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Town of Southern Shores

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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 19th 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

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.