest. There were none.

SWEARING IN OF ALL PEOPLE GIVING TESTIMONY

All parties wishing to give testimony during the public hearing were sworn in by Chairperson Morey.

OPEN HEARING & EVIDENTIARY PORTION OF HEARING

Chairperson Morey opened the public hearing and called on Wes Haskett to present the Staff Report (attached).

David Neal asked when the Variance was granted for the side yard setback requirement. Chairperson Morey stated May 11, 2016.

Board Attorney Jay Wheless asked if the ownership of For The Love of Pete LLC had been confirmed and asked Chairperson Morey to confirm the application.

Casey Varnell stated that he was standing in for the applicant, Starkey Sharp, due to illness. He confirmed that For The Love of Pete LLC is in single ownership by Steven Love. He stated that his client should not be deprived to build on his lot which he paid \$650,000 to build upon. His client did come before the Board in 2016 with the full intent to build when he requested the Variance which was granted and he believes that his client has a vested right. He was told that he could build with a reduced side yard setback requirement and now he is being told that he cannot. With respect to the spirit and intent of the ordinance, a Zoning Text Amendment (ZTA) has been going back and forth that concerns his client. Prior versions of that ZTA have been recommended that would allow his client to build which shows that his client's request is in compliance with intent.

David Neal asked if there was a time limit on Variances. Casey Varnell stated that there is no expiration. Board Attorney Wheless stated there could be conditions of expiration but Variances should run with the land.

Ed Lawler asked if the site plan in the application was the same site plan used for the previously granted Variance. Wes Haskett stated that it was not.

Andy Ward asked how a Variance can be requested with a different site plan. Town Attorney Ben Gallop stated that the previous Variance was for setback requirements and it runs with the property. The current Variance request is not asking for a Variance from Section 36-132, it is a request for a Variance from the dimensional requirements. The vested rights issue holds no water. Vested rights in North Carolina are established when a Building Permit is issued and that is not something you should entertain. What the Board really needs to consider is the four standards for granting a Variance. The property owner could recombine the properties which could potentially increase the property value. The property is not peculiar, the owner's investment in the property is what differentiates it from other properties.

Ben Gallop reads information regarding Variances from a book by Professor David Owens with the UNC School of Government.

Ben Gallop stated with respect to the hardship not being created by the property owner, ZTA-18-07 was considered at several meetings and a Public Hearing and the property owner did not build prior to its adoption. It is clear that a single LLC is considered same ownership.

Jay Wheless asked if the applicant took any action that created this situation or did the ordinance change create the request. Ben Gallop stated that the ZTA was in the process during the transfer of ownership to an LLC so it resulted from actions taken by the property owner. The applicant admitted in the application that they were aware of the ZTA and started transferring the ownership.

Jay Wheless asked if it would be different if a Building Permit had been granted prior to adoption of the ZTA. Ben Gallop stated that the owner would have been able to build or sell the property.

Andy Ward asked had ZTA-18-07 not passed, would the Board be hearing the request. Ben Gallop stated no.

Chairperson Morey closed the evidentiary portion of the hearing.

#### DELIBERATION AND DECISION

Chairperson Morey opened the floor for a vote/decision on the four standards that apply to variances. *(The concurring vote of four-fifths majority of the Board shall be necessary to grant a variance)*

Andy Ward stated that it would be a hardship not be able to develop the property. \$650,000 is a lot financially.

Jay Wheless stated that the NC Legislature would agree, but unnecessary hardship cannot be determined exclusively by cost of compliance, or lost property, or lost value. There must be other determining factors. No one is saying that it is not present.

Chairperson Morey stated that ZTA-18-07 could be amended again but in the meantime, people have to wait. It does not mean that the door is closed, it means that we are waiting. She stated that she doesn't see anything in the application that shows that there is a hardship, it talks specifically about the economics.

Andy Ward stated that the owner could have built when he received the Variance in 2016 if he was ready.

Ed Lawler asked how long a Building Permit is valid until it expires. Joe McGraw stated one year. Andy Ward stated that it can be extended, it is one year to start construction.

Jay Wheless stated that the Board members are to act as finders of fact. The owner received the Variance in 2016. Is it an unnecessary hardship that there was a delay to build and an ordinance amendment?

David Neal asked if there is a hardship if a lot is rendered unbuildable. Jay Wheless stated that the Town has stated that it is not deemed an unnecessary hardship when the owner has an opportunity to recombine to increase the property's value.

Andy Ward stated that that may be a hardship in itself. From a builder's standpoint, tearing into a new house for an addition would be a hardship.

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

**VOTE: 0 aye / 5 no**

- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

**VOTE: 0 aye / 5 no**

Jay Wheless stated that there was a good deal of evidence from the Town's perspective and there are multiple properties. The applicant spoke to the site being peculiar, but not peculiar enough.

- (3) Does the hardship result from actions taken by the applicant (or the property owner)? The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Chairperson Morey stated that the applicant did or did not do some things, the Town also.

Andy Ward stated that the hardship was not self-created because the property owner could have built when he purchased the property. It was created after he bought the lot.

**VOTE: 0 aye / 5 no**

- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Jay Wheless asked if granting the Variance breathes life into the ordinance.

**VOTE: 3 aye / 2 no**

Jay Wheless stated that granting a Variance requires a 4/5 majority vote on all of the established standards.

Ed Lawler motioned to deny the Variance request based on the Board's vote on the four standards. Joe McGraw seconded the motion.

**VOTE: 4 aye / 1 no The motion passed – Variance denied**

Chairperson Morey closed the public hearing on VA-19-01. She also indicated that further business would be conducted as the Planning Board (not acting as a Board of Adjustment).

- B. ZTA-19-01, a Zoning Text Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Section 36-57, Definition of Specific Terms and Words; 36-202, RS-1 Single-family Residential District; and 36-205, R-1 Low-density Residential District.

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

Ed Lawler asked where the 170,000 sq. ft. came from. Ben Gallop explained and said that it would be about 4 acres.

Chairperson Morey asked if the Conditional Use Permit (CUP) version would allow vacation cottages that exceed the size requirements. Ben Gallop stated that it would. A CUP could not be denied if the standards are met.

The Board discussed the potential impacts of allowing large vacation cottages.

Chairperson Morey stated that ZTA-19-01 regulates occupancy and septic capacity. Vacation cottages would be subject to an occupancy limit. Single-family dwellings and vacation cottages would be subject to a maximum septic capacity of 14 occupants.

The Board discussed changes in use and how and when a Zoning Permit would be required for a vacation cottage.

Andy Ward stated that the non-CUP version does what the Board asked and it looks comprehensive.

Chairperson Morey stated that her concern is that adoption of the ZTA may put a burden on property owners who want to rent their home.

Ed Lawler stated that adopting ZTA-19-01 would be consistent with the Town's Land Use Plan.

Chairperson Morey suggested adding another Part to ZTA-19-01 that would include the RS-10 zoning district.

Joe McGraw motioned to recommend approval of ZTA-19-01 to the Town Council with the addition of a Part IV that adds the RS-10 zoning district. Andy Ward seconded the motion. The motion passed unanimously.

The Board discussed the CUP version and its potential impacts.

Andy Ward stated that he had discussed it with Professor David Owens with the UNC School of Government and he does not recommend going further with it.

Chairperson Morey stated that density is the issue. If the CUP version is approved, and a proposal meets the requirements, then the CUP must be granted which is what the Town does not want.

Joe McGraw motioned to recommend denial of ZTA-19-01 CUP. David Neal seconded the motion. The motion passed unanimously.

**VII. OLD BUSINESS:**

A. Continued discussion of nonconforming lots

Wes Haskett stated that Town Staff is working with Dare County in order to determine the number of nonconforming lots in the Town.

Chairperson Morey suggested to continue discussion once more information is provided by Town Staff.

**VIII. PUBLIC COMMENT:**

Matt Neal stated that he was confused about signing up for speaking during public comment and suggested that the process be streamlined. He read an article from Our State from the 1950's and suggested that the Town consider the original intent of Southern Shores which was marketed and sold as 90 ft. and 100 ft. lots.

**IX. PLANNING BOARD MEMBER COMMENTS:**

David Neal stated that he may have misunderstood when considering the Variance and asked if the owner had sold the lot prior to adoption of ZTA-18-07, could it have been built. Ben Gallop stated yes.

Andy Ward stated that the Board did a good job. We looked at the facts which made it uncomfortable, but we did what was needed. He stated that he was glad the Board voted 5-0 to recommend approval of ZTA-19-01.

**X. ANNOUNCEMENTS:**

Wes Haskett stated that the next scheduled meeting is on April 15, 2019.

**XI. ADJOURNMENT:**

Andy Ward motioned to adjourn. Joe McGraw seconded the motion. The motion passed unanimously and the meeting adjourned at 7:40.

ATTEST:

  
\_\_\_\_\_  
Elizabeth Morey, Chairperson

RESPECTFULLY SUBMITTED:

  
\_\_\_\_\_  
Wes Haskett, Deputy Town  
Manager/Planning Director

**STAFF REPORT**

**To:** Southern Shores Planning Board  
**Date:** March 11, 2019  
**Case:** VA-19-01  
**Prepared By:** Wes Haskett, Deputy Town Manager/Planning Director

**GENERAL INFORMATION**

**Applicant:** Starkey Sharp  
 P.O. Drawer 1027  
 Kitty Hawk, NC 27949

**Property Owners:** For The Love of Pete LLC  
 10324 Grendel Ct.  
 Mechanicsville, VA 23116

**Requested Action:** Variance from Section 36-132, Regulation of Structures and Uses  
 Nonconforming

**PIN #:** 986712956130  
**Location:** 64 Ocean Blvd.  
**Zoning:** RS-1, Single-Family Residential District  
**Existing Land Use:** “Residential”

**Surrounding Land Use & Zoning:**

- North-** Residential; RS-1, Single-Family Residential District
- South-** Residential; RS-1, Single-Family Residential District
- East-** Conservation; OSW, Ocean and Sound Waters District
- West-** Residential; RS-1, Single-Family Residential District

**Physical Characteristics:** Vacant

**Applicable Regulations:** Chapter 36, Zoning Ordinance: Article III, Interpretation and Definition of Terms; Article IV, Application of Regulations; Article V, Nonconformities; Article VII, Schedule of District Regulations, Article XII, Board of Adjustment.

**ANALYSIS**

The applicant is requesting a Variance to allow for the construction of a single-family dwelling at 64 Ocean Blvd. which is a vacant legally nonconforming lot with respect to lot width and lot size. The adjacent property located at 62 Ocean Blvd. is owned by Steven D. Love and Kathleen M. Gorman which also own 64 Ocean Blvd. Single-family dwellings are a permitted use in the RS-1 Single-family Residential zoning district. However, Section 36-132, Regulation of Structures and Uses Nonconforming, was amended on September 5, 2018 as ZTA-18-07 which includes a requirement that requires a recombination of property when development is proposed upon land under the same ownership which includes one or more nonconforming lots adjacent to one or more other lots under the same ownership.

Prior to September 5, 2018, the property owner would have been able to construct a single-

family dwelling at 64 Ocean Blvd. and this Board granted a Variance to the property owner to reduce the side yard setback requirements from 15 ft. to 12 ft. ZTA-18-07 was adopted by the Town in order to manage the development of the Town in a manner which maintains the low-density character of the Town by requiring formal recombination of lots to current Town standards toward a goal of reducing the existence of nonconforming lots. In addition, the Town adopted ZTA-18-07 in order to allow for existing nonconforming lots that are not otherwise adjacent to lots owned by the same person or entity to be developed rather than vacant and unusable.

Section 36-367 of the Town Zoning Ordinance establishes that the Planning Board, when performing the duties of the Town Board of Adjustment, shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - Assuming the perceived hardship exists, it may not be unnecessary because the lot could be recombined with the adjacent property which would increase the lot size, increase property value, and allow for an addition or development on the recombined lot.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - There is nothing peculiar about the subject property which is one of many vacant legally nonconforming lots adjacent to land under same ownership in the Town.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - Prior to the adoption of ZTA-18-07 on September 5, 2018, the property owner would have been able to construct a single-family dwelling on the subject property.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
  - The intent of Section 36-202, RS-1 Single-family Residential zoning district is to provide for the low-density development of single-family detached dwellings in an environment which preserves sand dunes, coastal forests, wetlands, and other unique natural features of the coastal area. The district is intended to promote stable, permanent neighborhoods characterized by low vehicular traffic flows, abundant open space, and low impact of development on the natural environment and adjacent land uses.
  - The intent of Section 36-131, Nonconformities is to permit nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of Section 36-131 that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

## STAFF REPORT

**To:** Southern Shore Planning Board  
**Date:** March 11, 2019  
**Case:** ZTA-19-01 and ZTA-19-01CUP  
**Prepared By:** Wes Haskett, Deputy Town Manager/Planning Director

### GENERAL INFORMATION

**Applicant:** Town of Southern Shores  
**Requested Action:** Amendment of the Town Zoning Ordinance by amending Section 36-57, Definition of Specific Terms and Words; 36-202, RS-1 Single-family Residential District; and 36-205, R-1 Low-density Residential District

### ANALYSIS

As requested by the Board at the January 22, 2019 Planning Board meeting, Town Staff is proposing to amend the Town Zoning Ordinance by amending Section 36-57, Section 36-202, and Section 36-205 in an effort to effectively regulate the density of population within the Town by regulating the size and bulk of residential structures within its jurisdiction and the use of property as vacation cottages, particularly those having maximum overnight occupancy and/or septic capacity in excess of fourteen (14) persons. The proposed language would establish that detached single-family dwellings and vacation cottages are permitted uses in the RS-1 Single-family Residential District and the R-1, Low-density Residential District provided that such residential structures shall not be: (i) advertised to accommodate, designed for, constructed for or actually occupied by more than fourteen (14) overnight occupants when used as a vacation cottage; or (ii) have a maximum septic capacity sufficient to serve more than fourteen (14) overnight occupants. ZTA-19-01CUP includes the same proposed language in addition to establishing vacation cottages (high density) as Conditional Uses on lots that are at least 175,000 sq. ft.

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

- **Policy 2:** The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low density residential community comprised of single family dwellings on large lots (served by a small commercial district 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 amendments are 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