

**DRAFT**

## **Town of Southern Shores**

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

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**Planning Board Meeting**

**February 18, 2014**

**7:00 p.m., Pitts Center**

### **MEETING MINUTES**

**I. CALL TO ORDER:**

Chairperson Sam Williams called the meeting to order at 7:00 pm. Planning Board Members Gray Berryman, Mike Florez, Elizabeth Morey, Sam Williams, ETJ Member John Finelli, Town Attorney Ben Gallop, and Town Planner Wes Haskett were present. Alternate members Betty Corbin and David Neal were absent with excuse. Since ZTA-14-02 did not pertain to the ETJ areas, representative John Finelli did not participate in the voting or discussion related to the application.

**II. PLEDGE OF ALLEGIANCE:**

Chairperson Sam Williams led the Pledge of Allegiance.

**III. APPROVAL OF AGENDA:**

Chairperson Williams motioned to amend the agenda by making Item C under New Business Item A. Elizabeth Morey seconded the motion. The motion passed unanimously (5-0).

**IV. APPROVAL OF MINUTES:**

Sam Williams motioned to amend the minutes of the October 21, 2013 Planning Board Meeting to reflect that representative John Finelli was not in attendance since there were no items on the Agenda pertaining to the ETJ areas. Mike Florez seconded the motion. The motion passed unanimously.

**V. OLD BUSINESS:**

None

**VI. NEW BUSINESS:**

**A. Rules of Procedure-Time of Regular Meetings**

Chairperson Williams stated that the Town Council had recently revised their regular meeting time from 7:00 to 5:30 and that he had been approached about doing the same with the Planning Board's regular meeting time. By doing so, it would be more convenient for Town Staff by not having to wait from 5:00 until 7:00 for the meeting to begin. Mike Florez motioned to revise the Board's regular meeting time from 7:00 to 5:30. Elizabeth Morey seconded the motion. The motion passed unanimously.

**B. ZTA-14-01: Board of Adjustment**

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

During his Staff Report, Wes Haskett indicated that he had done a survey of other jurisdictions with populations under 5000 asking if their Planning Board served as the Board of Adjustment (BOA). Of the respondents, about 60% indicated that they had combined Planning Board and Board of Adjustments. Chairperson Williams asked if the respondents to the survey indicated how well their Planning Boards were doing with handling the duties of both the Planning Board and the Board of Adjustment. Wes Haskett stated that they did not.

Elizabeth Morey asked if any of the respondents were from Dare County. Wes Haskett stated that there were not. Ben Gallop stated that he believed at least one jurisdiction in the region assigned the duties of the BOA to the Planning Board or was in the process of doing so.

Mike Florez asked if the only changes to the current BOA ordinance in the ZTA were to assign the BOA duties to the Planning Board and if the decisions the BOA makes are final. Ben Gallop stated that that it was not and that the ZTA is a complete re-write of what was currently adopted. When the Legislature changed the General Statutes that apply to the BOA, they included more detail and brought in some things that had been previously problematic. The decisions made by the BOA are quasi-judicial and the Planning Board's decisions are advisory. The BOA makes decisions on appeals and variances which can be appealed to Superior Court.

Chairperson Williams asked if there would be a conflict of interest if the BOA duties were assigned to the Planning Board. Ben Gallop stated basically no and that the Planning Board would treat the separate duties as separate meetings.

Gray Berryman asked if it was unusual for the BOA to not have a meeting since 2008. Ben Gallop stated that it is unusual although the zoning makeup of Southern Shores is different than most jurisdictions with very few commercial properties and fewer problematic zoning restrictions to be challenged.

Chairperson Williams asked if a quorum of the BOA was 4/5. Ben Gallop stated that it only applied to variances and it would have to be 4/5 of the members seated at a meeting. An applicant could decide to waive the 4/5 requirement at their discretion.

Chairperson Williams asked for the definition of tolled as used in Section 36-362, (d). Ben Gallop stated that it is a legal term which basically means extended. Following discussion of whether or not to replace tolled with extended, the Board decided to use the term extended. Ben Gallop indicated that by doing so, the number of days allowed for an applicant to pay the applicable fee would change from 30 days to 45 days which the Board felt was acceptable.

Chairperson Williams stated that all of the proposed language following Section 36-366 was very detailed and asked if it could be taken out and used in the BOA Rules of Procedure. Ben Gallop stated that the language was primarily word for word from the Statutes. The BOA's Rules of Procedure should not include standards that the applicant has to meet but should include the setup of the agenda and other administrative procedures.

Chairperson Williams asked if the official that could be challenged was only the Town Planner Wes Haskett and if/when there is an application to consider as the BOA, who

would take the minutes and would Town Staff be represented by Counsel. Ben Gallop stated others could be challenged and that it would depend on the application. It is not uncommon for the official being challenged to be represented by an attorney, the BOA represented by another attorney, and the Town Clerk to serve as the clerk for the BOA. John Finelli asked if the Town Planner could tell a potential applicant that their application would not meet the requirements for a variance. Ben Gallop stated that it could be a mistake and that he would advise caution in doing so.

The Board discussed whether or not a quorum should consist of five or six members since an application pertaining to the ETJ could have up to six voting members. Ben Gallop stated that the voting requirement for a variance is 4/5 of the members seated and that it would have to be established in the Rules of Procedure.

Elizabeth Morey motioned to recommend approval of the ZTA as amended to the Town Council. Mike Florez seconded the motion. The motion passed unanimously (5-0).

**C. ZTA-14-02: Wireless Facilities**

Chairperson Williams introduced the application and stated that Ben Gallop had done a good job revising the current Wireless Ordinance to be consistent with the recently adopted legislation. He then called on Wes Haskett to present the Staff Report (attached).

Chairperson Williams provided suggested revisions to the numbering of some of the sections in the ZTA and asked if there was a difference in the language that addresses consultants on pages 13 and 17. Ben Gallop stated that they were slightly different and established in the revised Statutes that apply to wireless facilities.

Gray Berryman motioned to recommend approval of the ZTA as amended to the Town Council. Mike Florez seconded the motion. The motion passed unanimously (4-0, John Finelli did not participate in the voting or discussion related to the application since the ZTA did not pertain to the ETJ areas).

**VII. PUBLIC COMMENT:**  
None

**VIII. PLANNING BOARD MEMBER COMMENTS:**  
Gray Berryman reminded everyone that the first public workshop for the Southern Shores Bicycle and Pedestrian Plan would be held on February 19<sup>th</sup> from 5:00 to 7:00 in the Pitts Center.

**IX. ANNOUNCEMENTS:**  
Chairperson Williams noted that the next meeting is scheduled to be held on March 17, 2014.

**X. ADJOURNMENT:**  
Mike Florez motioned to adjourn. Elizabeth Morey seconded the motion. The motion passed unanimously and the meeting adjourned at 8:00 p.m.

ATTEST:

RESPECTFULLY SUBMITTED:

Sam Williams, Chairperson

Wes Haskett, Town Planner

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**STAFF REPORT**

**To:** Southern Shores Planning Board  
**Date:** February 7, 2014  
**Case:** ZTA-14-01  
**Prepared By:** Wes Haskett, Town Planner/Code Enforcement Officer

**GENERAL INFORMATION**

**Applicant:** Town of Southern Shores

**Requested Action:** Amendment of the Town Zoning Ordinance regarding the following:  
 Chapter 36, Article XII.

**ANALYSIS**

In October, 2013, new legislation adopted by the North Carolina General Assembly which applies to the Board of Adjustment went into effect. The new legislation includes changes to the provisions regarding voting, decisions, hearing notices, appeals, and variances. The Town Zoning Ordinance must be amended in order to be consistent with the recently adopted legislation which Town Staff has attempted to do in this Zoning Text Amendment Application.

In addition to the required legislative changes, Town Staff is proposing to also amend the current makeup of the Board. Currently, the Town's Board of Adjustment is comprised of five regular members, three alternates, and one ETJ member. The Board has not met to consider new business since November 20, 2008, and as a result, Town Staff is proposing to include the assignment of the Board of Adjustment's duties to the Town Planning Board in this ZTA.

A survey of other Planning jurisdictions with a population under 5,000 asking if their Planning Board served as the Board of Adjustment produced 18 results. Out of the 18 results, 11 of the jurisdictions have assigned the duties of the Board of Adjustment to the Planning Board.

**RECOMMENDATION**

Town Staff recommends approval of the proposed amendment and that the application is consistent with the Town's currently adopted Land Use Plan.

## STAFF REPORT

**To:** Southern Shores Planning Board  
**Date:** February 7, 2014  
**Case:** ZTA-14-02  
**Prepared By:** Wes Haskett, Town Planner/Code Enforcement Officer

### GENERAL INFORMATION

**Applicant:** Town of Southern Shores

**Requested Action:** Amendment of the Town Zoning Ordinance regarding the following Sections: 36-175, Wireless Telecommunications Sites and Towers; 36-202, RS-1, Single-family District; 36-205, Low-density Residential District; 36-206, Government and Institutional District; and 36-207, C General Commercial District.

### ANALYSIS

In October, 2013, new legislation adopted by the North Carolina General Assembly which applies to wireless facilities went into effect that sets standards regarding the expedited review of collocations and minor modifications requests. The Town Zoning Ordinance must be amended in order to be consistent with the recently adopted legislation which Town Staff has attempted to do in this Zoning Text Amendment Application. The proposed ZTA attempts to make the Town's current Wireless Facilities Ordinance consistent with new legislation.

### RECOMMENDATION

Town Staff recommends approval of the proposed amendment and that the application is consistent with the Town's currently adopted Land Use Plan.



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## PLANNING BOARD GENERAL APPLICATION FORM TOWN OF SOUTHERN SHORES, NC 27949

Date: 1/20/14

Filing Fee: \$200

Receipt No. N/A Application No. ZTA-14-01

**NOTE:** The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36. Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- Chapter 30. Subdivisions-Town Code
- Chapter 36. Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District
- Chapter 36. Article IX. Planned Unit Development (PUD)
- Chapter 36. Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units \*
- Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use
- Chapter 36. Article X. Section 36-303 Fees
- Chapter 36. Article X. Section 36-304-Vested Rights
- Chapter 36. Article XIV. Changes and Amendments

**Certification and Standing:** As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

### Applicant

Name Town Staff

Address: \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

### Applicant's Representative (if any)

Name \_\_\_\_\_

Agent, Contractor, Other (Circle one)

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

Property Involved:  Southern Shores  Martin's Point (Commercial only)

Address: \_\_\_\_\_ Zoning district \_\_\_\_\_

Section \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_ Lot size (sq.ft.) \_\_\_\_\_

Request:  Site Plan Review  Final Site Plan Review  Conditional Use  Permitted Use  
 PUD (Planned Unit Development)  Subdivision Ordinance  Vested Right  Variance

Change To:  Zoning Map  Zoning Ordinance

W.W. H...  
Signature

1-20-14  
Date

\* Attach supporting documentation.



## STAFF REPORT

**To:** Southern Shores Town Council  
**Date:** February 19, 2014  
**Case:** ZTA-14-01  
**Prepared By:** Wes Haskett, Town Planner/Code Enforcement Officer

### GENERAL INFORMATION

**Applicant:** Town of Southern Shores

**Requested Action:** Amendment of the Town Zoning Ordinance regarding the following:  
Chapter 36, Article XII.

### ANALYSIS

In October, 2013, new legislation adopted by the North Carolina General Assembly which applies to the Board of Adjustment went into effect. The new legislation includes changes to the provisions regarding voting, decisions, hearing notices, appeals, and variances. The Town Zoning Ordinance must be amended in order to be consistent with the recently adopted legislation which Town Staff has attempted to do in this Zoning Text Amendment Application.

In addition to the required legislative changes, Town Staff is proposing to also amend the current makeup of the Board. Currently, the Town's Board of Adjustment is comprised of five regular members, three alternates, and one ETJ member. The Board has not met to consider new business since November 20, 2008, and as a result, Town Staff is proposing to include the assignment of the Board of Adjustment's duties to the Town Planning Board in this ZTA.

A survey of other Planning jurisdictions with a population under 5,000 asking if their Planning Board served as the Board of Adjustment produced 18 results. Out of the 18 results, 11 of the jurisdictions have assigned the duties of the Board of Adjustment to the Planning Board.

### RECOMMENDATION

The Town Planning Board unanimously (5-0) recommended approval of the application at the February 18, 2014 meeting. Town Staff recommends approval of the application and that the application is consistent with the Town's currently adopted Land Use Plan.





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ZTA-14-01

AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to N.C.G.S. § 160A-381, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

**WHEREAS**, N.C.G.S. § 160A-388 governs the creation, composition, process and procedures of boards of adjustment. 2013 N.C. Sess. Law 126 makes substantial changes to the text of N.C.G.S. § 160A-388 which become effective as of October 1, 2013. The changes to N.C.G.S. § 160A-388 affect the operation and management of the Town's Board of Adjustment and require that the Town's Zoning Ordinance be updated accordingly; and

**WHEREAS**, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Zoning Ordinance and Town Code of Ordinances as stated below.

**ARTICLE II. Construction.**

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses ("...") shall remain as they currently exist within the Town Code.

**ARTICLE III. Amendment of Zoning Ordinance.**

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

1 **PART I.** That **Chapter 36, Article XII. BOARD OF ADJUSTMENT** be replaced in  
2 its entirety with the following:

3  
4 **Sec. 36-360. Planning Board to Act as Board of Adjustment.**

5  
6 By the adoption of this ordinance, the town abolishes the previously established board of  
7 adjustment and designates the town planning board established under Chapter 24, Art. II  
8 to perform the duties of a board of adjustment as provided in this article. The term  
9 "board" when used in this article shall be construed to mean the planning board while  
10 performing the duties of board of adjustment under this article. The planning board may  
11 perform the duties of a board of adjustment under this article at meetings  
12 contemporaneously with other duties or it may hold separate meetings solely for the  
13 purpose of performing the duties of a board of adjustment.

14  
15 **Sec. 36-361. Alternate Members.**

16  
17 Each alternate member serving on behalf of any regular member has all the powers and  
18 duties of a regular member.

19  
20 **Sec. 36-362. Meetings of the Board of Adjustment.**

21  
22 (a) *Generally.* All meetings of the board shall be held at a regular place and shall be open  
23 to the public. The board shall keep minutes of its proceedings, showing the vote of each  
24 member upon each question or, if absent or failing to vote, an indication of that fact. Any  
25 party may appear in person or be represented by an attorney.

26  
27 (b) *Notices.* Notice of hearings conducted pursuant to this article shall be mailed to: (i)  
28 the person or entity whose appeal, application, or request is the subject of the hearing; (ii)  
29 to the owner of the property that is the subject of the hearing if the owner did not initiate  
30 the hearing; (iii) to the owners of all parcels of land abutting the parcel of land that is the  
31 subject of the hearing; and (iv) to any other persons entitled to receive notice as provided  
32 by this chapter. In the absence of evidence to the contrary, the town may rely on the Dare  
33 County tax listing to determine owners of property entitled to mailed notice. The notice  
34 must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date  
35 of the hearing. Within that same time period, the town shall also prominently post a  
36 notice of the hearing on the site that is the subject of the hearing or on an adjacent street  
37 or highway right-of-way.

38  
39 (c) *Burdens.* The burdens of production, persuasion and proof for all quasi-judicial  
40 decisions of the board lie with the applicant or appellant seeking such a decision.

41  
42 (d) *Fees.* A fee in accordance with the regularly adopted fee schedule of the town shall be  
43 paid to the town for each notice of appeal or variance application to cover the  
44 administrative expenses involved. A notice of appeal or variance application shall not be  
45 deemed complete and filed until such time as the associated fees have been paid. The  
46 time to file a completed notice of appeal or variance application and associated fee will

1 be extended for 15 days to receive payment of the fee upon an applicant's timely  
2 submission of a notice of appeal or application for variance that is otherwise complete.  
3 No hearing will be scheduled before the board until a completed application and fee have  
4 both been received.

5  
6 **Sec. 36-363. Quorum.**

7  
8 A quorum of three members shall be seated and present in order to open a meeting of the  
9 board and to take action on non-quasi-judicial matters. In order to take action on a quasi-  
10 judicial matter the board must have a quorum of five members seated and present unless  
11 the appellant or applicant consents to moving forward with less than five members. For  
12 calculating a quorum to take action on a quasi-judicial matter, the number of members  
13 seated and present includes members who were seated at the opening of the meeting that  
14 have been disqualified from voting on the particular matter if there are no qualified  
15 alternates available to take the place of such members. In the event that a quorum cannot  
16 be met due to vacant positions or a lack of qualified members, the board may continue its  
17 meeting in order for absent members to become available and, if necessary, for the town  
18 council to make appointments filling vacant seats and/or to make appointments of  
19 temporary alternate members who can fulfill the board's duties.

20  
21 **Sec. 36-364. Voting.**

22 The concurring vote of four-fifths majority of the board shall be necessary to grant a  
23 variance. A majority of the members shall be required to decide any other quasi-judicial  
24 matter or to determine an appeal made in the nature of certiorari. For the purposes of this  
25 subsection, vacant positions on the board and members who are disqualified from voting  
26 on a quasi-judicial matter shall not be considered members of the board for calculation of  
27 the requisite majority if there are no qualified alternates available to take the place of  
28 such members.

29  
30 **Sec. 36-365. Powers and duties of the Board of Adjustment.**

31  
32 (a) *Hearings authorized.* The board shall hear and decide requests for variances of the  
33 provisions of this chapter and appeals of decisions of administrative officials charged  
34 with enforcement of this chapter. The board shall follow quasi-judicial procedures when  
35 deciding appeals and requests for variances. The board shall hear and decide all matters  
36 upon which it is required to pass under any statute or ordinance that regulates land use or  
37 development that provides for the board to hear such matters.

38  
39 (b) *Oaths.* The chair of the board or any member acting as chair and the clerk to the board  
40 are authorized to administer oaths to witnesses in any matter coming before the board.  
41 Any person who, while under oath during a proceeding before the board, willfully swears  
42 falsely is guilty of a Class 1 misdemeanor.

43  
44 (c) *Subpoenas.* The board through the chair, or in the chair's absence anyone acting as  
45 chair, may subpoena witnesses and compel the production of evidence. To request  
46 issuance of a subpoena, persons with standing under G.S. 160A-393, (d) may make a

1 written request to the chair explaining why it is necessary for certain witnesses or  
2 evidence to be compelled. The chair shall issue requested subpoenas he or she determines  
3 to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on  
4 any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the  
5 chair may be appealed to the full board. If a person fails or refuses to obey a subpoena  
6 issued pursuant to this subsection, the board or the party seeking the subpoena may apply  
7 to the General Court of Justice for an order requiring that its subpoena be obeyed, and the  
8 court shall have jurisdiction to issue these orders after notice to all proper parties.

9  
10 (d) *Continuances*. The board may grant a continuance to any party for good cause shown  
11 or upon the board's own motion. Requests for continuances should be made in writing,  
12 but may be made orally at a meeting of the board. The board chair may grant a  
13 continuance request prior to a meeting if the applicant or appellant makes a written  
14 request showing good cause. The chair may always defer ruling on such a request to  
15 allow for the decision to be made by the board.

16  
17 (1) Good cause. Good cause for a continuance includes, but is not limited to:

18 (i) The official issuing the decision subject to an appeal is unavailable;

19 (ii) There is insufficient membership of the board seated and present to  
20 hear a matter; or

21 (ii) If any party or the town would be unduly prejudiced by the  
22 presentation of matters not presented in a notice of appeal.

23  
24 (2) *Renotification fees*. If notices of hearing have already been issued, the party  
25 granted a continuance is responsible for the administrative costs of noticing an  
26 additional hearing if such costs are incurred.

27  
28 (e) *Rules of Procedure*. The board may adopt from time to time such rules and  
29 regulations as it may deem necessary to carry into effect the provisions of this article.  
30 Where this article and the rules adopted by the board are in conflict, the provisions of this  
31 article prevail.

32  
33 **Sec. 36-366. Appeals of administrative decisions.**

34  
35 (a) *Administrative decisions*.

36  
37 (1) *Defined*. An appealable "administrative decision" is any final and binding  
38 order, requirement, or determination issued in writing by an administrative  
39 official charged with enforcement of this chapter. Administrative decisions  
40 include, but are not limited to: (i) permit issuance or denial, (ii) issuance of a  
41 notice of violation, warning citation or civil citation or (iii) issuance of a formal  
42 interpretation of a provision of this chapter.

1 (2) *Formal interpretation.* Only formal interpretations issued in accordance with  
2 this subsection are subject to being appealed as an administrative decision. Any  
3 written or oral interpretations that do not meet the strict requirements of this  
4 subsection are merely advisory and represent only the view, opinion or belief of  
5 the administrative official issuing them. Advisory interpretations have no binding  
6 force or effect and there is no right to appeal advisory interpretations to the board.  
7

8 (i) *Request.* Any person may request a formal interpretation of any  
9 provision of this chapter or of the location of zoning district boundary  
10 unassociated with a permit application or enforcement action. Such  
11 request must relate to a specific parcel of property, must be made in  
12 writing, must state all of the necessary facts to make the determination and  
13 must specifically state the ordinance provisions subject to the  
14 interpretation request. If the applicant for the formal interpretation is not  
15 the owner of the property, the applicant must certify that a copy of the  
16 request has been provided to the property owner.  
17

18 (ii) *Response.* Only the director of the town's planning and zoning  
19 department is authorized to issue a formal interpretation under this  
20 subsection. The director may in his/her discretion decide whether or not to  
21 respond to a request for a formal interpretation. A response to a request  
22 may only be made with the approval of the Town Manager. A response to  
23 a request is not a formal interpretation unless it is made in writing and  
24 includes a notation on its face that states "This is a Formal Zoning  
25 Ordinance Interpretation."  
26

27 (iii) *Notice.* Formal interpretations are not appealable under this subsection  
28 unless they include a certificate of service certifying that a copy of the  
29 formal interpretation has been provided to the Town Manager and the  
30 owner of the land subject to the interpretation if the applicant for the  
31 interpretation was not the owner of the land. The written notice shall be  
32 delivered by personal delivery, electronic mail, or by first-class mail.  
33

34 (3) *Notice of decisions.* The official who made the decision shall give written  
35 notice to the owner of the property that is the subject of the decision and to the  
36 party who sought the decision, if different from the owner. The written notice  
37 shall be delivered by personal delivery, electronic mail, or by first-class mail.  
38 Landowners or applicants for a decision may provide for actual or constructive  
39 notice to persons who have standing to appeal the decision by acting in  
40 accordance with subsection (b)(3)(i).  
41

42 (b) *Appeals of administrative decisions.* The board shall hear and decide appeals of  
43 administrative decisions of administrative officials charged with enforcement of this  
44 chapter and may hear appeals arising out of any other ordinance that regulates land use or  
45 development, pursuant to all of the following:  
46

1 (1) *Who may appeal.* Any person who has standing under G.S. 160A-393(d) or  
2 the town may appeal an administrative decision to the board. Any other party who  
3 has such standing may also intervene in an existing appeal by filing a written  
4 request to do so with the town clerk prior to the expiration of that party's time to  
5 appeal under subsection (b)(3).  
6

7 (2) *Form of appeal.* An appeal is taken by filing a notice of appeal with the town  
8 clerk. The notice of appeal shall state the grounds for the appeal. Each notice of  
9 appeal shall include a listing of the names and addresses of all of the persons  
10 listed in section 36-362(b) who are entitled to receive notice. The list shall be  
11 supplied by the appellant and shall be current according to the most recent tax  
12 listing abstract as filed in the office of the Dare County tax supervisor.  
13

14 (3) *Time to appeal.* The owner or other party shall have 30 days from receipt of  
15 the written notice within which to file an appeal. Any other person with standing  
16 to appeal shall have 30 days from receipt from any source of actual or  
17 constructive notice of the decision within which to file an appeal.  
18

19 (i) It shall be conclusively presumed that all persons with standing to  
20 appeal have constructive notice of the decision from the date a sign  
21 containing the words "Zoning Decision" or "Subdivision Decision" in  
22 letters at least six inches high and identifying the means to contact an  
23 official for information about the decision is prominently posted on the  
24 property that is the subject of the decision, provided the sign remains on  
25 the property for at least 10 days. Posting of signs is not the only form of  
26 constructive notice. Any such posting shall be the responsibility of the  
27 landowner or applicant. Verification of the posting shall be provided to the  
28 official who made the decision. Absent an ordinance provision to the  
29 contrary, posting of signs shall not be required.  
30

31 (4) *Duties of official who made decision.* No less than one week before an appeal  
32 is to be heard, the official who made the decision being appealed shall transmit to  
33 the board all documents and exhibits constituting the record upon which the  
34 action appealed from is taken. The official shall also provide a copy of the record  
35 to the appellant and to the owner of the property that is the subject of the appeal if  
36 the appellant is not the owner. The official who made the decision being appealed  
37 shall be present at the hearing as a witness.  
38

39 (5) *Stay pending appeal.* An appeal of a notice of violation or other enforcement  
40 order stays enforcement of the action appealed from unless the official who made  
41 the decision certifies to the board after notice of appeal has been filed that because  
42 of the facts stated in an affidavit: (i) a stay would cause imminent peril to life or  
43 property or (ii) because the violation is transitory in nature, a stay would seriously  
44 interfere with enforcement of the ordinance. In that case, enforcement  
45 proceedings shall not be stayed except by a restraining order, which may be  
46 granted by a court. If enforcement proceedings are not stayed, the appellant may

1 file with the official a request for an expedited hearing of the appeal, and the  
2 board shall meet to hear the appeal within 15 days after such a request is filed.  
3 Notwithstanding the foregoing, appeals of decisions granting a permit or  
4 otherwise affirming that a proposed use of property is consistent with the  
5 ordinance shall not stay the further review of an application for permits or  
6 permissions to use such property; in these situations the appellant may request and  
7 the board may grant a stay of a final decision of permit applications or building  
8 permits affected by the issue being appealed.  
9

10 (6) *Timing of hearing.* Subject to the provisions of subsection (b)(5) of this  
11 section, the board shall hear and decide the appeal within a reasonable time.  
12

13 (7) *Appeals in the nature of certiorari.* When hearing an appeal from an ordinance  
14 provision that requires the appeal be heard in the nature of certiorari, the hearing  
15 shall be based on the record below and the scope of review shall be as provided in  
16 G.S. 160A-393(k).  
17

18 (8) *Alternative dispute resolution.* The town and other parties to an appeal may  
19 agree to mediation in accordance with the applicable rules for mediated settlement  
20 conferences in Superior Court. If the parties agree to mediation, a hearing on the  
21 merits of the matter will be delayed until the regular board meeting following the  
22 mediation.  
23

24 (9) *Authority of the board.* The board may reverse or affirm, wholly or partly, or  
25 may modify the decision appealed from and shall make any order, requirement,  
26 decision, or determination that ought to be made. The board shall have all the  
27 powers of the official who made the decision.  
28

29 (10) *Hearing on appeal.* The appellant shall not be limited at the hearing to  
30 matters stated in the notice of appeal. If any party or the town would be unduly  
31 prejudiced by the presentation of matters not presented in the notice of appeal, the  
32 board shall continue the hearing.  
33

34 **Sec. 36-367. Variances.**  
35

36 (a) *Standards for granting a variance.* When unnecessary hardships would result from  
37 carrying out the strict letter of this chapter, the board shall vary any of the provisions of  
38 the ordinance upon a showing of all of the following:  
39

40 (1) Unnecessary hardship would result from the strict application of the  
41 ordinance. It shall not be necessary to demonstrate that, in the absence of the  
42 variance, no reasonable use can be made of the property.  
43

44 (2) The hardship results from conditions that are peculiar to the property, such as  
45 location, size, or topography. Hardships resulting from personal circumstances, as

1 well as hardships resulting from conditions that are common to the neighborhood  
2 or the general public, may not be the basis for granting a variance.

3  
4 (3) The hardship did not result from actions taken by the applicant or the property  
5 owner. The act of purchasing property with knowledge that circumstances exist  
6 that may justify the granting of a variance shall not be regarded as a self-created  
7 hardship.

8  
9 (4) The requested variance is consistent with the spirit, purpose, and intent of the  
10 ordinance, such that public safety is secured, and substantial justice is achieved.

11  
12 (b) Under no circumstances shall the board of adjustment grant a variance to allow a use  
13 either expressly or by implication not permissible under the terms of this chapter in the  
14 district involved.

15  
16 (c) Appropriate conditions may be imposed on any variance, provided that the conditions  
17 are reasonably related to the variance. Violation of such conditions shall be deemed a  
18 violation of this chapter and punishable under chapter 1, section 1-6 of this Code.

19  
20 (d) Any other ordinance that regulates land use or development may specifically provide  
21 for variances consistent with the provisions of this subsection.

22  
23 (e) A variance that is granted shall be the minimum variance that will resolve the  
24 unnecessary hardship resulting from the strict application of this chapter to the land,  
25 building or structure.

26  
27 (f) No nonconforming use of neighboring lands, structures or buildings in the same  
28 district, and no permitted use of lands, structures or buildings in other districts shall be  
29 considered grounds for the issuance of a variance.

30  
31 (g) *Application Requirements.* Each application for a variance must be in writing,  
32 accompanied by any associated administrative fee and shall include all of the following  
33 information:

34  
35 (1) A listing of the specific section(s) and subsection(s) of this chapter that the  
36 applicant is seeking to vary.

37  
38 (2) For each provision the applicant is requesting to vary, a listing of how the  
39 provision applies to the property without the requested variance and how the  
40 applicant proposes the provision should be varied.

41  
42 (3) A description of how the property can be used without the requested variance  
43 compared with how it could be used with the requested variance.

44  
45 (4) A description of the unnecessary hardship which results from the strict  
46 application of this chapter.

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(5) A description of the conditions that are peculiar to the property, such as location, size, or topography which cause the unnecessary hardship.

(6) A certification that the hardship did not result from actions taken by the applicant or the property owner other than the act of purchasing property with knowledge that circumstances exist requiring a variance.

(6) A narrative explaining how the requested variance is consistent with the spirit, purpose, and intent of this chapter, such that public safety is secured, and substantial justice is achieved.

(7) A certification that the requested variance, if granted, will not allow an increase or extension of an existing nonconforming structure or use of land.

(8) A certification that the requested variance, if granted, will not allow a use of the land otherwise prohibited in the applicable zoning district to occur on the property.

(9) A listing of the names and addresses of all of the persons listed in section 36-362(b) who are entitled to receive notice. The list shall be supplied by the applicant and shall be current according to the most recent tax listing abstract as filed in the office of the Dare County tax supervisor.

(h) In addition to the foregoing requirements, when considering a variance from chapter 16, section 16-4, (e) of this Code, flood damage prevention, the board shall follow the additional provisions of such article.

(i) *Amendments.* The owner of land which has been granted a variance may apply for an amendment to the previously granted variance. All of the standards for granting a variance shall apply to the consideration of an amendment to an existing variance. An amendment may only be granted if:

(1) The circumstances on the property have substantially changed since the time of the granting of the prior variance in such a way that the use of the property in accordance with prior variance is itself an unnecessary hardship; or

(2) The amendment requested will be equal to or less of a variance than the previously granted variance.

**Sec. 36-368. Appeals from decisions of the Board of Adjustment.**

(a) *Decisions of the board.* The board shall determine contested facts and make its decision within a reasonable time.

1 (1) *Basis for decision.* Every quasi-judicial decision of the board shall be based  
2 upon competent, material, and substantial evidence in the record.

3  
4 (2) *Form of decision.* Each quasi-judicial decision shall be reduced to writing and  
5 reflect the board's determination of contested facts and their application to the  
6 applicable standards. The written decision shall be signed by the chair or other  
7 duly authorized member of the board. In absence of specific board direction, the  
8 written decision will be prepared by the town via the clerk to the board after  
9 review by the town's attorney and board attorney and will be presented to the  
10 chair for execution if the chair deems it appropriate. The chair, in his/her  
11 discretion, may seek the approval of the board for all or any portion of a decision  
12 so prepared. Otherwise, the board may at the time of its oral decision direct any  
13 party to prepare a proposed written decision and may consider the written  
14 decision at its next regular meeting.

15  
16 (3) *Reasonable time.* The board shall endeavor to reach a decision and file its  
17 written final decision as soon as practicable and shall not withhold a decision  
18 without a reasonable basis. However, the determination of whether the board's  
19 decision has been made within a reasonable time shall take into consideration all  
20 of the surrounding circumstances including, but not limited to, additional  
21 meetings necessary to consider evidence or findings of fact and continuance  
22 requests by the applicant or appellant. The board's decision shall not be  
23 considered to be made greater than a reasonable time if a vote on the matter is  
24 taken within 45 days following the completion of the public hearing and a final  
25 written decision is filed within 45 days following the vote of the board. If the  
26 circumstances warrant, additional time may be reasonable to take a vote or make a  
27 final decision.

28  
29 (4) *When effective.* A board decision is effective upon filing the written decision  
30 with the clerk to the board. The board decision is filed the later of the date it is  
31 received by the clerk to the board or the date it is served by the clerk to the board.

32  
33 (5) *How served.* The decision of the board shall be delivered by personal delivery,  
34 electronic mail, or by first-class mail to the applicant, property owner, and to any  
35 person who has submitted a written request for a copy, prior to the date the  
36 decision becomes effective. The person required to provide notice shall certify  
37 that proper notice has been made.

38  
39 (b) *Appeal to Superior Court.* Every quasi-judicial decision of the board shall be subject  
40 to review by the superior court by proceedings in the nature of certiorari pursuant to G.S.  
41 160A-393. A petition for review shall be filed with the Dare County Clerk of Superior  
42 Court by the later of 30 days after the decision is effective or after a written copy thereof  
43 is given in accordance with subsection (a)(4) of this section. When first-class mail is used  
44 to deliver notice, three days shall be added to the time to file the petition.

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46 **Sec. 36-369. Impartiality of Board of Adjustment members.**

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A member of the board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

**ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.**

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

**ARTICLE V. Severability.**

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the Town of Southern Shores, North Carolina which shall remain in full force and effect.

**ARTICLE VI. Effective Date.**

This ordinance amendment shall be in full force and effect from and after the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

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\_\_\_\_\_  
Town Attorney

Date adopted:

\_\_\_\_\_  
Motion to adopt by Councilmember:

\_\_\_\_\_  
Motion seconded by Councilmember:

Vote: \_\_AYES\_\_NAYS