



TOWN OF SOUTHERN SHORES
PLANNING BOARD SPECIAL MEETING

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

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www.southernshores-nc.gov

PITTS CENTER

Wednesday, January 29, 2025 at 3:00 PM

MINUTES

Call Meeting to Order

Pledge of Allegiance

Present

Chairperson Ward

Vice Chairperson DiBernardo

Planning Board Member Lawler

Planning Board Member McClendon

Planning Board Member Collins

Town Attorney Johny Hallow

Chairperson Ward called the special planning board meeting to order on January 29, 2025.

Approval of Agenda

Vice Chairperson DiBernardo made a **motion** to approve the agenda for January 29, 2025, Seconded by Planning Board member Collins. The motion passed unanimously.

Approval of Minutes

October 21st, 2024, Meeting Transcript

Planning Director/Deputy Town Manager Wes Haskett explained that the 265-page transcript prepared by certified court reporter Stephanie Graham would serve as both the transcript and meeting minutes for the October 21st, 2024 planning board meeting. He noted that the last page included a certification for the chairperson to sign upon approval.

Motion made by Chairperson Ward to approve the transcript as written and enter it into the record, Seconded by Vice Chairperson DiBernardo. The motion passed unanimously.

November 18th, 2024, Meeting Minutes

Chairperson Ward noted a few minor corrections to the November 18th, 2024 meeting minutes.

Vice Chairperson DiBernardo raised a question about whether Chairperson Ward had made a statement clarifying that the ZTA discussion was not about a tree ordinance. After some discussion, it was determined this statement was already included on line 174 of the minutes.

Motion made by Vice Chairperson DiBernardo to approve the minutes of the November 18, 2024 meeting as amended, Seconded by Chairperson Ward. The motion passed unanimously.

Public Comment

The following members of the public spoke during the first public comment period:

Ann Sjoerdsma (232 North Dogwood Trail) expressed opposition to the proposed ZTA, stating it would add more cumbersome language to an already complex ordinance. She provided historical context on previous discussions and revisions to the non-conforming lots recombination ordinance. Ms. Sjoerdsma suggested enforcing recombination for lots 43 and 44, while allowing lot 45 to stand alone.

Casey Varnell (attorney representing Garrison Beach LLC) clarified that his client's intention was to build one residence across lots 43 and 44, leaving lot 45 alone. He stated this approach aligned with the proposed ordinance amendment and would result in less density than potentially building separate structures on each lot.

Scott Simmons (6 Sand Fiddler Ct.) asked what the town was trying to achieve with the proposed changes regarding the lots on Dolphin Run.

Old Business

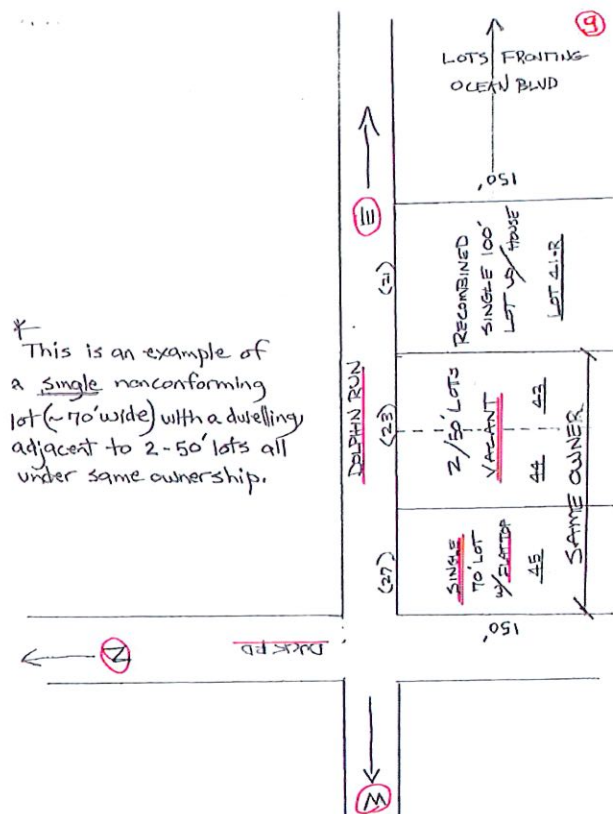
None

New Business

ZTA-25-01: Zoning Text Amendment on Development and Sale of Certain Nonconforming Lots

Planning Director/Deputy Town Manager Haskett introduced the proposed zoning text amendment (ZTA-25-01), which addresses the development and sale of certain nonconforming lots. The amendment was prompted by an appeal from Casey Varnell, attorney for Garrison Beach LLC, regarding the formal interpretation of town code section 36-132. This section deals with how nonconforming lots are managed within the town's planning framework.

Chairperson Ward reviewed a sketch created several years earlier.



The Staff Report for ZTA-25-01 read as follows:

ANALYSIS

At the February 6, 2024 Town Council meeting, the Town Council directed Town Staff to draft Town Code amendments to modernize the Town Code. Town Code Section 36-132(a)(2) establishes the requirement to recombine adjacent nonconforming lots under the same ownership prior to sale or development. Town Code Section 36-132(a)(1) establishes exceptions which permit the development and sale of certain adjacent nonconforming lots under same ownership without the requirement of recombination.

On October 16, 2024, Town Staff received an application from Casey Varnell, Attorney for Garrison Beach, LLC, to appeal a formal interpretation issued by Town Staff on September 16, 2024, regarding the application of Section 36-132 of the Town Code. The formal interpretation addressed a scenario in which three adjacent nonconforming lots on Dolphin Run, all owned by Garrison Beach, LLC, may be developed without recombination. The subject properties include Lots 43, 44, and 45 (23 and 27 Dolphin Run). The Town's formal interpretation determined that, under the current version of Town Code Section 36-132(a), Garrison Beach, LLC could not legally construct a single-family dwelling and customary accessory building upon Lots 43 and 44 without recombining them with Lot 45 prior to development.

Recognizing the need to modernize the Town Code, and in order to avoid an appeal to Superior Court, Town Staff and the Town Attorney worked with Mr. Varnell to develop a Zoning Text Amendment that would establish a new exemption in Section 36-132(a)(1), consistent with the purpose of the Town Code. The proposed Zoning Text Amendment will permit the construction of a single-family dwelling and customary accessory building on two or more currently nonconforming adjacent lots as a single development site, if at least one of two or more nonconforming adjacent lots is located adjacent to a single nonconforming lot that is under the same ownership and on which there is located an existing single-family dwelling, and the adjacent improved land is made up of no more than two lots all of which are nonconforming.

The proposed Zoning Text Amendment will also clarify the applicability of the existing exemptions to the recombination requirement referenced in Section 36-132(a) of the Town Code and further clarify the requirements for the recombination of adjacent nonconforming lots under same ownership that do not qualify for an exemption.

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

- LUC 3.1: Support development design and approvals that reinforce low-density nature of the community and are at an appropriate scale for the commercial district.

RECOMMENDATION

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Comprehensive Land Use Plan and Town Staff recommend approval of the application.

Planning Director/Deputy Town Manager Haskett stated this ZTA would create another exemption. The intent is for lots 43 and 44 to be developed as a single development site with a single-family dwelling and customary accessory building. That would be allowed on Lots 43 and 44 without having to recombine with lot 45, making this all one parcel.

Chairperson Ward reviewed page 3, line 18 which states recombination required as item #2.

Recombination required If any of the following situations apply, all adjacent lots under the same ownership shall be recombined into: (i) a single lot which may or may not meet the minimum requirements for the district in which such lots are located; or (ii) multiple lots which all meet the minimum requirements for the district in which such lots are located:

a. Development is proposed upon land which includes one or more nonconforming lots adjacent to one or more other lots under the same ownership;

Chairperson Ward questioned why the recombination requirement was not in effect for this situation? Planning Director Wes Haskett stated the ordinance currently states all parcels would have to be recombined and this ZTA would create an exemption. Chairperson Ward stated he understands the intent of the ZTA and does not have an issue with it but would like an explanation as to why these parcels were not previously recombined.

Town Attorney Johnny Hallow stated Mr. Varnell submitted a request for an interpretation and provided two scenarios, the second of which could potentially challenge the interpretation. The town would prefer to have lower density and the property owner in this case would prefer to build on Lots 43 and 44 together, as opposed to building two small structures on these even smaller lots creating more density. To avoid a possible dispute and litigation, staff wanted to find some way to put this ordinance in a clear way that could avoid litigation and unnecessary attorney fees.

Chairperson Ward stated his understanding is that if we pass this tonight it will preclude any development of a single lot 44 or 43. He proposed working through some scenarios but first called on the board for comment.

Vice Chairperson DiBernardo inquired as to how many other properties fall under this category. Planning Director Wes Haskett replied that to his knowledge this is the only one.

Vice Chairperson DiBernardo commented that we are adding this exemption for one property because we don't want to take it to court. He questioned if the town would do this for another property if it arises. Planning Director Wes Haskett stated it would depend on the circumstances.

Planning Director Wes Haskett stated when former town attorney Ben Gallop proposed this ordinance, he mentioned several times that this was hard to make this perfect and it is not going to catch every situation and will require coming back to look at it again.

Chairperson Ward stated in 2018 the planning board started identifying nonconforming lot situations and out of the nine pages of sketches this was one of the ones being identified as nonconforming. In September 2018 Town Council passed an extreme ZTA that acted almost as a moratorium and it was held for a year until the current ordinance was passed in 2019. At that time five exemptions were made, and it has been the planning board and the town's position ever since that we would strive to be fair and reasonable to accommodate non-conforming lot situations, and this is an example. Chairperson Ward felt this is a good compromise as an exemption to allow what these people are trying to do.

Planning Board member Collins asked if a structure was to be built across lots 43 and 44 without being recombined, would the middle lot line just go away. Planning Director Wes Haskett stated it depends. If the proposed ordinance is adopted then the applicant can build a structure across the center line, including an accessory structure, all setbacks are required.

Vice Chairperson DiBernardo asked for clarification. He asked if Dare County taxed per parcel or the combined parcels as one. Applicant's attorney Casey Varnell stated the county will bill as a whole at the property owner's request. This is not a formal combination; it is just for billing purposes.

Planning Board member Lawler asked if the house was built on both lots and burned down or torn down and sold, could the next owner then have two lots to build on. Planning Director Haskett stated the property lot lines run with the property, not the owner.

Citizen Ms. Sjoerdsma asked to speak, and Chairperson Ward agreed.

Ann Sjoerdsma- all three lots were owned by the same individual before being purchased by Mr. Garrison, the current owner. She asked why the lots were not recombined prior to the sale.

Chairperson Ward agreed with Ms. Sjoerdsma and stated he would like to know the answer as well. The town has an ordinance that requires recombination prior to the sale.

Applicant's attorney Casey Varnell spoke. The enforcement is on the town. He stated that properties being sold subject to the requirement of recombination from local government is an enforcement nightmare. You would have to hire someone to monitor the MLS.

Chairperson Ward stated he felt it was an obligation of the attorney representing the buyer and seller to notify them of the requirement. It is part of the town's ordinance and should be respected. Attorney Casey Varnell stated we can inform them, but they may be willing to take the risk.

Vice Chairperson DiBernardo asked when the changes to the tax billing came into effect, when the property was sold and suddenly, they converted the three tax bills into two. Attorney Casey Varnell did not know the circumstances of the tax bill. Chairperson Ward stated it was set up that way prior to the change of ownership.

Planning Board member McClendon asked Attorney Varnell in his opinion did he think the town had the authority to require recombination of lots before sale. Attorney Casey Varnell stated he felt there was a potential for a takings claim from a constitutional standpoint, the deprivation of property rights because you're now involving or affecting somebody's ability to sell their property in a buyer beware state.

Attorney Casey Varnell felt what his client was proposing is more in line with the intent of the original ordinance.

Planning Board member McClendon felt the selling of the property is not something that the town can control, and it was on the side of the buyer to know the code and take the risk.

Town attorney Johny Hallow stated no doubt it's a difficult enforcement thing to do, monitoring the sale of every property within the town. The town would need somebody that is willing to go through the records, to be up to date on the sales that are happening in the town, and then you'd also need somebody that would be able to look at this ordinance, look at the proposed sale, and determine whether or not the ordinance is going to be violated.

Chairperson Ward asked if this thing passes tonight as written and next month, we have the exact same situation come along, can they build separately on those two smaller lots. Attorney Casey Varnell stated it would have to be the same exact scenario with the third lot but if the ordinance was to pass it would prevent the building of two houses, one on each parcel.

Town attorney Johny Hallow ran through the ordinance again and did an analysis using the same situation. He stated it probably does permit it, but you also have the option not to do that. This was kind of what our goal was to expand the exemption to allow for this scenario, not necessarily eliminate other scenarios that are in place. He also commented that he can't tell what it would do if we deleted that exemption that would allow to build on 44 first and then 43 because he did not know what other effects that would have on properties in the town.

Planning Director Wes Haskett commented that part of the recent legislation where you cannot down zone property may come into question if the exemption was deleted or something else was proposed.

Chairperson Ward proposed three scenarios:

1. develop Lots 44 and 43 as one per parcel and hold lot 45
2. develop Lots 44 and 43 as one parcel and sell lot 45 individually or remodel
3. sell lots 44 and 43 as one parcel and hold lot 45

Town attorney Johny Hallow stated a recombination would be required in those scenarios.

Chairperson Ward proposed what if lot 45 was sold but lot 44 and 43 remain held by the same owner.

Town attorney Johny Hallow stated the same situation applies, a required recombination.

Chairperson Ward additionally proposed, redevelop of lot 45 and hold lot 44 and 43. Town attorney Johny Hallow answered recombination required.

Planning Board member McClendon stated the property owner could sell the middle parcel and the new owner could build a small cabin there. He didn't feel that it was what anybody really wanted. He stated allowing the property owner to combine lot 44 and 43 without 45 makes sense.

Planning Director Wes Haskett stated lots 43 and 44 would be considered as a single development and no recombination would be required if they are doing one single family home and accessory dwelling.

Planning Board member McClendon asked why the recombination isn't being required.

Planning Director Haskett stated that the recombination requirement in the draft ZTAs has been very difficult to achieve.

Chairperson Ward stated this was a good compromise for both the town and the property owner. The duty of the planning board is to be fair and reasonable.

Planning Board member McClendon stated he would still like to see the recombination of the parcels because if the property did burn down or was torn down, you still have two lots there.

Planning Director Wes Haskett did state that the exemption allows for a single-family dwelling and customary accessory building. If they would like a pool, then that would force a recombination due to the rule 2(c) development is proposed of a new structure used to be located on two or more adjacent lots under the same ownership.

Planning Director Wes Haskett stated the proposed language would prohibit the sale of lot 45 without recombination of lot 43 and 44 prior to sale. The proposed language also says lots 43 and 44 cannot be sold if they're vacant.

Planning Board member McClendon felt it would be much simpler to allow two originally platted lots under same ownership to be built on even if it is still not conforming.

Chairperson Ward made a **motion** to approve ZTA-25-01 as written and discussed, and to send it to the town council. Planning Board Member Collins seconded the motion.

Chairperson Ward called on the board for further discussion or questions.

Vice Chairperson DiBernardo felt the town was jumping through hoops because the property owner didn't want to recombine the lots. Planning Board member McClendon stated because the town ordinance currently states he would have to recombine the three lots, not two lots.

Planning Board member McClendon stated that he is not against what the property owner is trying to do. He felt that any two non-conforming lots under same ownership should be allowed to be recombined and built on. He stated the town's code is more complicated than it needs to be. Ultimately, he would support the ZTA if the town attorney and staff agreed that this is the most expeditious method of moving forward to allow this individual to build on those two lots.

Vice Chairperson DiBernardo stated this ordinance is complicated and he believes that any ordinance as written should allow a layman to understand it.

Planning Director Wes Haskett agreed the proposed language was complicated, but it needed to be narrow and specific so as to not create any unintended consequences.

After extensive discussion and clarification, **MOTION** to approve ZTA-25-01 as written and discussed and send it to the town council made by Chairperson Ward, seconded by Planning Board Member Collins. The motion passed unanimously, with some members expressing reluctance but ultimately supporting the intent and deferring to the elected town council for a final decision.

Public Comment

Ann Sjoerdsma spoke again during the second public comment period. She raised concerns about section 36-132(a)2c of the town code, which requires recombination for various property improvements. Sjoerdsma shared examples of relatives who had to recombine lots for minor improvements like replacing a deck or staircase. She suggested the board consider revising or eliminating this section or potentially allowing exceptions for improvements that do not change the property's footprint.

Chairperson Ward advised Sjoerdsma to take her concerns to the town council and suggested she could propose language for a potential ZTA to address the issue.

Planning Board Member Comments

Vice Chairperson DiBernardo noted he would be absent for the April 21st meeting and suggested considering rescheduling due to its proximity to Easter.

Planning Board Member Collins raised concerns about traffic light timing at the intersection of Chicahauk and Ocean, particularly during busy tourist periods. Town Manager Ogburn responded that NCDOT traffic engineers had been notified and had reportedly made some adjustments recently.

316 **Announcements**

317 Planning Director/Deputy Town Manager Wes Haskett announced that the next regular meeting was
318 scheduled for February 19th, with the agenda to be determined.

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320 **Adjourn**

321 **Motion** made by Chairperson Ward to adjourn the meeting at 4:51 PM, Seconded by Vice Chairperson
322 DiBernardo. The motion passed unanimously.

323 The meeting was adjourned.

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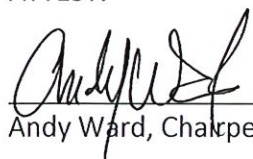
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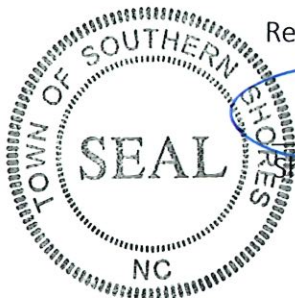
326 ATTEST:

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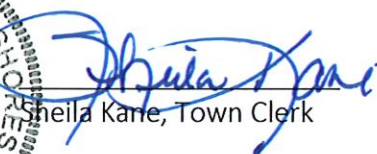
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Andy Ward, Chairperson



Respectfully submitted,


Sheila Kane, Town Clerk