

**FINAL**



## Town of Southern Shores

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**Planning Board Meeting**

**December 17, 2018**

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

### MEETING MINUTES

#### I. CALL TO ORDER:

Vice Chairperson Elizabeth Morey called the meeting to order at 5:30 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. Alternate Member Michael Basilone was seated as a voting member due to the current regular member vacancy.

#### II. PLEDGE OF ALLEGIANCE:

Vice Chairperson Elizabeth Morey asked for a moment of silence for the passing of Glenn Wyder and led the Pledge of Allegiance.

#### III. APPROVAL OF AGENDA:

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

#### IV. APPROVAL OF MINUTES:

Andy Ward motioned to approve the minutes from the October 15, 2018 Planning Board meeting. Michael Basilone seconded the motion. The motion passed unanimously.

#### V. PUBLIC COMMENT:

None.

#### VI. NEW BUSINESS:

- A. ZTA-18-09: Zoning Text Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Section 36-132, Regulation of Structures and Uses Nonconforming

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

Andy Ward requested that Wes Haskett show the list of scenarios of conforming and nonconforming lots that he had compiled on the screens for review. The Board reviewed the list of scenarios and asked Town Attorney Ben Gallop how ZTA-18-09 would apply to some of the scenarios.

Ben Gallop explained that ZTA-18-09 was drafted as requested by the Board which would allow the sale or development of a nonconforming lot that is adjacent to two

nonconforming lots that contain a single-family dwelling. The ZTA also expands on the definition of an "Affiliate" with respect to ownership and LLCs.

Vice Chairperson Morey opened the floor for Public Comments.

Starkey Sharp stated that he used to live in Southern Shores and that Mr. Love, owner of 62 and 64 Ocean Blvd, was his client. He stated that he had watched this mess created by the Town which takes away the ability to build on a nonconforming lot on the oceanfront. This is a big mistake and amending it further will make it worse. His client, Mr. Love, bought 62 Ocean Blvd. and was threatened with a monster house on the adjacent property so he bought the lot to prevent the monster house from being constructed. The lot wasn't purchased to leave it vacant. Plans have been developed for a 5 bedroom house and his client obtained a Variance from the Town to reduce the side setback requirements. Before the nonconforming issue, his client transferred title of the property to an LLC. The CAMA permit has been delayed and the house at 62 Ocean Blvd. was recently vandalized as a result of this ordinance. It is unfair. If the ordinance is amended to help his client, that is not right either. This is exposing the Town to litigation and liability.

Ann Sjoerdsma stated that the Board was doing an excellent job and thanked Andy Ward for what he has done. She stated that when buying a nonconforming lot, the owner should know. You are adhering to what the Town has always done. Development on 50 ft. lots has always been restricted. Frank Stick did not allow development on 50 ft. lots. Ben Gallop has made it clear that the ZTA deals with Mr. White's situation. The difference with Mr. Love's property is that he combined the lots at 62 Ocean Blvd. Owners should do their due diligence before buying property. She then thanked Vice Chairperson Morey and Andy Ward and stated that we all miss Glenn Wyder.

Vice Chairperson Morey closed the floor for Public Comments.

David Neal asked how ZTA-18-09 affects Mr. White's property and Mr. Love's property. Ben Gallop stated that ZTA-18-09 allows Mr. White to build and does not allow Mr. Love to build. The Board can change it or leave it as is. He stated that he was not sure if Mr. Sharp advocated for his client.

David Neal asked about the Variance granted to Mr. Love. Ben Gallop stated that the Variance was for setback requirements and it was issued several years ago. Mr. Sharp misread, Mr. Love could have obtained a permit to build prior to adoption of ZTA-18-07 or he could have requested to amend the ordinance. There was ample time to address the issue.

Andy Ward stated that it was not the Board's intent to render valuable property unusable.

Ben Gallop stated that the best way to move forward is for the Board to decide what it wants to do and he will redraft the ordinance.

The Board discussed further amendment of ZTA-18-09.

David Neal motioned to ask Town Staff to amend ZTA-18-09 to allow development on a nonconforming adjacent to a conforming lot that was recombined within the last few years with the intent of complying with the Town Code. Elizabeth Morey seconded the motion. The motion passed unanimously.

B. Potential regulations to address large single-family dwellings

Vice Chairperson Morey stated that the Town Council had asked the Board to discuss the issues regarding large single-family dwellings and asked Wes Haskett to provide background information.

Wes Haskett stated that the Town Council had asked the Board to look at the issue of large single-family dwellings and explained what was included in the meeting packets. On November 7, 2018, the Town Council voted to ask Town Staff to draft a ZTA to address large single-family dwellings which resulted in ZTA-18-10. On December 11, 2018, the Town Council voted to ask the Board to consider ZTA-18-10 in addition to all other options in order to address large single-family dwellings.

Vice Chairperson Morey stated that she was not in favor of ZTA-18-10. It over regulates and does not arrive at a solution. It still allows large single-family dwellings.

David Neal stated that it was a good idea to get the discussion going on the issue and that he was not sure about the overlay district concept. You cannot call a 12 bedroom house a single-family dwelling. He stated that he was not suggesting that the Town should regulate the rental of property. The nature of the beast is capitalization.

Andy Ward stated that he had asked Councilman Jim Conners to visit his relatives' house at 48 Ocean Blvd. and they discussed the issue. He stated that he was sticking with the language recommended by Professor David Owens and that he was more inclined to recommend septic.

Joe McGraw stated that the Board should go after it a different way.

Michael Basilone agreed with Joe McGraw.

Vice Chairperson Morey stated that she was not ok with the overlay district concept. The legislature took away the Town's authority to limit the number of bedrooms but not density as it relates to the public's health and safety. She stated that she thinks that septic is the approach. Nags Head regulates septic capacity in one of its zoning districts.

Wes Haskett read the Nags Head septic capacity requirements from the Nags Head Town Code.

Vice Chairperson Morey stated that the enforcement of rentals would be hard to enforce.

David Neal stated that the septic option should be investigated. The Homebuilders Association has come up with a good idea to regulate the RS-1 zoning district that is easy to enforce. A Conditional Use Permit would be required for large single-family dwellings.

Ben Gallop stated that he sees problems with using septic and that he is in a complicated situation. If he says what the risks are, someone can find out how and sue. He stated that he knows Professor Owens and to read what he says and say there is no risk is not true. He and Professor Owens had discussed the issue and that he has proposed something similar to what the Homebuilders Association has provided. There are risks with septic. There are less risks with the use aspect. The complexity is how it is defined and how it is done. It remains an open question if you can regulate rentals in

North Carolina. No complaints have been heard about anything not abutting NC 12 or within the Ocean Blvd. corridor.

Ben Gallop explained the overlay district concept.

Andy Ward stated that Section 36-163, parking includes septic capacity requirements and asked how that can be tied to septic and not for occupancy. Ben Gallop stated that it was not something that he advised. Septic capacity has a risk and the Town Council can take that risk. He stated that he has to say that there is a risk.

Andy Ward stated that the Town could have adopted the 6,000 sq. ft. limitation and septic capacity in 2016. Professor Owens is in a thinktank at the UNC School of Government and they have looked at the suggested language provided by Professor Owens. Ben Gallop stated that the difference is that Professor Owens is not the Town Attorney. There is no way that he will say that it is not without risk.

Vice Chairperson Morey asked if Nags Head had been challenged on their septic capacity requirements. Ben Gallop stated that someone should ask Nags Head if they have ever denied a permit based on the septic capacity requirements and that there is one Town that uses septic only. The Dare County Environmental Health Dept. is a permit issuing authority and they will allow more bedrooms than the Town allows.

Andy Ward stated that Section 36-163 states that the Health Dept. determines the number of occupants and rooms. Ben Gallop stated that the Health Dept. has allowed more than what the Town has allowed and asked if it would solve the problem. It would not unless the Health Dept. changes.

Andy Ward asked what would happen if a permit application is caught on the front end and the septic permit allows 16 or 20 occupants. Wes Haskett would not allow it. Ben Gallop explained a similar situation in Duck and in that situation, the applicant changed the plans and the description of rooms and received a permit.

Andy Ward described a situation at 46 Ocean Blvd. that involved more than the allowed bedrooms and septic capacity. He stated that this Board wants to regulate occupancy and density. He suggested to add the language provided by Professor Owens to the RS-1 zoning district requirements.

Vice Chairperson Morey opened the floor for Public Comments.

Matt Neal stated that the Homebuilders Association had developed a use option which doesn't include counting the number of occupants at night and distributed it to the Board. The proposed language is a suggestion for conversation. A Conditional Use Permit would be required for a High Occupancy Dwelling which would be recorded with the Dare County Register of Deeds. Large houses cannot be built in some areas with septic requirements in Nags Head due to lot sizes. Short term rentals in Duck is a hot topic. The Homebuilders Association does not believe the Town would be challenged on their proposed requirements.

Ann Sjoerdsma stated that there is another option that the Homebuilders Association has not suggested which is to reduce the house size to a maximum of 5,000 sq. ft. It is easy, clear cut, and straight forward. A 5,000 sq. ft. house is about the size of a 9 bedroom house. The overlay district concept has to be considered. Regulations should only be considered in the overlay district. With respect to the current parking

requirements, they should not have been enacted in 2016. It does not fit with the Town Code and allows too many spaces. Multiple ZTAs for all options should be generated.

Mark Martin stated that the Homebuilders Association has been discussing this issue. The General Assembly took away the ability to regulate the number of bedrooms in 2015 and the Town can still adopt an ordinance that regulates use which could be changed again by another Town Council. The General Assembly had everybody doing their own thing and the bedrooms language was inserted into the Bill at the last minute. The Town needs to come up with a solution. The Homebuilders Association has also discussed a 5,000 sq. ft. limit but that can still allow an 11 bedroom house. The Town may get away with capacity on occupancy, but property owners do not want the Town to get sued.

Chris Toolan stated that he is a realtor with the Outer Banks Association of Realtors and they have discussed the proposals being considered. He stated that he was blown away that he was the only realtor present. The Vacation Rental Act takes care of advertising more than you rent. The problem here has not been clearly stated yet. The overlay district will not prevent an event house and would not apply to Mark Martin or his street because he lives outside of the overlay district. The areas would shift. There are not many stakeholders present. The Homebuilders Association appreciates the fact that the Town does not want large houses, but do not address the use. With respect to septic, the Town would be regulating the number of rooms.

Vice Chairperson Morey closed the floor for Public Comments.

Vice Chairperson Morey stated that it is clear that the Board is not ready for a motion. The Board has not addressed some of the issues that the Town Council wanted the Board to address.

Vice Chairperson Morey suggested holding a Special Meeting to continue the discussion of potential regulations to address large single-family dwellings.

Joe McGraw motioned to schedule a Special Meeting. Michael Basilone seconded the motion. The motion passed unanimously for the Special Meeting to be held prior to January 8, 2019.

**VII. OLD BUSINESS:**

None.

**VIII. PUBLIC COMMENT:**

None.

**IX. PLANNING BOARD MEMBER COMMENTS:**

David Neal stated that the Board has discussed septic requirements and the Board has a letter from Professor David Owens. Rental machines next to a RS-1 zoning district cottage is the problem. The Board needs to focus now on the use of property. Ann Sjoerdsma's point about the 6,000 sq. ft. limit is valid on conforming lots. The Town needs to adjust the square footage on lot sizes.

Andy Ward stated that he is not getting off of septic capacity requirements and that he trusts Professor Owens. Professor Owens's suggestions are not just from him, they come from a group at the UNC School of Government. Professor Owens is not putting it out lightly. He stated that he would not walk away from how easy it would be to regulate with the septic option. If Professor Owens's language was in effect today, the Town

would not have a 12 bedroom house. There is risk involved but it is clean. The Town has to get a handle on this issue.

**X. ANNOUNCEMENTS:**

Vice Chairperson Morey announced that the next scheduled Planning Board meeting is January 22, 2019. A Special Meeting will be held prior to January 8, 2019.

**XI. ADJOURNMENT:**

Joe McGraw motioned to adjourn. Vice Chairperson Morey seconded the motion. The motion passed unanimously and the meeting adjourned at 7:45 p.m.

ATTEST:

  
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Elizabeth Morey, Vice Chairperson

RESPECTFULLY SUBMITTED:

  
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Wes Haskett, Deputy Town  
Manager/Planning Director

### STAFF REPORT

**To:** Southern Shores Planning Board  
**Date:** December 13, 2018  
**Case:** ZTA-18-09  
**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 36-132, Regulation of Structures and Uses Nonconforming

#### ANALYSIS

Town Staff is proposing to amend the Town Zoning Ordinance by amending Section 36-132, Regulation of Structures and Uses Nonconforming. The purpose of the ZTA is to further address the sale and development of legally nonconforming lots as established in ZTA-18-07 which was adopted by the Town Council on September 5, 2018. At the September 17, 2018 Planning Board meeting, the Planning Board agreed that further amendment of the language adopted in ZTA-18-07 was necessary in order to address scenarios which involve a nonconforming lot adjacent to two nonconforming lots that contain a single-family dwelling based on public comments. The proposed language in ZTA-18-09 would allow for the development or sale of a nonconforming lot adjacent to two nonconforming lots that contain a single-family dwelling.

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 public interest. That statement is not subject to judicial review.