



Town of Southern Shores

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

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MEETING MINUTES

PLANNING BOARD-SEPTEMBER 19, 2022, 5:00 P.M.

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

I. CALL TO ORDER:

Chairperson Andy Ward called the meeting to order at 5:00 pm. Planning Board Members Lynda Burek, Ed Lawler, Robert McClendon, Tony DiBernardo (Vice Chairperson), Andy Ward (Chairperson), John Finelli (ETJ), Jan Collins (alternate #1), Dan Fink (alternate #2) and Deputy Town Manager/Planning Director Wes Haskett were present.

II. PLEDGE OF ALLEGIANCE:

Chairperson Ward led the Pledge of Allegiance.

III. APPROVAL OF AGENDA:

Chairperson Ward moved to amend the agenda by moving New Business item PSP 22-01 final subdivision plat and hear that item first, followed by old business signs, Motion seconded by Vice Chair DiBernardo. Motion passed unanimously. The motion passed unanimously (5-0).

IV. APPROVAL OF MINUTES:

Chairperson Ward recommended the following changes to the May 19, 2022, minutes:

- Move lines 487 through 490 further up in the minutes to the proper order of the meeting.
- line 155 should read "a house in Southern Shores with same restrictions".

Motion made by Vice-Chair DiBernardo to approve the May 19, 2022, minutes as amended, Seconded by Planning Board Member Burek. Motion passed unanimously.

Vice-Chairperson DiBernardo recommended the following additions to the Town Clerk's draft minutes dated August 15, 2022, minutes:

- Vice-Chair DiBernardo stated where he asked about the aggrieved party can ask all the questions they would like, and it does not have to be their attorney. He stated he also questioned them about chain of custody, and he said the attorney said it usually only applies to criminal cases and may not, probably will not, apply to this case.
- He further stated he asked the attorney 3 questions. He asked if the chain of custody was applicable, he stated its usually criminal cases and probably would not be applicable at this case. On line 23 Planning Board Member Lawler said he was aware in a rough way and add, myself and Planning Board Member Burek stated they were not aware whatsoever of the appeal and that should be added to the minutes.

47
48 Planning Board Director Wes Haskett asked if Vice-Chair DiBernardo was suggesting the chain of
49 custody addition should be inserted between line 200 and or 203 and 205. Vice-Chairperson
50 DiBernardo stated yes, and it should state, "the attorney said it is usually only criminal cases
51 unlikely to be applicable in this case."

52
53 Planning Board Director Haskett requested confirmation of the location of the second addition.
54 Vice Chairperson DiBernardo stated line 223 should include" DiBernardo and Burek stated they
55 were not aware of it at all, they were not aware of any information."

56
57 **Motion** made by Chairperson Ward to accept those two corrections by Vice Chair DiBernardo,
58 Seconded by Vice Chairperson DiBernardo. The board accepted the corrections/additions
59 unanimously. Vice Chairperson DiBernardo stated he felt it was important to include that in the
60 minutes.

61
62 **V. PUBLIC COMMENT** (not held)

63
64 **VI. PSP-22-01: 267 Hillcrest Dr. Final Subdivision Plat**

65 Planning Director Wes Haskett stated the board approved the preliminary plat to subdivide the
66 property at 267 Hillcrest Drive. The final plat has not changed other than the conditions that
67 were recommended for the final plat to included. Council approved the preliminary plat with the
68 recommended conditions. The surveyor made the changes in the conditions to the final plat. The
69 reference to recombination has been removed because this is a subdivision. Town staff
70 recommends approval of the final plat.

71
72 Chairperson Ward stated the exemption certificate has been removed as requested and all
73 requirements for the plat itself have been shown on the revised plat.

74
75 Hearing no concerns, **motion** by Planning Board Member Lawler to approve PSP-22-01 267
76 Hillcrest Dr final subdivision plat as presented, Seconded by Planning Board Member Burek. The
77 motion passed unanimously.

78
79 **ZTA-21-08**

80 The proposed amendments to Section 36-57, Definition of Specific Terms and Words and 36-
81 165, Regulations Governing Signs are a result of a U.S. Supreme Court ruling that signage
82 requirements should be content neutral. In an effort to make the Town's sign requirements
83 content neutral, the proposed language addresses signage based on the applicable zoning
84 district the subject property lies within.

85
86 The Planning Board first considered the application at the October 18, 2021, Planning Board
87 meeting and after several meetings with revisions, recommended approval to the Town Council.
88 The Town Council considered the application at the November 9, 2021, Town Council meeting.
89 Following several comments during the public hearing, the Town Council voted to send the
90 application back to Town Staff and the Planning Board for revisions, including allowing signs in
91 the Town right-of-way during campaign season. Town Staff has made several revisions to the
92 proposed language since November, 2021 which include: Allowing temporary signs in the Town
93 right-of-way during campaign season with permission of the adjacent property owner(s), revised

the requirements for signs on properties that are for sale or lease, revised the definition of “sign”, revised the definition of “temporary sign”, revised the requirements for signs at major entrances to subdivisions, revised the requirements for wall signs in the Commercial zoning district, and revised the requirements for temporary signs in all zoning districts.

Both Town staff and the former Town Attorney Ben Gallop worked together to address any concerns. This version is a product of those revisions and responses. Town staff recommends the Planning Board recommends approval to Town Council.

Chairperson Ward stated this is the fourth version the board has worked on. Line 22 summarizes why we are doing this, content neutral.

Chairperson Ward stated on line 22 the definition of pennant is not really a sign and questioned if the board should place some type of square footage on pennant. He recommended the size of a campaign sign (3 square feet).

Planning Director Haskett stated the only incident where staff had pennants come up was during one of the Food Lion remodels.

Planning Board Alternate Collins stated a string of pennants will exceed your recommended measurements. Do you put that size regulation on one single pennant, rather than the string?

Planning Board Member McClendon stated since pennants aren’t regulated, we will have to classify it as a sign, put a limit on it and where it is allowed.

Chairperson Ward stated pennants didn’t have to be considered a sign.

Planning Director Haskett stated if you are to propose or recommend requirements and regulate them, he felt it should be considered a sign.

Chairperson Ward stated that was not the intent to preclude people from putting seasonal pennants in their yard. Once you make it a sign then we must find a place for it. He stated he would prefer to stay away from that.

Vice Chairperson DiBernardo stated the next word is captive balloon which is permitted on page 2 and then on page 6 it is prohibited; signs supported in whole or in part by water, air, or gas. The prohibited list does not say balloon, but the description is that of a balloon. It needs to be listed as one or the other, the statements contradict one another. He recommended scratching captive balloon.

Chairperson Ward stated he didn’t think the definition of a sign would have bearing on whether it is permitted or not.

Planning Board Member McClendon stated part of the definition, a captive balloon, then that means it is a sign and must follow the sign ordinance. If you take it out it doesn’t apply to all of this. A hot air balloon with text is a sign and would have to meet the terms of our ordinance. If you remove it from the definition than that hot air balloon is not a sign.

Chairperson Ward stated he understood Vice Chairperson DiBernardo's concern but it is just being defined on page two, which isn't allowing anything. It is then not permitted a few pages later. The definition is not allowing, just defining the parameters.

Planning Board Member Finelli (ETJ) recommended to keep the document simpler, just include pennants of a certain size allowed.

Chairperson Ward stated he recommends leaving pennants alone and if we notice it being abused, then we can address pennants. Citizens will get upset if we are taking out simple yard hangings. He didn't think that was the original intent and recommended saying a banner is a sign, a flag is a sign, and a pennant is a pennant.

Chairperson Ward stated on page three permanent sign is the same that we agreed at the last meeting. The sign "temporary" has been redone slightly.

Planning Director Haskett stated temporary sign on line 22 has a new strike out because it was not content neutral, which was recommended by Town Attorney Gallop.

Chairperson Ward stated he knew Planning Board Member Finelli (ETJ) had a concern with vehicle signs at a previous meeting and asked if he felt they were addressed. Mr. Ward stated the issue was if an old truck that does not run is used for advertisement, or a vehicle with no plate or registration. On page 6 under prohibited uses, vehicle advertisement is listed as a prohibited use and should add not licensed to operate on a roadway.

Planning Director Haskett stated the motor vehicles and traffic ordinance currently deals with vehicles partially dismantled or wrecked, and if it doesn't have a valid registration, it is considered a junk motor vehicle, which can be cited.

Planning Board Member McClendon stated the ordinance appears to read as long as the vehicle is being utilized as it was intended, travel, deliveries, loading and unloading at businesses, then it is okay. It is when it gets parked out front of the business for extended times it becomes a sign.

Chairperson Ward asked the board if they wanted to add more language, such as operable vehicle.

Vice Chairperson DiBernardo felt it was already covered by the junk vehicle ordinance or put a footnote referencing that portion of the ordinance.

Chairperson Ward stated if the board was okay with not defining what that vehicle is, then he called to move forward.

Chairperson Ward heard no discussion for page 4, 5, and 7. He stated the one item scratched (item f) was for content neutral purposes. Planning Director Haskett stated that was correct. Chairperson Ward stated off-site signs are generally placed in the right of way. Most of the ones removed in this town have been removed from the town right of way. That is the current ordinance and in the new draft ordinance.

188 Planning Director Haskett stated temporary signs with less than three-day duration are allowed
189 in the current draft. All temporary signs are allowed in the right of way during campaign times
190 (early voting through election day).

191 Planning Board Member McClendon stated in theory he did not have a problem with the three-
192 day temporary signs in the right of way but as a property owner he has a problem with not
193 getting the adjacent property owners' permission.

194
195 Planning Board Member Finelli (ETJ) asked if an attorney's opinion has been sought. Planning
196 Director Haskett stated former town Attorney Gallop reviewed the draft.

197
198 Planning Director Haskett stated in the current ordinance it is one day, and the proposed
199 ordinance it is three days. The purpose of the three-day temporary signs is in response to the
200 church and schools having events and fundraisers throughout the year.

201
202 Chairperson Ward moved onto tables.

203
204 Table A- Chairperson Ward asked about internally illuminated signs and if the Fire
205 Department was exempt. Planning Director Haskett stated in the current ordinance, signs
206 approved by the Town Council are exempt. The Fire Department went through the
207 conditional use permit and were approved, so they would be legally non-conforming if
208 this ordinance is approved.

209
210 Table B-no discussion/no changes.

211
212 Table C- Planning Director Haskett stated there was a deletion for wall signs in Table C #1
213 because Attorney Gallop stated arguably not content neutral because you must review
214 content to determine what store it advertises.

215
216 Table C- Planning Board Member McClendon asked about accumulative sign area per lot
217 and for group developments, one for every linear foot. He asked if that was a count of
218 signs? Planning director Haskett stated the current ordinance breaks it out into retail
219 development and then freestanding lots. The only way he could think to do it is to say
220 this column is for cumulative design area per lot but for group developments one per
221 every linear foot of store frontage for each store. One square foot of sign area per linear
222 store frontage.

223
224 Table D-no discussion/no changes.

225
226 Table E-Chairperson Ward reviewed the table and prior revisions. When reviewing the
227 campaign time signs, he asked Planning Director Haskett if it was his intent to say,
228 permission of the adjacent property owner would only be at election time? Planning
229 Director Haskett stated yes.

230
231 Chairperson Ward recommended all temporary signs should have permission of the
232 adjacent property owners, not just at campaign time.

Planning Board Member McClendon stated there is an inconsistency in the placement of temporary signs. Planning Director Haskett stated that was correct, temporary signs of three-day nature can be placed in the right of way and campaign time signs must be out of the right of way (private property). Chairperson Ward stated it then says except, from thirty days from early voting and ten days after with permission of the adjacent property owners.

Chairperson Ward stated it does state that they have to have the adjacent property owner's permission for all temporary signs during that time period (campaign time). He recommended adding a number four having all temporary signs state, all temporary sign placement shall have prior permission of the adjacent property owner.

Planning Director Haskett stated strike out the last sentence in number two, and just put a period after election.

Planning Board Alternate Member Collins was bothered with the three-day signs and then a sign allowed in the right of way thirty days prior to an election. Planning Director Haskett stated the three-day sign must be content neutral, so you cannot say it is mainly to accommodate the school and church.

It was the **consensus** of the board to make the change to temporary signs- residential.

Chairperson Ward asked to discuss a potential remedy to sign pollution during campaign season. That would be, no temporary sign shall be placed within any traffic median of any roadway within the town. This doesn't discriminate against signs; you just can't put any in there.

Planning Board Member Lawler asked about permission of the property owner. Chairperson Ward stated this is for the medians within town, South Dogwood, East Dogwood, the Triangle.

Planning Board Member McClendon stated we can regulate size, location, and time. This would be in our rights to do that (place). Chairperson ward stated time, place, and manner.

Planning Board Alternate Collins stated freedom of speech and it is an election.

Chairperson Ward stated it is sign abuse. He stated last year the Southern Shores Civic Association wrote a letter to the candidates asking them not to place any signs on the civic association's common areas and it worked.

Vice Chairperson DiBernardo stated there would have to be an exception of some type for polling locations.

Planning Director Haskett stated church and school events will probably use that median on South Dogwood and North Dogwood.

Town Manager Ogburn stated the day of election and how close the signs can be to the polling location is a state law.

Chairperson Ward stated permission from adjacent property owners is important and he would also like to see language stating no temporary signs may be placed within the traffic medians anywhere in town. People will get used to it. He asked the board if they felt it was too restrictive.

Vice Chairperson DiBernardo felt it would be a hard thing to do and should seek a legal opinion. He stated it brings up many points from the supreme court decision that Clarence Thomas wrote. He felt the board would be jumping the gun without a legal opinion if they tried adding that language.

Town Manager Ogburn stated if signs were placed in a line of sight, they can be relocated or moved but to pick and choose placement of signs in a median seems problematic.

Chairperson Ward stated it is an aesthetics issue.

Planning Board Member McClendon stated the Town of Southern Shores owns the streets, so it seems we could not allow temporary signs in front of the public right of way.

Town Manager Ogburn stated the ordinance currently does not allow them in the right of way. You cannot pick and choose locations of right of ways.

Planning Director Haskett stated if the town was able to allow signs in the rights of way, it would be frowned upon to discriminate which areas of the right of way are good or not.

Chairperson Ward acknowledged this did single out a right of way the town owns as restrictive for any sign anytime.

The board was reluctant to add the language and took no action on Chairperson Ward's recommendation to not allow signs in town medians.

Planning Director Haskett asked to clarify number 4. *All temporary signs placed in a right of way shall have prior permission.* Chairperson Ward confirmed the language.

Banners and Flags-same as last revision. Planning Director Haskett stated flags are a challenge, you allow all or none.

Government Institutional & Commercial District- add an additional #4 with exact same language for a free-standing sign.

Table E-Planning Director Haskett stated the wall sign for rent or lease, the Town Attorney said that it requires one to look at the content to determine what is advertised and suggested changing, to be placed on the principal building that is listed for rent or lease.

Vice Chairperson DiBernardo stated he had brought up corner properties and allowing signs on both sides may be more relevant. He said it is the same as allowing commercial corner buildings to have a sign on each side.

Chairperson Ward stated it could be added in the additional requirement section. Make a number 3 and add language allowing corner properties to have the additional sign.

Corner lots may place up to two freestanding signs on a lot.

Chairperson Ward recommended after Council approves the ordinance to have staff put out a condensed version of what the sign ordinance says and place it on the website and send to all political campaign offices and the Board of Elections. It would make sense to show where we stand as a town in our sign ordinance.

Hearing no further discussion, Vice Chairperson DiBernardo **moved** to approve ZTA-21-08 with the amended aspects and send it to Town Council, seconded by Chairperson Ward. Motion passed unanimously.

ZTA-22-10

At the May 19, 2022 Planning Board meeting, the Board recommended approval of a revised version of ZTA-22-06 which established mixed use group development of commercial and residential buildings as a Special Use in the C, General Commercial zoning district. Some of the recommended revisions included some of the dimensional requirements from the C, General Commercial zoning district. On June 7, 2022, the Town Council adopted ZTA-22-06 with most of the language recommended by the Board, including a requirement for maximum building height, which is established in the dimensional requirements for the C, General Commercial zoning district.

The maximum building height requirement for the C, General Commercial zoning district (and all other zoning districts) states: Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level. Only the first sentence from that requirement was included in the Planning Board's recommendation and what was ultimately adopted by the Town Council. Town Staff believes that omitting the second sentence was an oversight, and that it should be included in the requirements for mixed use group development of commercial and residential buildings as it is a part of the maximum building height requirement for all zoning districts.

Planning Board Alternate Collins asked if the building code allows fill on low lying lots? She indicated it could affect the neighboring homes. Planning Director Haskett stated, currently there is not a restriction to placing fill but there is a stormwater ordinance, many of which require an engineered plan.

Planning Director Haskett state it could be fill or pilings to raise it to the 8ft above mean sea level.

Planning Board Member McClendon asked what uses could be permitted under those pilings? Planning Director Haskett stated anything below the regulatory flood protection elevation can

only consist of parking, access, or storage; no enclosed living space, all electrical must be above, all HVAC units must be above.

Chairperson Ward stated it was an oversight and needs to be on par with what we have in all the rest of the zoning districts. Staff is recommending approval.

Planning Board Member McClendon **moved** to adopt ZTA -22-10 as written, Seconded by Planning Board Member Burek. Motion passed unanimously.

Chairperson Ward recommended moving discussion of potential design standards to the October meeting.

Chairperson Ward asked each member to bring a list of 5-10 design standards that stood out.

Vice Chairperson DiBernardo moved to continue the discussion of potential design standards until October 17th, Seconded by Chairperson Ward. The motion passed unanimously.

VIII. Public Comment-None

IX. Planning Board Member Comments-None

X. Announcements

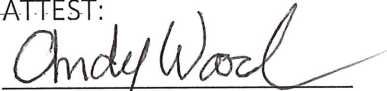
Planning Director Haskett stated the appeal application will be heard October 5th at a special meeting. The regular meeting will be October 17th. The agenda will consist of potential design standards, potentially the Pledger ZTA, and potentially 160D changes.

Town Council will consider the sign ordinance at their October 4th meeting.

XI. Adjourn

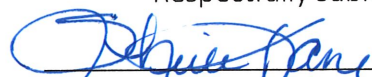
Hearing no further business, **motion** made by Chairperson Ward to adjourn, Seconded by Planning Board Member Burek. Motion passed unanimously. The time was 6:56 P.M.

ATTEST:


Andy Ward, Chairperson



Respectfully submitted,


Sheila Kahe, Town Clerk