



Town of Southern Shores

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

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www.southernshores-nc.gov

Planning Board November 18, 2024 5:00PM

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7 Present

8 Chairperson Ward

9 Vice Chairperson DiBernardo

10 Planning Board Members Lawler, McClendon, Collins and Zehner(non-voting)

11 Call to Order

12 Chairperson Ward called the Southern Shores Planning Board Meeting to order on November
13 18, 2024.

14 Pledge of Allegiance

15 The Pledge of Allegiance was recited.

16 Approval of Agenda

17 Chairperson Ward proposed adding consideration of the order for case VA-24-01 after the
18 approval of minutes. Vice Chairperson DiBernardo made a motion to amend the agenda
19 accordingly, which was seconded and passed unanimously.

20 **Motion** by Vice Chairperson DiBernardo to amend the agenda for November 18, 2024 to
21 include the approval of the order for case VA-24-01 after the approval of minutes, Seconded by
22 Planning Board Member Collins. The motion passed unanimously.

23 Approval of Minutes – May 15, 2023 and July 15, 2024

24 **Motion** by Vice Chairperson DiBernardo to approve the May 15, 2023 minutes as corrected,
25 which was seconded by Planning Board Member Lawler. The motion passed unanimously.

26 **Motion** by Planning Board Member Collins to approve the July 15, 2024 minutes with
27 corrections, Seconded by Planning Board Member Lawler. The motion passed unanimously.

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29 Consideration of the Order for Case VA-24-01

30 Chairperson Ward read a statement from planning board attorney Jay Wheless regarding the
31 order for case VA-24-01. The statement indicated that attorney Jay Wheless had reviewed the
32 proposed order and had no objections to its substance.

Motion by Vice Chairperson DiBernardo to approve Order VA -24-01 and authorize Chairperson Ward to sign it, with a correction to the spelling of "variance" on page 9. The motion was seconded by Planning Board Member Lawler. The motion passed unanimously.

Planning Director/Deputy Town Manager Wes Haskett explained that the next steps would involve having Attorney Lauren Arizaga-Womble finalize the document, having Chairperson Ward sign it, and then serving the applicant and property owner who is not the applicant. This would start a 30-day period for potential appeal to the Dare County Superior Court.

Public Comment

Five members of the public provided comments:

1. Mark Martin, a builder in Southern Shores, expressed concerns about the proposed tree ordinance. He questioned the necessity of regulations for unimproved lots and highlighted potential issues with obtaining lot disturbance permits for tree removal.
2. Mark LeBlanc echoed concerns about the proposed regulations. He suggested considering fire-resistant landscape principles and noted potential fire risks associated with the current vegetation. He also pointed out that the proposed language might not adequately address tree emergencies caused by insect damage, disease, or senescence.
3. Richard Filling inquired about whether consideration had been given to landscape plans in association with tree clearing. He suggested that developers and property owners could be required to submit landscape plans to remediate or replace removed trees.
4. Mike Stone highlighted the historical context of tree growth in Southern Shores, pointing out that there is currently more vegetation than in past decades. He emphasized the natural capacity of the vegetation to regrow following construction and cautioned against overly restrictive regulations that could limit property owners' rights to manage their own land.
5. Michelle Youngstone supported the proposed tree ordinance, emphasizing the importance of trees in Southern Shores for environmental benefits and neighborhood aesthetics. She shared personal experiences of why she values wooded lots and noted concerns about neighbors who remove trees for convenience.

Old Business

None

New Business

ZTA-24-05, a Zoning Text Amendment application

Planning Director/Deputy Town Manager Haskett explained that the current requirement for a lot disturbance-stormwater management permit applies to the commercial zoning district and setback areas of unimproved lots. During previous discussions, both the planning board and town council identified the need for provisions allowing emergency tree removal.

Planning Director Wes Haskett presented the staff report which read as, at the February 6, 2024 Town Council meeting, the Town Council directed Town Staff to draft Town Code amendments to modernize the Town Code. At the April 9, 2024 Town Council meeting, the Council adopted ZTA-24-02 which established that a lot disturbance/stormwater management permit is required to remove trees greater than 6 inches in diameter, measured at 4.5 feet above the ground, within a front, side or rear yard (setback) on any unimproved lot in the general commercial zoning district and the penalty for not obtaining a lot disturbance/stormwater management permit to remove trees greater than 6 inches in diameter, measured at 4.5 feet above the ground, within a front, side or rear yard (setback) on any unimproved lot in the general commercial zoning district. In addition to adoption of ZTA-24-02, the Town Planning Board had recommended that the Council direct Town Staff to draft another ZTA that would apply the amendments to all other zoning districts.

At the June 17, 2024 Planning Board meeting, the Board unanimously (5-0) recommended additional amendments to Town Code Section 36-171 that would establish that a lot disturbance/stormwater management permit is required to remove trees greater than 6 inches in diameter, measured at 4.5 feet above the ground, within a front, side or rear yard (setback) on any unimproved lot in all zoning districts. In addition, the Board recommended amending Town Code Section 36-171 to address diseased, dead, or hazardous trees. As a result, Town Staff has drafted ZTA-24-05 which establishes that a lot disturbance/stormwater management permit is required to remove trees greater than 6 inches in diameter, measured at 4.5 feet above the ground, within a front, side or rear yard (setback) on any unimproved lot in all zoning districts, and exceptions from having to obtain a lot disturbance-stormwater management permit to remove a tree greater than 6 inches in diameter, measured at 4.5 feet above the ground, within a front, side or rear yard (setback) on any unimproved lot in all zoning districts when a tree emergency is deemed to exist. If adopted, a tree emergency shall be deemed to exist when:

(a) A tree has become an imminent danger or hazard to persons or property as a result of fire, motor vehicle accident, or natural occurrence such as lightning, windstorm, ice storm, flood, or other similar event; or

(b) A tree must be removed in order to perform emergency repair or replacement of public or private water, sewer, electric, gas, or telecommunications utilities.

In the case of a tree emergency, the Zoning Administrator would have the authority to issue a lot disturbance-stormwater management permit within 72 hours after a tree is removed in a tree emergency, or waive the requirement for a lot disturbance-stormwater management permit. A person otherwise required to obtain a lot disturbance-stormwater management permit may take any reasonable action necessary to avoid or eliminate the immediate danger or hazard, or conduct emergency repair or replacement of the public or private utility. The person taking such action shall file an application for a lot disturbance-stormwater management permit within 72 hours after a tree is removed in a tree emergency, unless the requirement for a lot disturbance-stormwater management permit has been waived by the Zoning Administrator. In these instances, documentation of the need for the emergency tree removal must be provided which may include documentation from a certified arborist, a police

report, photographs, and/or other information documenting the condition of the tree and circumstances surrounding its removal.

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

- **LUC 10:** Monitor and preserve maritime forests and other tree canopy coverage.
- **LUC 10.2:** Consider reviewing standards for tree preservation in new development and redevelopment to ensure they protect and preserve the existing canopy and forest coverage.

Planning Director Haskett added that these provisions came mostly from the Town of Duck's current requirements.

The board considered the tree emergency exception. Planning Board Member Zehner proposed the addition of language to consider on 1A. is a tree has become an imminent danger or hazard to persons or property due to damage to the tree resulting from fire, motor vehicle accident, or natural occurrence [I.E lightning, windstorm, ice storm, flood, or similar event] and then under 1C and just say the tree is dead or dying being the result of disease or pest. He added that not every tree that has a disease needs to be removed and can be treated.

Vice Chairperson DiBernardo stated insect, or disease is a natural occurrence and that could be in brackets. He added that requiring a homeowner to try and treat the tree first would be a hardship, as most likely there may be several diseased trees within the property.

Chairperson Ward stated the pine trees were infected by pine beetles a few years back. He felt the ordinance as written addressed the emergency tree removal, plus allowing the zoning administrator some flexibility to make a decision when necessary.

Planning Director Haskett reviewed the lot disturbance/stormwater management permit process with the board. He added that currently in the commercial district for removal of trees one could obtain a lot disturbance storm water management permit to remove every tree and currently in the residential zoning district there is no lot disturbance/ storm water management permit required to remove a tree or trees, unless it involves altering the greater topography as a result of removal of those trees.

Chairperson Ward addressed the need for some level of commitment before allowing tree removal within setbacks, which could encourage property owners to be more serious about starting the home-building process. He noted how the council had previously agreed on similar measures in the commercial zone and suggested the residential zone should follow suit.

Planning Board Member Zehner stated in his opinion the ZTA doesn't go far enough and expressed concerns that the amendment might not protect trees effectively and could potentially become a bureaucratic hurdle, merely requiring people to obtain permits and pay additional fees.

Chairperson Ward felt that it kept people from going in and defoliating, cutting every single tree down on that lot. It keeps the process of building a house and cutting down trees more serious.

Planning Board Member Collins suggested emphasizing education on the importance of maintaining the trees, not only for aesthetics but the protection they offer from storms.

Vice Chairperson DiBernardo stated a home cannot be built in the setback area and suggested not allowing trees to be removed within the setback area until construction is permitted.

Chairperson Ward asked what the genesis for town council was wanting to have some type of ordinance for trees within setbacks in commercial districts. Planning Director Haskett stated that the town council had directed staff to draft amendments to modernize the town code, and in reaction following a special use permit application for development on a lot in a commercial zoning district in which buffers were a big discussion.

Chairperson Ward expressed his opinion in that, what is good for the commercial zone is good for the residential zone. He stated the town council had removed the residential language and this ZTA has included it again. The town council will have to reexamine taking the residential language out.

Planning Board Member Zehner stated the only difference though is commercial properties cannot remove the trees without a permit, but they can't get that permit without a site plan review, so those trees can be evaluated to be preserved when we are looking at a site plan review application. Those trees that they cannot remove because they cannot get a permit can never be removed but for residential that is not the case. He felt that if the goal is to preserve trees this is not the right vehicle to do it.

Vice Chairperson DiBernardo suggested replacing "prior to the issuance of a lot disturbance" with "prior to the building permit." He stated a lot disturbance permits can still be obtained and the buffer area not disturbed until a building permit is issued.

Chairperson Ward expressed that he is not advocating for a stand-alone tree ordinance, as he felt a homeowner has the absolute right to remove any or all the trees on their lot. Requiring a lot disturbance stormwater management permit for residential tree removal within the setback adds a layer of commitment to the lot development process.

Planning Board Member Lawler suggested that setback areas should not be touched. Chairperson Ward did not agree but felt a permit should be obtained in order to protect the setback area.

Hearing no further discussion, Chairperson Ward **moved** to accept ZTA-24-05 as written, with Mr. Zehner's corrections/additions:

1a. a tree has become an imminent danger or hazard to persons or property due to damage to the tree resulting from fire, motor vehicle accident, or natural occurrence, such as, lightning, windstorm, ice storm, flood, insect damage or disease, Seconded by Vice Chairperson DiBernardo. The motion was carried unanimously 5-0.

Public Comment

Four members of the public provided additional comments:

1. Anthony Mina, identifying himself as the applicant and homeowner of 75 East Dogwood Trail, expressed concerns about a discrepancy in the property ownership records mentioned by Planning Director/Deputy Town Manager Haskett. He also raised issues about public notification of zoning ordinance changes.
2. Mark Martin provided insight into his building process, emphasizing that he does not clear-cut lots and designs around existing features. He explained the complexities of working within setbacks and the need for flexibility in tree removal for construction purposes.
3. Mike Stone discussed the historical context of vegetation growth in Southern Shores, noting that there is currently more vegetation than in the past. He emphasized the natural regrowth of vegetation after construction and cautioned against overly restrictive regulations.
4. Mark LeBlanc referenced NC invasive plant Council for list of trees which considered invasive on the coastal plains and your emergency regulation might consider removing those trees. He felt the amendment was a solution in search of a problem.

Planning Board Member Comments

- Planning Board Member Zehner mentioned his appointment to the Entry Corridor Committee.
- Planning Board Member Lawler suggested pursuing a quantification of the current tree canopy in Southern Shores as a point of reference.
- Planning Board Member McClendon expressed satisfaction that there are no light poles along the corridor and passed that along to the Entry Corridor Committee.
- Chairperson Ward requested that a memo dated August 6th from Tom Manager Ogburn about ADU's be distributed to all planning board members.

Announcements

Planning Director/Deputy Town Manager Haskett announced:

- The next regular meeting is scheduled for December 16th.
- A draft zoning text amendment addressing the recombination of non-conforming lots may be presented for consideration at the next meeting.

Adjourn

Vice Chairperson DiBernardo moved to adjourn the meeting. Chairperson Ward seconded the motion.

The meeting was adjourned at 6:20 PM.

226 ATTEST:

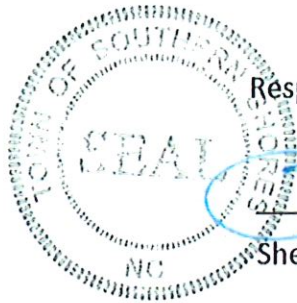
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Andy Ward

Andy Ward, Chairperson



Respectfully submitted,

Sheila Kane

Sheila Kane, Town Clerk