Town of Southern Shores

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Planning Board Meeting
May 15, 2023 at 5:00 PM

Call Meeting to Order
Pledge of Allegiance

Present
Chairperson Ward, Planning Board Members, Zehner, McClendon, Lawler, and ETJ Representative John Finelli

Chairperson Ward introduced and welcomed Michael Zenner who has agreed to an alternate position on the planning board.

Agenda
Planning Board Member Lawler moved to approve the agenda of the May 15, 2023, planning board meeting, Seconded by Chairperson Ward. The motion passed unanimously.

Minutes

Planning Board Member Lawler moved to approve the minutes of February 22, 2023, as corrected, Seconded by Planning Board Member Zehner. The motion passed unanimously.

Public Comment
None

Old Business

ZTA-22-08, a Zoning Text Amendment application submitted by Casey Varnell on behalf of Pledger Palace, CDEC, Inc. to amend Town Code Sections 36-57 and 36-207(b) to allow Shared space-Occupancy Dwellings in the C, General Commercial zoning district.

Applicant: Pledger Palace CDEC, Inc.
6325 N. Croatan Hwy.
Southern Shores, NC 27949

Applicant's Representative: Casey C. Varnell, Attorney for Applicant
P.O. Drawer 1027
Kitty Hawk, NC 27949

Requested Action: Amendment of the Town Zoning Ordinance by amending Sections 36-57, 36-207(b)

Planning Director Wes Haskett's staff report read as follows:

The applicant is proposing a Zoning Text Amendment (ZTA) to amend Town Code Sections 36-57 and 36-207(b) to allow for Shared Space-Occupancy Dwellings (SSO) as a permitted use in the C, General Commercial zoning district. The application was submitted on June 17, 2022, but the Applicant withdrew the application from the July 18, 2022 Planning Board meeting agenda. The proposed language defines Shared Space-Occupancy Dwelling as a private structure in which shared spaces are offered for rent for the purpose of providing affordable sleeping accommodations, payable in money and other consideration, to persons who do not meet the definition of family. Each shared space offered for rent within the structure may accommodate up to ten (10) bunk units (maximum of twenty (20) occupants). Each shared space offered for rent within the structure shall exist within the confines of four walls, and separate and apart from any other shared space within the structure. Residents of the SSO shall share a kitchen facility and common living area with all other residents and shall share a bathroom facility with one or more other residents. The owner of the SSO shall not use the dwelling comprising the SSO as their primary residence. SSO does not include dormitory and residence halls, single-family dwellings, multi-family dwellings, motels, or vacation cottages.

The proposed requirements for Shared Space-Occupancy Dwellings (SSO) are:

a. There shall be one (1) parking space for every seven (7) residents. The parking of any motor vehicle shall only occur in a designated parking space.

b. Bathroom facilities shall be provided which accommodate separate use by males and females.

c. The owner of the SSO shall obtain the requisite permit(s) from the Dare County Health Department.

d. The owner of the SSO shall be responsible for ensuring that residents are, at all times, in compliance with all Town Code regulations, including the town noise ordinance.

e. The Town of Southern Shores may complete periodic inspections of the SSO to ensure the SSO is providing for the health and safety of the occupants.

Since Town Code Section 36-207(b)(11) was established after the application was submitted, the proposed amendment to Town Code Section 36-207(b) should consist of the addition of (12) instead of (11) as shown in the application.

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

The applicant seeks to provide affordable housing for J-1 Work Visa students and others in need of affordable housing. During your consideration, questions and discussion should mainly focus on the ZTA and not on a specific property as it would apply to all lots in the Town's C, General Commercial zoning district. Policy 2 of the Town's Land Use Plan establishes the commercial district as a small district for convenience shopping and services. The Land Use Plan also establishes that incompatible uses in the commercial area are limited to "residential (low density)," educational, and conservation activities. Since the proposed use would consist of high-density housing in the C, General Commercial zoning district, Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan. However, given the potential impacts of the proposed use on adjacent properties Town staff recommends that the board recommend disapproval of the application to the town council unless the proposed use is proposed as a special use. As a special use a public hearing would be required and notice of the hearing would be sent to all adjacent property owners as opposed to an administrative approval without providing an opportunity for public input and without the ability to impose reasonable and appropriate conditions and safeguards.

Chairperson Ward called on the applicant **Patricia Pledger** or the applicant's representative **Attorney Casey Varnell**.

(Transcript)
***PBM: Planning Board Member**

Casey Varnell: So good to see all you guys as always. We are here trying. I do believe Ms. Pledger's statement if you will, for lack of a better phrase, was attached to our application. Just to give you guys kind of an idea what the purpose is behind what we're proposing, you know, there's no know definition itself reads affordable that is within there. Wes and I discussed that; I agree. I thought that was a good idea to add in the definition itself as far as the cost of rent because the proposal here is designed to put a dent and that's all we can possibly do with affordable housing out here in my humble opinion. I mean, there is no solution that is going to cure and rid us of our affordable housing issue. However, we do believe if you have a building that is the size of Ms. Pledgers here it can accommodate even if it is in one room with bolts, that is going to accommodate say 20 people. If you can do that feasibly and then again, not have it let us say, aid to the folks who just want to make money for example, it is why we have excluded single-family residents from the definition. It is why we put in the definition that any occupants cannot meet the definition of family. The idea here is to provide for our workforce, also for j1 students as you noted in Ms. Pledger's statement. It is a very critical thing here and Ms. Pledger knows for a fact based on conversations with business associates throughout the Outer Banks that J1 housing is still an issue. We still have situations where folks are going and I am not necessarily knocking them, but folks are taking a six-bedroom home and they are putting twenty-four people in there, which is double what the septic would allow for. We are trying to prevent those types of situations. We are not trying to create a scenario here where someone could go in build a monster home, rent this out the family for seasonal rental or weekly short-term vacation rental and then have the owner profit. The idea here is that we want to

try to do something to put a dent in what we see, and I believe what the county overall sees as. Again, a more affordable housing scenario. Just a couple notes here. I am going to let Ms. Pledger speak, just about assume she wants to about her personal endeavor in this matter. However, I will note that there are a few outstanding issues in case that is in your mind right now. We fully acknowledge and that is why it is within there, that we are going to have to get septic approval. We have been in conversations with the county. We have met with several individuals there, they have informed us of our options, and we intend to pursue those options. Of course, in the event that this was to be approved. There is an issue with potentially at least that I have seen raised with the fact that Martin's Point commercial has covenants on them. Okay, and that's if the covenants indeed, I've not done an exhaustive search yet on what the covenants do and do not, require mainly because I don't want to have my client spend a whole bunch of money with me to go give some fancy legal opinion If there's no shot and even moving forward with it. No need to put the car before the horse but what I can say is this, we would acknowledge that while at the same time acknowledging that as you guys will know towns don't enforce restricted covenants between private property owners. But again, that is not your issue. We acknowledge that if we have to address it, we will be addressing that as well. Pointing out I will now speak that Wes surprised me a little bit there? I do not think I have read your proposal for the special use recommendation here. I was explaining to my client the difference in what we proposed, which is a permitted use and special use. You guys know what it is, I don't have to do that but what I would note that is sometimes special use permits can get in the way of really good things. I have seen it happen with the two towns I represent. What I will note though is that in the C1 and in this particular district we're proposing, if you think about the layer think about the size of it. If you think about the structures that currently exist there, not that other things cannot be constructed but this is something that most properties are not going to qualify for. Those properties are not going to fall into this particular definition or even be capable of falling into this definition. That is why in the first place I did ask for it to be permitted use, to save money, to save time of course for citizens and applicants, for business owners in trying to make such an endeavor. However, we are at your guy's mercy. I did however want to speak to the fact that if it remains as a permitted use I do not see, first off you've got a fantastic town planner here who's going to take the conditions that are already placed or put on the what we're now proposing as this new use. There are already conditions that we're asking be built into the covenants, I believe those conditions are sufficient to counteract any potential town concerns and with your planner administrating his code the way he does I know that those conditions would be followed. That coupled with the fact that this is what I believe to be at least very limited in application, now and in the future because of again the size and layout of the c1 district here in Southern Shore. So, with all due respect what I would ask is that it be approved with as a permitted use. But again, that is that is something that is for you guys to decide. Thank you very much.

Patricia Pledger: Good afternoon, thank you so much for indulging and taking the time to allow me to speak this afternoon. I Initially hired my council to represent me not that I could not speak for myself but it was just the fact that I just wanted to make sure that I do everything right. I have always since I have been have my business here in Southern Shores I have I feel like and from what I have been told that I have been a stellar business owners in the community .As you noted earlier the project was put on the table, actually it was put on the table back in 2019 and then we removed it from the table because the building is a 7700 square foot educational facility as you are very much aware of and so It was a proposal had come to me at the last minute, after Casey had already presented it,

to leave it an educational facility because Dare County is still saying that they are very much short of quality childcare. Of course, that deal fell through that they present it. So, I took it off, then covid hit and I did not do anything else. Then when I came back, I moved to Charlotte and so I was getting phone calls about the facility constantly. Even if I came back and opened it up as a summer camping which I did. Then it was presented to me to allow the building to be used for putting some j1 students in there because several of the businesses did not have anywhere for these students to stay. I would not allow that because I want to do things right. I know there is a lot of people that do things under handily, under the table and then ask for forgiveness later. I am that person that teeters on the other end. I want to come to you and say okay, what do we need to do in order to make this building viable for j1 students and you know workers that come into the area and is affordable for them. It is not about me making all the money, it is not about me curing the problem, it is about me doing my part as a business owner in Dare County. If everybody does their little part, then maybe we can put this pie together. So that is what I am trying to do, I am not trying to take a building that I have and throw a bunch of students in it and then not give them a reasonable place to live in. When I came to Casey, I do my research before I do anything, and I said we cannot just put anything there. If we are going to do this then we are going to do it correctly. So, I started doing research, I am connected with people that are housing j1, I'm connected with j1 students that are actually typing in and listening to their concerns. Their biggest complaint is that, you know, they're paying all of this money, and I mean they're not even as the code allows 50 square foot apart. I mean some of them some of them as I showed Casey are not even good, you know, four foot apart .So when I'm presenting this building and what I'm trying to present , my philosophy and everything has been we stay ready so we don't have to get ready. Does that make sense? So, it's one of those things that I'm trying to create an environment that if for some reason, God forbid that we have another pandemic or something like that right, we don't have to deal with the issues of what's going on and how we're going to handle it because we're going to be ready just like we were ready when this pandemic came. I have tried, people are calling me and they are still asking me to please leave the facility an educational facility. The building I have tried for two years to leave it that way, actually has been going on almost three years and I'm a very business-oriented individual. Someone is not just going to be able to come in that building and just run it like an you know, a normal facility. They have to have a business mind behind them. And so therefore after speaking with all these people the only thing I could see was to take it to the next level. Um, you are calling it housing, Casey is shared living, it is still an educational facility simply because these j1 students are coming from all across the world. They are the fuel of our economy, which is what everyone says but if they are the fuel of our economy, then why can't we give them decent housing? That is all I am trying to do, is take what we need in Dare County and when we when we hire and bring these people over here that they have a decent place to live. Again, I cannot solve the whole problem, I can only do my part, and I hope that you will have me do that.

Casey Varnell: We will both stand for any questions.

Chairperson Ward: Thank you, we may have a few. I want to remind the board in fact, thank you for You know giving us your perspective on your building but what we have to remember is this is not specific to your property; this is going to be for the entire town of Southern Shores and anything in the commercial district. That is how we have to treat it, we can't look at your individual situation as how we're going to go about discussing this. I just want to remind the board members that we need to kind of stay in our lane.

PBM Robert McClendon: We would be speaking specifically about this property if it were a special use?

Casey Varnell: once a site

Planning Director Wes Haskett: If it is if it is established as a permitted use or special use then at that point, yes. Once a site plan is submitted, we would be considering it as a specific property.

Chairperson Ward: For purposes of tonight, that is correct. Does anybody have questions for Mr. Varnell or Ms. Pledger?

PBM Robert McClendon: The J1 students are primarily here in the summertime I understand, what is the offseason business model look like to you?

Patricia Pledger: At this time, what I would like to try and do is not just you know, Label it as J1 housing so to speak but to any of the work, it is workforce housing. So therefore, we all know that I can just use this as an example, like when the bridge workers come down and they are always working on the bridge. Like that working on the bridge now. So, it would be very easy to be able to house those people as well because they could easily be combined in a shared living situation.

Casey Varnell: What in a hotel or an inn you're paying much steeper prices than what of course we're proposing, and again that's would be the client's business model, but I also think that's why we build the word affordable into the definition.

PBM Robert McClendon: And I have seen you know some numbers here and that kind of thing. So, you would be planning how many toilets, how many persons would be sharing a toilet?

Patricia Pledger: You would have in one room a maximum of twelve people sharing.

PBM Robert McClendon: twelve sharing a toilet, what about a sink?

Patricia Pledger: Each one of the rooms will actually have two laboratories inside of it and two sinks inside of it. So, the capability there is thirty people in a room, but I would not do that.

Chairperson Ward: Once again, we are trying to keep this thing to a ZTA. Okay, but you just answered his question, but I just want to try to keep it honed into a ZTA that is before us.

PBM Michael Zehner: Yeah, so looking at the definition, this may be for Mr. Haskett or Mr. Varnell and thank you Ms. Pledger, so each shared space offered for rent within the structure and there could be multiple shared spaces, right under the definition?

Casey Varnell: That is referring to the room. So, my vision when writing that was the space is the room.

PBM Michael Zehner: Okay, that is great. And so there could be ten bunk units in each of those rooms, correct?

And a maximum of twenty occupants per room.

Casey Varnell: So that way there's some for I mean, if you have an auditorium size for example, you could put 80 people in that one room, but we wanted to try to somewhat limit it while doing what we feel is reasonable at the same time.

Patricia Pledger: And still allowing the fifty square foot.

Casey Varnell: Right

PBM Michael Zehner: Yeah, I do not know. I mean, I just wonder if that sentence is necessary unless there needs to be a maximum number of occupants. That is one thought. But there is nothing limiting time, length of occupancy, there is nothing limiting the density of the of the occupancy, number of units number of shared spaces. So hypothetically, you could have a building in as many shared spaces as you could feasibly fit in there but it's something if it's subject to a special use permit presumably you could limit it that way.

Casey Varnell: Right, that is true. Again, with that maximum back to your previous point too, still there's going to be a set number of people that can occupy it under this definition, even if it is a 400,000 square foot building, still each space make it as big as you want, but only have up to 20.

PBM Michael Zehner: The last sentence where it says shared space occupancy dwelling does not include dormitory and residence halls, single-family dwellings, and multifamily dwellings motels or vacation cottages. I assume one it does not include dormitory and residence halls because those are prohibited but are you also meaning to say that you could not use a single-family dwelling, a multifamily dwelling, a motel, or a vacation cottage as a shared space occupancy.

Casey Varnell: Correct, I would say that it is because there is already you know uses out there that are allowed in Southern Shores to accommodate those particular types of calling commercial use. Originally, we had proposed an additional as you may remember but an additional amendment to the code. Prohibited uses currently in Southern Shores prohibit dormitory halls residence halls so I had proposed that we strike that as prohibitive use. Now the only reason I did do that is in the event that somebody tried to liken this or make it akin to a dormitory residence, how do we make that as clear as possible that that's not what we're allowing. We are only allowing what is specifically within this particular definition. Dormitories, for example, would not have your kitchen accommodation, they would not have the bathroom facility, things of that nature. However, Wes and I in our conversation, he brought a great point which was do away with the prohibition do not strike the prohibition, but just exclude it from your definition. That I thought was a great move and that is what I decided to incorporate.

PBM Michael Zehner: Yeah, maybe I might split that sentence up and just say that SSO does not constitute a dormitory or residence hall and then another sentence that single-family dwellings, multi-family dwellings, motels or vacation cottages may not be used as a shared space.

Casey Varnell: Just to make it clearer. We would have no off no opposition to a change in language such as that if that is what you recommend. Understanding that it is our ordinance I do believe we

have got the discretion to make and recommendation to agree to that change. So that would be a change we agree to, for sure.

Chairperson Ward: I would think getting into your discussion about dormitory residents' hall we do not currently have a definition of either in our ordinance, which I think probably deserves a definition and differentiate that from what this ZTA speaks to because they are very much the same. When I was at NC State 100 years ago, I lived in a residence hall that had some cooking. It was a residence hall, and it in essence could be a hall to house j1 students. So, we need to differentiate between what your ZTA is asking for and what a residence hall and or dormitory would be defined as.

Casey Varnell: Wes, do you in my research and I am not the expert on the only such as my friend here, but from a zoning perspective dormitories and residence hall have to be linked to some form of educational, such as it's an ancillary. In other words, it is a college dorm or something of that nature. My client's not operating, you know a college, she is not operating even a private school or something of that nature. That is not what is happening. So, I do not know if that does it, but I do understand exactly what you are saying.

Chairperson Ward: I could not find anything; I mean even when you hit search on the Municode dormitory you get nothing.

Planning Director Wes Haskett: It is not in the town code. If you look up the definition the Oxford dictionary refers, or it does link it to institutional/ educational uses.

Casey Varnell: I think we all went down the same rabbit hole with Municode because I could not find it either.

Chairperson Ward: Well, we want to get rid of ambiguities.

Casey Varnell: Absolutely, yes sir.

Chairperson Ward: Well, we received our packet from Wes and I am just curious because it was the same packet that was out there last June/July. What has changed in the narrative of your ZTA from last June?

Casey Varnell: No change in the ZTA. What's changed in the narrative is that we feel like we are getting much closer to the septic issue, which again not to get site specific. However, the question is somewhat specific to my client at least. We feel like we are getting closer to a resolution on that where at first, we were not sure. So, we took that time off to work through those particular hurdles. Now the hurdle that we are at though is no different than what I brought up about HOA covenants, its
you know things like that when lawyers unfortunately the only way we get paid is by you know our time and our service so to go and address an HOA issue before use gets approved is going to cost my client money, so let us avoid that if we can. In the event you guys and the town council shoot this thing down, same for septic, we wanted to know that there was some surety there but at the same time we did not want to begin the administration of permitting and perhaps even going to the state level. We did not hire engineers to design specific plans. We needed to get our bases but not expend the money until such time as we knew that this was even a viable option

for us. So that in all candors has been exactly what caused us to table this thing but also bring back the exact same. But note that it is still in there, we must have we must have septic approval of course.

Chairperson Ward: Once again, that is specific to your problem.

Casey Varnell: Correct, I mean in the definition of any particular property of course would have to have the necessary septic for housing this amount of people is not same as a house. Let us put it that way as far as what is required. I just wanted to point out that would be incumbent upon any applicant in the future if this use is approved.

ETJ Rep. John Finelli: I do not have any questions for the applicant, some comments for the planning board and staff at the appropriate time.

PBM Robert McClendon: So, Wes or Casey or whoever, if the town wanted to restrict the number of persons sharing toilet or a bathroom, if the town wanted to require accessibility for SSO those kinds of things, where would those be? Would we put those in the definition, under permitted uses thing? Where would we place those kinds of restrictions on any SSO that might be built within this town?

Casey Varnell: I would say that definition itself. Okay, if yes if it was a permitted use as long as it met the requirements put forward then by administrative., However, that's a threshold when it comes to a special use. It is kind of a must have this to even get to the point where you can be considered for a special use which then more Conditions if that's the favor of any board could be placed on it, such as I suppose the conditions you're referring to. Wes, I do not know if you agree with that.

Planning Director Wes Haskett: My suggestion is if you think it should be a requirement then it should be built in either to the definition or into the other requirements that they proposed.

PBM Ed Lawler: Does the Health department come in and establish minimal facilities?

PBM Michael Zehner: They are going to limit the number of occupants by septic capacity.

PBM Ed Lawler: Well, you could go beyond septic, you could purchase capacity from the wastewater plant down the road, right?

Planning Director Haskett: It is a possibility.

Casey Varnell: It requires a private agreement, of course. You negotiate with the wastewater, yes.

PBM Ed Lawler: Yes, but as far as facilities on that site would that be controlled by the health department.

Planning Director Wes Haskett: Typically

Casey Varnell: That would take some of the sting out of it I suppose if it is health department health code rules.

PBM Robert McClendon: I have looked into HUD requirements for persons that are use shared housing as part of the section 8 voucher and there are restrictions as to how many people have to share a bathroom, which are specified there and the square footage as well, per person. Which is different than our health department. The health department I was familiar with by occupants, I understood it was by bedrooms.

PBM Michael Zehner: right, it is by bedrooms and recognizing occupants by bedroom.

Chairperson Ward: The health department it is bedrooms and Southern Shores are occupants.

PBM Michael Zehner: They are going to recognize a maximum number of occupants per bedroom under the health department.

Chairperson Ward: Or what is the definition of the bedroom too. Yeah, you are relying on what is on the plan. So back to you Robert, I think I am on the same page as you as far as the listing requirements that we would like to see in this situation. Right off the bat I feel like the definition is way too long. You could simply define what you are looking for and then we start a requirement section. I would recommend shortening the definition because it is very long and has a lot of things in there and then what we need to discuss as a board is what kind of requirements we would like to see on what you are proposing your ZTA.

Casey Varnell: Of course, I do not know what you guys want. So, we have to throw it all out there and your opinion.

Chairperson Ward: Sure.

PBM Robert McClendon: The Department of Labor and the Department of Agriculture labor camps for persons that come in and are transient to work in our farms, the labor camps, and individual farmers still they have specific restrictions of how many people per bath and all of those kinds of things. Surely, we can come up with something like that. It is appropriate for the kind of facilities we would like to see.

Chairperson Ward: And that would be listed out in requirements after we know what the definition is and narrow that definition down in scope and then do the requirements. I mean, if you look at what we did for produce stands, which is right around this in the commercial district we define what a produce stand was and then we had like eight or ten conditions underneath it. This ZTA defines specifically what you envision, but it has very little requirements below that definition. Only three A, B, and C speak to specifically to ratio of parking space to vehicle, bathroom facilities. It does not speak to the number of facilities per resident, like you were saying Robert. The owner of the SSO shall obtain the requisite permits from the health department. The other two D and C are pretty broad but that would be something that would be in there but it's not as critical to what we're trying to do as A, B, and C. I'm saying that we need to hone down the definition of what an SSO would be and then put what requirements we would like to see or what concerns that we would like to see included in another draft of it or another stab at it or what the town is recommending that we go the special use route. I do not think anybody sitting up here, anybody in this room is opposed to your concept and what you are trying to do Ms. Pledger, but it is for the entirety of Southern Shores. We are sympathetic to what is needed in this county for affordable housing and little chips at it are

going to help out, so we're not against what you're trying to do but we just want to have a few more protections I think for the town before we would, or I would vote on moving this thing forward.

Casey Varnell: On the toilets and the showers, I will let my client speak. She's written some numbers down here, but I do not know what they mean. I am all at her talk about that.

Patricia Pledger: As I said, I do my research before I do anything and so I guess I would want clarification to understand I am hearing you say what the town would want. In saying that, are you saying that the town would want something different than what the local governments, like the health department and the state require? I did go to them ahead of time and that is when we found out the square footage issue because I was basing everything on thirty-five square foot per person and they were saying no that it had to increase to fifty square foot a person. So, we went back, and we made those adjustments. For the toiletries it is still one to every fifteen people. For the showers it is one to every eight people. So, not to get ahead of the part again because like we were saying, you know, this is not the site approval thing, but the building has already been drawn out. It is going to house 12 showers, we still have all the toiletries that were there double in each room, so we are well beneath what the requirement is, right down the parking. So, I call myself double dotting every I and triple crossing every T to make sure that we were doing what was required. Now am I understanding you want to adjust that and make something different than that or that you just want it written that we are not going to go over that even if we went to a public septic, is that what you are saying?

PBM Robert McClendon: I think the issue for me is that we are creating a text zoning text amendment that applies to everybody. It appears to me, like you, you made all this stuff we're talking about but we as a body we need to write in this code all of the details that we would like to see and then come in and say, Wes here, I meet all of these. But we need to have it in our code, this is how we would like shared space occupancy to be done in our town and based on your application, I think you would meet all of those. The next person might or might not. If this were a special use and you came to us, I think everybody would look at it and go wow, she meets reasonable requirements, and it would be up to the public hearing and that kind of thing as to whether or not you went forward. But if we're doing just an allowable use, then it's it behooves us and the town council to come up with what do we want in a shared housing facility because we're going to make this in the allowed use. I think our homework on the front end is going to be a lot longer perhaps, than if it were a special use then there's a little bit more of site-specific conversation to have.

Casey Varnell: I was taking notes over there about what you guys have been saying but something dawned on me, just to make sure we're all clear here is that you would rather see a ton of conditions and a permissible use or would you rather see flaky conditions, but then make it special use. You can get to where you are going under either. Now what I would what I would say though is, I do not think there is any need to put fifteen conditions on this thing and then make it a special use either. If you are already dictating conditions and extensive conditions and we should keep it at the administrative level, now that would just be my position. Now Wes's advice is based on what is in front of him, not based on something, I do not know what his advice would be if it had fifteen conditions written in there, but I am just trying to get a sense of where you guys are coming from.

Chairperson Ward: I do not think it would be fifteen conditions. I have written down six or seven concerns that I cannot necessarily say I agree with or in your ZTA for our town. I will be glad to start

the ball rolling. Robert has made his issues with it and getting ahead of myself but I had looked at Chippewa Falls regulations on shared house and it's in our packet and It's a little bit over the top, but they ask a lot of conditions; one flush water closet Laboratory for each seven persons was in there. This is their zoning ordinance. They asked for any communal cooking and someone responsible for the food service facility should be on site. Once again, I do not know if that would apply to you or your ZTA but the size of the shared space within the structure would be something that I would like to see spelled out. What are the year-round possibilities if the j1 students move out? I mean you are a businesswoman or anybody's going to be a businessperson, what do they do with those empty rooms? Well, I would want to rent them if I was in your shoes or in a businessperson's shoes but that is not addressed. In your narrative you speak to the tourist season. What is that? When does that start and stop? The commercial code requirements would probably be a state level, you know sprinklers, smoke detector and so on. Maximum number of inhabitants per structure square footage, how many people do we want? Can it be two stories? I mean, this is not about your property, it is about what happens in our town here.

PBM Robert McClendon: So much of the work that you have done, and this request is really very site specific with your facility, so that lends me to think of a special use permit as opposed to.

PBM Michael Zehner: I was just going to say, one I think regardless of whether or not there's a long or a short list of stipulations I think it should be a conditional use permit but excuse me a special use permit. I don't disagree with Mr. Casey Varnell that perhaps that list can be shorter and less precise if it's a special use permit. I Don't think you generally have to include stipulations in your ordinance that are requirements anyway. So, we should not worry about you have to comply with the building code. They have to comply with the building regardless. You could for instance revise the definition to say, means a private structure in which shared spaces are offered for rent for the purposes of providing affordable sleeping, accommodations payable and money and other consideration to persons who do not meet the definition of family. Then jump to SSO does not, however I said it earlier. Take that second piece of the fragment and everything in between there and put them as stipulations, you know ABCD.

Casey Varnell: As opposed to breaking it out in the other chapter.

PBM Michael Zehner: You would have under special use permit each shared space offered for rent within the structure may accommodate up to 10 bunking units, those would be your subpart stipulations. On the bathroom concern, I think you could just simply amend that to say something to the effect of
bathroom facilities shall be provided which accommodates separate use by males and females and say that applications for special use permits shall demonstrate sufficient bathroom laboratory facilities, bathing facilities, what have you, to ensure proper sanitary conditions and then they just have to demonstrate compliance when they apply for their special use permit.

Chairperson Ward: And maybe site. I mean it has got to be specific. We just cannot say appropriate because that is ambiguous, I would think. I would say that there would have to be a number of persons per toilet. Chippewa Falls has the number of square footage per person in the shared space. We are getting on the right trail.

PBM Michael Zehner: It only has to be specific if it's not subject to a special use but if it's subject to a special use permit then this board and the town council can use their discretion, that is the

purpose. So, if they came back and said well, we're going to provide one lavatory for 30 people I think we could all say that's probably not going to cut it. I would say this, Ms. Pledger is the only one that we know of that is teeing something up and it seems like she is under a time limit, too. I think there is a lot of credit we should give her for pushing something like this forward. I do not know that we should take maybe months longer to do this, where we could maybe come back to approve it after the fact.

Chairperson Ward: Wes, on the on the town staff recommendation for a special use what do you see the timeline from tonight moving forward for their ZTA that would the special use permit.

Planning Director Haskett: One, I would ask do you agree to that change? And if not, then Go to the next question.

Casey Varnell: Let's say I don't agree to it. They could recommend disapproval.

Planning Director Haskett: That is correct.

Casey Varnell: And then we take that to the to the council with the recommendation of disapproval if that occurred. If they are agreeing with your recommendation that this be special use and we didn't agree to that, I need to ask my client about the special use thing. If you do not mind, what the second question would be?

Planning Director Haskett: If you do agree to it, are you also agreeable to some of the suggestions and questions about some other conditions or at least the bare minimum instead of the longer list if it were a permitted use but at least some of the things, like laboratories.

Casey Varnell: There is no doubt. What we want to do is try to get this thing in front of the council as soon as possible. I mean, Ms. Pledger's touched on it a little bit, we are under a time constraint, time is money, and you know, this is not about making money but at the end of the day it is a business decision for us. I Like Mr. Zehner's line of thinking that lets agreed to wait four or five months for the planning board to put together their own definition with conditions and things of that nature certainly I think would be a more exhaustive process than just going straight through to the council.
But would we be willing to make modifications based on these recommendations? As long as Wes tells me that we can still present it to council based on our agreed to modifications on a usual schedule, then we'd be amenable. How would that affect our time?

Planning Director Haskett: Well, I would say that the planning board if there is going to be a recommendation as to what they want to see in it, It should be made tonight.

Casey Varnell: Tonight, okay and that makes it easy.

Planning Director Haskett: I think what I am hearing that there seems to be more concerned about bathrooms and I did not quite understand Mr. Lawler's question earlier, but bathrooms are certainly something I'm hearing from most of the members that they're concerned about. The size of the rooms and Mr. Zehner made comment that there is no need to put a condition in there for something like a building code and they are obviously going to have to meet the building code. I get

that but I think I am hearing more concerned about bathrooms in the actual space than anything else. I do not know if that is what you want to focus on.

Chairperson Ward: The maximum number of inhabitants per structure square foot. You got to come up with some size of the shared space and I do not know if the state has something in their regulations that specifically speaks to that.

Casey Varnell: They certainly do for toilets and showers, which is what my client is talking about. One for every fifteen toilets, one for every eight occupants as far as showers, I mean that's state code. I think a special use would again take care of these particular issues; you are not setting precedents with special use permits. It is just matter of fact they are designed by law to be site specific. You know the property right next to it that has the ability to do something just a little bit different because of the size of it and you can allow that, and you can approve that, and you cannot place the same condition. So again, in terms of efficiency I do not mind asking my client right now if yes, if we can come up with something tonight to push forward with the recommendation, I would be happy to ask her and explain to her what that means. That is the case because if we are going to amend what I presented to you guys and then send that amendment, I've got to approve it. That is just the way it works. I am not trying to get honcho here. The other thing is I could take y'all's recommendation of deny, I prefer not to do that though. If there is something tonight, we could do to come up with, something that you guys would be willing to push through than y'all just need to tell us what that means. If not, then we would ask that recommendation be denial, and we will push through to council as such.

Chairperson Ward: We can make it is time sensitive as possible but at the same time wheels of government move slowly. We want to help you any way we can within reason and protect our town.

Pledger: I understand, and can I just say that I think Pledge of Palace has shown that when we developed the educational facility that we currently have, our standards compared to everybody else's standards as far as the child care facilities on this outer banks are up here and everybody else's is here. I mean I am the only power unit, all by myself. Because that was something that the town required you know, currently I could. I do not know if you are aware of the layout, but we already have seventeen toilets in that building. What facility on this beach has seventeen toilets in? So realistically, even if we dropped it and went with your eight, that is a hundred and thirty-eight people. We are not even asking anywhere near that. I do understand what you are saying as far as you have to do what you need to do as far as the town. What I am asking is that the town does not crutch me for something that they're trying to create. Does that make sense what I am saying?

Chairperson Ward: It does, it would lend itself to the town staff's recommendation that it be a special use for you. I am trying to go with the staff's recommendation and hopefully in a timely manner it can get resolved. John, do you have a question?

ETJ Rep John Finelli: Yeah, I have a number of things.

Patricia Pledger: As I have always done, I feel that I want to be a team player. I do not have any negative reports from any of our inspectors or anything like that because they know all they have to do is tell me and it gets done. Of course, they did not have a lot to tell me because I already did. It is one of those things that I do want to be a town player with the community, but I want the community to be working with me as well because I've done just. I have done way above and

beyond what was required of me, but I did it because you know, I believe in quality not quantity and so I don't want those two to get confused when we're making all these decisions. It is not about throwing a bunch of people in here. We already have numbers and limits; we just want to be treated fairly, and I cannot say that I want to be given the same opportunity that everyone else out here has because I do not even like it myself. I am trying to be better than what we already have. So, with that being said, it's I'm going to say my counsel what do you suggest?

Casey Varnell: In talking with my client because she is always willing to go above and beyond we would agree to special use recommendation. Of course, I don't know what you guys are about to say next but in my staff's recommendation is simply to move this thing forward with the requirement that it not be permitted use, meaning it's approved administratively if we check all the boxes but that it comes back through you guys and through council when a site specific plan is presented. I have no doubt that my client can satisfy the reasonability of this board and the council on those issues. So, we are not afraid of special use if that again is your recommendation. We would accept that which means that how it would go council.

ETJ Rep. John Finelli: I am the ETJ representative for Martin's point and I was appointed to that position by the Dare County Commissioners who have made workforce housing top priority. I have worked on a number of ordinances during my time in the County Planning Board oriented towards workforce housing. I Don't know absent this application I don't know what the interest of the town is whether they want to pursue something like this, If they do then whether this is a special use or a permitted use I really think it .You'll need to go back to staff to draft a proper ordinance. There are so many issues here that I do not think we are going to be able to address adequately tonight. Now I want to address a couple of things that you have said, Martin's Point commercial area has ten lots and you and your client have been aware for ten months that there is a covenant issue. The protective covenants do not have this listed as a permitted use and the covenants also specifically exclude 100% residential use. It only takes 50% of the Property owners to make a change, which means with four or five people going along you could change the covenants. To me you are saying you do not want to put one thing ahead of the other because you are trying to save your client money, that would be the first domino that I would have gone after.

Casey Varnell: So, what? If we cannot get approval, then we cannot make our use. This is not site specific.

ETJ Rep. John Finelli: I am not talking about a specific site; I am talking about the.

Casey Varnell: This could be outside of Martins Point.

ETJ Rep. John Finelli: Ten commercial lots, that would be the first domino.

Chairperson Ward: The covenants, especially Martin's Point covenants are not in our purview in any ZTA decision.

Casey Varnell: correct, in any town decision ever in the history of town decisions.

ETJ Rep. John Finelli: You tried to put us in a position where we have a choice of a permitted use with a lot of conditions a special use from very few conditions. I Like special uses with a lot of conditions because then it is very clear to everyone what you're dealing. You know that way people

can make decisions based on something that is in writing. So, I like that that approach I've heard you and your client mention this at one point is being an educational facility and then I hear as workforce housing, and I've also heard where people like bridge workers could come and use this facility. Well, I assume that if these other people using the facility that they probably have cars, I don't think the one parking space per seven people is applicable.

Casey Varnell: But those people would not be able to make the use then that is why we put it in there for that exact reason.

ETJ Rep. John Finelli: Well, I think if this were to go forward what I would ask staff to do is to research similar uses in this state and find out what type of parking standards they have. I do not think the client's attorney should be drafting parking standards. In your application you indicated that the hope was to have housing for as many as ninety-six students. Doesn't mean it has to be in this facility could be somewhere in Southern Shores, but you've used that number 96, so I assume if someone could come up with a location where you could do septic or a package system or tie into an existing system that that is an option. You submitted it last year; you submitted it again recently.

Casey Varnell: Okay.

ETJ Rep. John Finelli: That is fine in certain locations, but that is the equivalent of like a 48-bedroom house. Now I think that works in some places, it does not work in others. I do not think something like that belongs next to someone's residents. You know you are talking about ninety-six young people, many of them from foreign countries here at the beach. What could go wrong? I think if the town is interested in workforce housing this needs to be tailored in a certain way so that these structures that have this many people are in certain locations. It also appears to me, Wes please interrupt me if I say anything that is inaccurate, it appears under this draft ordinance that we are looking at that space could be rented on a short-term basis for a week or even a day. It appears that space could be advertised on Airbnb.

Planning Director Haskett: You want me to respond to that, or I would say.

Casey Varnell: Yes, please do.

Planning Director Haskett: It is probably more appropriate for him to answer it, but I would say by him including that it does not include vacation cottage. Vacation cottage is short-term rental. So, is that what you are implying?

Casey Varnell: correct

ETJ Rep. John Finelli: If it is not for short-term rental use then something needs to be put actually in the ordinance that says minimum rental is 30 days or 90 days per year, whatever.

Casey Varnell: Which could also be added to site specific plan.

ETJ Rep. John Finelli: Again, instead of getting into the site-specific stuff when people come together and argue everything, I like to have stuff in the ordinance. I want people to see what they are looking at.

Casey Varnell: Understood.

ETJ Rep. John Finelli: We have a residential property owner in Martin's Point. Their side property line borders seven commercial lots.

Casey Varnell: Is Martin's Point in Southern Shores?

ETJ Rep. John Finelli: No. But Southern Shores has jurisdiction over the ten commercial properties there.

Casey Varnell: But not the residential there, I just want to make sure.

ETJ Rep. John Finelli: That is correct, it is under Dare County.

Casey Varnell: Understood.

ETJ Rep. John Finelli: You have the potential of seven properties that could have a large number of residents that I know in Southern Shores. I remember when all the signs went up about no mini hotels. This has the potential of a structure housing, I will come transient people or they are not full-time residents, has the capacity to house four times that. You had people bent out of shape in this town when the ocean front house went up. So, if this goes forward, I would like to send it back to staff to take into consideration some of the things we have mentioned to draft a potential ordinance. I Would also like to see this fashioned in a way similar to what we did when we dealt with drive-through facilities. I do not know how many of you were on the board, but we discussed drive-through facilities and the Planning board kind of came to the conclusion that they didn't belong in certain areas They shouldn't be in the Martins Point commercial area. They should not be on Juniper Trail. We fashioned an ordinance to make sure that they were properly located such as Southern Shores Crossing and the Food Lion. With the potential of the equivalent of a 48-bedroom house, I want to see something that protects the Martins Point Property owners. I want to see something that protects the residents of Southern shores from having something like this right next to them or even a row of them.

PBM Michael Zehner: Wes, in the general commercial district there's height limitations, right and there's lot coverage limitations, setback limitations.

Planning Director Haskett: Yes, sir.

Casey Varnell: and there is a maximum already which I have talked to my client, and she is willing to reduce this number that is in there. If that is something you guys want ,10 bunks which is 20 per.

Chairperson Ward: Well once again, as a ZTA for the town.

Casey Varnell: No as an applicant, I was just saying that is what is in front of you and that is what you are deciding.

Chairperson Ward: You are hearing our concerns about how the town is protected moving forward in a ZTA of this nature but as far as moving forward and going on to the next order of business I think we have talked about this enough. Do you have any questions of us before we vote on?

Casey Varnell: Wes, I am going to look to you, and I normally look to the attorney, I do not want to speak as a town's attorney. Do we have the right to request that does not be tabled and that have been rejected?

Planning Director Haskett: You could move forward to the town council public hearing with a recommendation of denial.

Casey Varnell: That is what I thought.

Chairperson Ward: But we would deny approval and recommend special use.

Planning Director Haskett: You could flat-out recommend denial. If they have agreed to incorporate the special use permit requirement so If that's what you all are still inclined to do. You could do that but also if there are additional concerns that haven't been addressed then it may be best to recommend denial if you think that it should be the special use and additional conditions or requirements.

Casey Varnell: And I am not bootstrapping anybody guys. I am aware, I represent two towns and on both sides of this thing a lot. I know what denials, recommendations of denial look like sometimes in front of town council but way I look at it is this we get a recommendation of denial we move forward to the town council with what we got here, we take our chances. If we get denied there, we're not a stop from bringing something back to you guys as long as it's different than what we're currently presenting. You guys loud and clear have told us how you guys feel about that, so I do believe at least we stand a chance for approval at that point as opposed to never getting to the table. And if we do not succeed, then we go from there. At that point, heck it may be in Dare County and their jurisdiction.

Planning Director Wes Haskett: I would just also comment and Mr. Finelli's concerns, understandable, but I would say that it is not town staff's place to put in language in their application and their proposed language. The onus is on the applicant for them to address your concerns, not staff.

ETJ Rep. John Finelli: I think it is up to the staff to draft an ordinance.

Planning Director Haskett: For the applicant?

PBM Michael Zehner: Not if they are not directed by council.

Planning Director Wes Haskett: Yes. In order for town staff to move forward it either has to be a recommendation from the planning board or from the town council. In this case the applicant paid for and submitted his application.

ETJ Rep. John Finelli: Okay. Thank you for that clarification.

Casey Varnell: Sorry guys, and that is why when you mention that you felt like I was giving you choices. Ultimately, we could agree to a lot of stuff, but we could also just not and so deal with the denial.

Chairperson Ward: Wes, what do you perceive as our choices here?

Planning Director Wes Haskett: Right now, it sounds like to me that you all could recommend approval with it being a special use permit or a special use or recommend denial.

Chairperson Ward: If we recommend denial and they want to pursue it goes to town council.

Planning Director Wes Haskett: Correct, as submitted. It would be a public hearing, most likely at the June 6th meeting I think. Or if you all wanted to discuss potential conditions or other requirements to add in addition to a special use permit, you all could do that as well.

Chairperson Ward: So that is three choices.

Casey Varnell: What is the last one?

Planning Director Wes Haskett: Special use permit, recommendation of approval special use permit in addition to additional requirements; spelling them out in the language, right such as parking bathrooms, etc.

PBM Robert McClendon: When is the council meeting?

Planning Director Wes Haskett: June 6th. The way the public notices have to be submitted there is a possibility that we could have it on the June 6th town council agenda.

PBM Michael Zehner: I would like to make a **MOTION** to recommend approval with changes. I'd recommend that the proposed definition be amended to strike, It would be after the first sentence to strike that all the way to SSO does not include dormitory, and to recommend that that definition be changed to that that last sentence there be changed to "SSO does not considered to constitute a dormitory or residence hall" and then to strike that last sentence, single-family dwellings multifamily dwellings motels or vacation cottages and then everything in the middle there. So each shared space offered for rent, each shared space offered for rent residents of the SSO, the owner of the SSO, and single-family dwellings, multifamily dwellings ,or vacation cottages, shall not be able to be used as a SSO. That those become part of what is I believe C. special use permit whatever that number is supposed to be and then ABCD And then FG I'll add all those things, if you're following. Okay, so Then you would do that and then you would change B to say that bathroom facilities shall be provided which accommodates separate use by males and females; and that special use permit shall demonstrate sufficient lavatory and bathroom shower facilities to ensure sanitary conditions; I would add one of those provisions that said that the number of occupants shall be limited to A hundred square feet. So, each occupant shall be afforded with a hundred square feet in the building and that limits the occupant number. It may not be consistent with what Ms. Pledger had in mind, but I think you all want a number, and I think that's an appropriate number. That is that would be my motion, happy to take any amendments.

Casey Varnell: and it would be a special use?

PBM Michael Zehner: Correct.

Chairperson Ward: Is there a second? Going once, going twice. No second shown, motion denied.

Chairperson Ward: I would make a **MOTION** and its basically what staff recommends, I recommend disapproval of the application to town council unless the proposed use is proposed as a special use with as many conditions as the planning board deems reasonable for moving this forward.

PBM Ed Lawler: **Second**

ETK Rep. John Finelli: so, are you saying before the motion we are now supposed to go through our list come up with a final list?

Chairperson Ward: Not at this point but for the special use.

ETJ Rep John Finelli: And that is what I am getting at.

Casey Varnell: he motioned to deny, so the conditions would not matter.

Chairperson Ward: My motion was and seconded by Lawler, recommend disapproval of the application as it appears to us tonight to town council unless the proposed use is proposed as a special use When it gets to a special use to fill in as many recommendations as the planning board deems reasonable.

PBM Michael Zehner: I do not think that was what staff was recommending.

Chairperson Ward: I read it straight out of staff recommendation.

PBM Michael Zehner: Mr. Haskett, you can clarify.

Planning Director Wes Haskett: Staff is recommending denial unless it goes forward as a special use. If they have agreed to special use then y'all would be recommending approval as a special use.

PBM Ed Lawler: So, the terminology or the additional conditions with a special use come at a later date, right?

Chairperson Ward: No, we are not doing that tonight.

Planning Director Wes Haskett: So, if a text amendment is approved and then someone applies for a special use permit then reasonable and appropriate conditions and safeguards can be considered with the application.

Chairperson Ward: So, if we straight-up disapprove, it goes to town council?
Haskett: You can recommend disapproval as is or recommend approval if it's a special use.

Chairperson Ward: So, my motion means that a special use would be granted right now?

Planning Director Wes Haskett: No, this would be recommending approval of the ZTA to council.

Chairperson Ward: I did not intend to recommend approval of this ZTA.

Planning Director Wes Haskett: Then I would suggest that your motion is to deny, then recommend denial to the town council.

Chairperson Ward: I withdraw my motion.

Chairperson Ward: **Motion** to disapprove or recommend disapproval of the ZTA as presented.

ETJ Rep. John Finelli: I will **SECOND** that.

PBM Robert McClendon: So, this is just a denial, it will go to council. Nothing special, nothing about anything else.

ETJ Rep. John Finelli: Oh, I have a little bit of discussion, I think. And I second it, so I am in favor of that. I think this gives the applicant an opportunity to come forward in the future with another list of conditions that might be more to our liking.

Chairperson Ward: Could not agree more.

ETJ Rep. John Finelli: The door is always open. Based on what we have here tonight, I will stand by my side.

Chairperson Ward: Thank you, John. Anyone else before we vote?

VOTE: 4-1; opposed by Zehner
Aye: Finelli, Ward, Lawler, McClendon

Planning Board Member McClendon recommended consideration of an ordinance that would allow for a special use of shared occupancy in the commercial district. He stated that we should write our own ordinance to have in there what we expect so that when people come to us, they have at least met some of these requirements. Unanimous consent of all Planning Board members /

Chairperson Ward requested to modify the agenda, moving Old Business B behind New Business A. No objections.

ZTA-23-04, a Zoning Text Amendment application submitted by Matthew Huband to amend Town Code Sections 36-207(c)(1)b., 36-207(c)(1.5)b., 36-207(c)(11)j., 36-207(c)(11)k., 36-207(d)(7), and 36-207(d)(8) to establish a 50 ft. setback requirement for restaurants from planned unit developments, a 50 ft. setback requirement for drive-through facilities or establishments (small) from planned unit developments, a 50 ft. setback requirement for mixed use group developments from planned unit developments and residential districts, a 50 ft. setback requirement for commercial buildings and facilities from planned unit developments, a 20 ft. buffer requirement where a mixed use group development abuts a residential district or planned unit development, and a 20 ft. buffer requirement where a commercial use or zone abuts a residential district or planned unit development

The staff report read as follows:

A Zoning Map Amendment application was submitted by a resident (the Applicant) in Southern Shores Landing ("SSL") to rezone the western portion of SSL from C, General Commercial to RS-10, Residential. Town Staff researched the history of SSL and found it was approved as a Planned Unit Development ("PUD") in 2005. The Town's Official Zoning Map (2007) shows approximately two thirds of SSL is zoned RS-10, Residential, and the remaining one third is zoned C, General Commercial. In reviewing the rezoning application, Town Staff investigated the history of the retained one-third commercial zoning district and determined there was no official Town amendment of the zoning map to RS-10 following SSL approval. The proper zoning of SSL is actually based on a 2005 Zoning Map Amendment wherein the entire development is zoned C, General Commercial. It is important to note, the Town and Town Staff have been operating as if SSL was zoned residential pursuant to the Zoning Map. Upon discovering this error, Town Staff advised the applicant to withdraw his application and the Town would proceed with a Zoning Map Amendment application (ZMA-23-01) to rezone Southern Shores Landing in its entirety to RS-10, Residential to reflect its current use and its designation on the Zoning Map.

Continued research by Town Staff determined PUDs were removed as a permitted use in the RS-10 district due to the limited size of the developments. This was done in 2005 pursuant to a moratorium after SSL was approved. At the time SSL was approved, PUDs were permitted in Residential Zoning Districts. It is Town Staff's opinion that the intent was to have SSL zoned residential. PUDs are currently a permitted use within the C, General Commercial District per Town Code Section 36-265. Town Staff withdrew ZMA-23-01 as the proposed rezoning would convert a conforming use into a nonconforming use.

Following withdrawal of ZMA-23-01, Town Staff drafted a Zoning Text Amendment (ZTA-23-02) that established a 50 ft. setback requirement for restaurants from PUDs, a 50 ft. setback requirement for drive-through facilities or establishments (small) from PUDs, a 50 ft. setback requirement for mixed use group developments from PUDs and residential districts, a 50 ft. setback requirement for commercial buildings and facilities from PUDs, a 20 ft. buffer requirement where a mixed use group development abuts a residential district or PUD, and a 20 ft. buffer requirement where a commercial use or zone abuts a residential district or PUD.

After further consideration, Town Staff withdrew the ZTA from the March 20, 2023 Planning Board meeting agenda to further assess the correlation of PUDs in the Commercial District. On April 11, 2023, the Applicant submitted a public records request for the withdrawn ZTA (ZTA-23-02). On April 12, 2023, the Applicant submitted the documents received (ZTA-23-02) as a proposed text amendment which is now identified as ZTA-23-04.

The ZTA is consistent with the Town's Existing and Future Land Use Map in the Town's currently adopted Land Use Plan. The Town's Land Use Plan contains the following Policies and Action Items that are 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.*

o Action Item 2-b The Town shall encourage the use of low impact development techniques and sound environmental preservation practices for all new development, remodeling and redevelopment within Southern Shores.
• Policy 7 Support stormwater management programs that reduce flooding and improve coastal water quality.
o Action Item 7-b Encourage the use of Low Impact Development (LID), vegetative buffers to filter stormwater, impervious surface limits, and innovative stormwater management alternatives to reduce runoff and to improve water quality.
• Policy 26 Promote open space, tree protection, and natural vegetation diversity.
o Action Item 26-b Encourage lot preparation methods that preserve natural vegetation and minimize clear cutting.

CONCLUSION
The proposed amendments are not inconsistent with the Town's currently adopted Land Use Plan. However, Town Staff believes that the concerns regarding setback, stormwater, and buffer requirements can be more specifically addressed through conditions in Special Use Permits when a Special Use (restaurants, drive-through facilities, or establishments (small) mixed use group developments, etc.) is proposed. Whenever a Special Use is proposed, the application is first considered by the Planning Board and subsequently considered by the Town Council following a public hearing. Town Code Section 36-207(c) establishes that Special Uses are subject to the requirements of the C, General Commercial District. They also are subject to appropriate conditions and modifications relating to impacts on adjacent properties, transportation and transportation systems, transportation interconnectivity, stormwater, utilities and telecommunications facilities (including capacity), vegetation and other elements of the natural environment, noise, hours of operation, and other factors that the Town Council finds applicable; and additional regulations and requirements imposed by the Town Council, as provided in Article X of the Zoning Ordinance. Such conditions can be recommended by the Planning Board which become effective if approved by the Town Council.

Chairperson Ward called on the applicant to come forward and speak.

Matt Huband, representing Southern Shores Landing, addresses the town council to advocate for the resubmission of a Zoning Text Amendment (ZTA) to ensure a 50-foot setback and a 20-foot vegetative buffer between residential and commercial properties. Despite previous discussions about using special use permits for protection, Huband feels additional measures are necessary. The ZTA, initially approved but later pulled by the town attorney, is being resubmitted to provide an extra layer of protection for the community. Huband highlights the uncertainty residents have faced over the past few months regarding development plans and requests the council's approval to safeguard their community.

Chairperson Ward asked the applicant to clarify that he would rather have the ZTA as written than a special use on a case-by-case.

Chairperson Ward clarified with Planning Director Haskett that in the conclusion it is saying more specifically that these issues that are brought forth in the ZTA may be better served as a special use permit, but that would be on a case-by-case application?

Planning Director Haskett stated a special use permit would be able to address it and yes, it would be on a case-by-case basis.

Applicant Huband stated he was under the impression that staff was directed to work with the developer to give us the maximum amount of setback possible, but there's no guarantee for that. Also, he was under the impression that he could file the ZTA and have the Planning board make a recommendation, and then it would go to the town council for approval.

Planning Director Haskett clarified that if the site plan or special use permit application is submitted prior to adoption of this ZTA, then the only thing Mr. Huband could rely on is the special use. He is submitting this for another layer of protection.

Planning Board Member McClendon inquired who wrote the ZTA and the statement of consistency? Planning Director Haskett replied it was town staff and the town attorney.

Planning board member McClendon stated the last sentence of the statement of consistency which stated tis amendment to be reasonable and in the public interest. He **MOVED** to recommend adoption this ordinance ZTA-23-04, Seconded by Chairperson Ward.

Planning Board Member Zehner asked to clarify that the staff's recommendation is that this is not necessary and there may be better or equal protection under the special use process. Planning Director Haskett answered yes.

Planning Board Member Zehner was concerned that by creating absolute distances and dimensions that whether you may in any given circumstance lose leverage to require equal or greater setbacks. He also questioned if this would affect any other existing situations.

Planning Director Haskett stated staff looked into the possibility of creating nonconformities and He said he was not aware of any currently.

Planning Board Member McClendon stated it is his understanding is that we are just adding planned unit developments, the same recommendations as a residential zoning district.

Planning Director Haskett stated that in addition to restaurants, drive-through facilities and planned unit developments when they are adjacent to a mixed-use group development.

Chairperson Ward asked to review the final version that was adopted by town council for mixed-use group development adopted May 19, 2022. He stated that item J says no building or other facility such as parking spaces, incinerators, trash collection areas, etc. shall be located near fifty feet to boundaries of residential districts. Item K says where a mixed-use group development abuts a residential zone, a buffer of dense vegetative planting or natural vegetation is required (see requirements in section 36-207(d)(8). That was the intent to address, and it was agreed upon by the applicant for the first mixed-use project in Southern Shores. Everybody sitting up here felt that that was protection for adjoining residential areas.

Chairperson Ward asked if a residential district is a residential zoning district?

Planning Director Haskett confirmed it is.

Planning Board Member Zehner asked if there was anywhere in the ordinance that defines what residential districts are versus commercial districts?

Planning Director Haskett stated in the intent and description of the districts.

Chairperson Ward stated the applicant that generated this mixed-use group development the very first one in Southern Shores which happens to be in Mr. Huband's backyard, the applicant and the planning board and the town council all thought the same thing that residential district meant residential area. You are a residential area as far as I am concerned.

Mr. Huband stated he thought the same thing until he saw draft site plans that showed otherwise.

Planning Director Haskett stated this goes back to the inaccurateness or the error in the zoning map. Everyone was under the impression that all of Southern Shores Landing was a residential zone or district. However, it was determined that it is not, it is zoned commercial therefore that does not apply.

Mr. Huband stated they only asking what would be afforded as being a residential neighborhood and protect themselves as a community as many ways as possible.

Planning Board Zehner asked what Southern Shores Landing is zoned? Planning Director Haskett stated it is commercial in its entirety. Prior to 2005 it was commercial, and an inaccuracy was shown in the zoning map after that time, but it is commercial.

> ***MOTION:*** *Planning Board Member McClendon moved to recommend adoption of this ordinance ZTA-23-04 to town council, Seconded by Chairperson Ward. Motion passed unanimously 4-0.*

ZTA-23-03 PB 01, a Zoning Text Amendment application submitted by the Town of Southern Shores to amend Town Code Sections 36-57, 36-202(d)(2), 36-203(d)(2), 36-204(d)(2), 36-205(d)(2), and 36-206(d)(2) to clarify the Town's current lot width requirements

The staff report read as follows:

> *On October 5, 2022, the Board considered APA-22-01, an appeal application that was submitted by Adam Ward to appeal the Zoning Administrator's decision to deny approval of a recombination plat for the property located at 55 Skyline Rd. The main reason for the denial was that Town Staff believed that the proposed lots did not meet the Town's 100 ft. minimum lot width requirement for the RS-1, Residential zoning district as established in Town Code Section 36-202(d)(2). Town Code Section 36-202(d)(2) currently requires a minimum lot width of one hundred feet measured at the building setback line.*
>
> *Town Code Section 36-57 defines "building setback line" as a line parallel to or concentric with the street right-of-way establishing the minimum allowable distance between such right-of-way and the nearest portion of any building, excluding the outermost three feet of any uncovered porches, steps, gutters, and similar fixtures. The Board voted to affirm the Zoning Administrator's decision (3-2) to deny approval of the recombination plat and the*

applicant subsequently appealed the Board's decision to Superior Court. Following guidance from the Town Attorney, the Town entered into a Consent Order with the applicant and the Zoning Administrator's decision was reversed.

At the April 17, 2023 Planning Board meeting, the Board considered ZTA-23-03 (drafted 3-31-23), a request to amend the Town's minimum lot width requirements in all of the residential zoning districts so that the requirements are unambiguous, as directed by the Town Council at their March 21st meeting. The Board asked Town Staff to revise the proposed language to reduce the potential impact of rendering some lots nonconforming and to remove right angles from the definition of "lot width." Following that meeting, Town Staff met with Chairperson Ward and drafted another new definition of "lot width" in Section 36-57 (drafted 4-28-23) which is the horizontal distance between the side lot lines of a lot. The new proposed amendments also include amendments to Sections 36-202(d)(2), 36-203(d)(2), 36-204(d)(2), 36-205(d)(2), and 36-206(d)(2) that establish that the minimum lot width is measured from the front lot line.

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. However, Town Staff recommends approval ZTA-23-03 as initially proposed (3-31-23).

Planning Director Haskett stated there was some confusion about the right angles. The original Z TA-23-O3 language stated that the lot width is measured from the front property line at right angles where it meets the side lot line 100 feet at this point where the front lot line meets the two side lot lines, and you carry that width of 100 feet all the way to the rear property. Town staff feels like in order to reduce the ambiguity in our current lot width and lot width requirements we feel that this is necessary and if the planning board and town council disagrees or does not is not 100% happy with it then we can always come back and fix it but right now we feel like the original language in 23-03 gives us the ability to make sure that recombination or subdivisions that may not be what the town are interested in can't go forward based on ambiguity in the town code.

Planning Board Member Zehner questioned if the town has a minimum frontage requirement. Planning Director Haskett stated it has a 30-foot frontage minimum.

Planning Board Member Zehner stated then this exempts that 30-foot frontage minimum. Planning Director Haskett If this were put into place that would have to be fixed.

Planning Board Member Zehner asked if there was a provision for cul de sacs. Planning Director Haskett stated the town does not have anything specific to cul de sac lots with respect to lot width or lot dimensions.

Planning Board Member Zehner felt that somebody is going to want to come back more thoroughly at some point, because it reads it requires a lot to never reduce less than the required lot width.

Chairperson Ward stated he was not in favor either, but the attorney says that if you are looking to get rid of a perceived ambiguity, which we have been through, then this is bulletproof according to our attorney.

Planning Director Haskett stated we can come back and address this to make it more inclusive, but at this time we feel like it is important to go ahead and get this adopted.

Chairperson Ward stated we are trying to avoid recombining or subdivide lots into new non-conformity lots.

Planning Board Member McClendon stated if a person has the square footage why would you not want them to be able to develop their property? Chairperson Ward answered it is not about developing their property, it is about getting smaller lots, we want to move away from nonconformity.

Planning Board Member McClendon stated the 20,000 minimum square foot requirement creates low density. Chairperson Ward agreed.

Chairperson Ward stated he was not going to get in the argument with over interpretation, but felt that the town is better served with a hundred-foot width as a guideline when it comes to cutting up lots and making multiple lots non-conforming.

Chairperson Ward stated that the relevancy here is that we're trying to bring more lots in conformity rather than nonconformity and the 20,000 square feet sounds good but the other dimensional requirement is that it has to have a lot with minimum at a hundred feet from lot line to lot line.

Planning Board Member Zehner asked how many lots are you making nonconforming if you make this change? He stated he was not prepared to do that.
Chairperson Ward asked what is the ramification of legally non-conforming lots? Planning Director Haskett stated it depends. It depends on if it is adjacent to another non-conforming lot under same ownership, but otherwise if it is a standalone non-conforming lot that is not subject to recombination with other adjoining lots, they can be developed as long as they still meet setbacks and lot coverage requirements.

Planning Director Haskett stated there are issues that may come out of this however we feel like this gives us more time to address the concerns.

Planning Board Member Zehner suggested adding a provision that applies to lots that are created after a certain date. For instance, lots created after June 2023 shall be subject to a 100-foot lot requirement measured at the front lot line.

MOTION: Planning Board Member Zehner move to recommend to town council adoption of ZTA -23-03 as initially proposed March 31, 2023, with the provision that stated this is applicable to lots created after xxx (adoption date), Seconded by Chairperson Ward. The motion passed 3-1; opposed by Planning Board Member McClendon.

Public Comment

None

Planning Board Comments

ETJ Rep. John Finelli- glad some members of town council were in attendance. He stated Casey Varnell tried to get this planning board to make a choice between a permitted use with a number of conditions or a special use. He felt it was extremely important in the zoning moments to have as many conditions as applicable; we need guiding standards.

Announcements

Planning Director Haskett stated the next meeting is June 19th in the Pitts Center. Agenda items may consist of commercial design standards.

Adjourn

Chairperson Ward motioned to adjourn the meeting at 7:43 PM, Seconded by Planning Board Member Lawler. Motion passed unanimously.

ATTEST:

Andy Ward, Chairperson

TOWN OF SOUTHERN SHORES SEAL NC

Respectfully submitted,

Sheila Kane, Town Clerk