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Alice Derian, ICMA-CM
Town Manager

Aldermen:
Richard Grant
Tom Leonard
Laura Olszewski
Connie Pletl

Nancy Avery
Interim Town Clerk

Agenda	Public
Item:	Hearing
Date:	09 04 2024

Issue: Public Hearing: Case # RZ24-000001

Rezoning Application by Toby Keeton AIA on behalf of Daniel Sooy to rezone
1090 New River Inlet Rd (774-27.3) from R-20 to R-15

Presented by: Deborah J. Hill MPA AICP CFM CZO – Planning Director

On July 11, 2024, the Planning Board held a special meeting and:

1. Conducted a review of this proposed zoning map amendment;
2. Advised and commented on whether the proposed action is consistent with the Town’s Comprehensive Plan and any other officially adopted plan that is applicable (*See CAMA LAND USE PLAN: CONTINUING PLANNING PROCESS p. 6-1, 6-2*); and
3. Provided the following written recommendation to the Board of Aldermen that addresses plan consistency and other matters as deemed appropriate by the Planning Board and
4. Considered the following Consistency and Reasonableness Statement, based upon the property history, compatibility with the Comprehensive Plan, Unified Development Ordinance, Response to Standards contained in the Staff Report and the applicant’s submittal.

Consistency and Reasonableness Statement

The proposed zoning amendment is not consistent with the Comprehensive Plan because:

- **Promoting the development of properties that have been deemed unbuildable due to either state or local development regulations is inconsistent with:**
P. 25 The Town, in an effort to protect the eco-friendly environment that the Town has established over the years, may aim to secure lots through either acquisition, grant-funded purchase, or donation. These lots may be secured as open space easements in perpetuity. Special attention will be given to acquire properties that have been deemed unbuildable due to either state or local development regulations; and
P. 52 The Town supports relocation of structures endangered by erosion, if the relocated structure will be in compliance with all applicable local, state, and federal policies and regulations including the Town’s zoning and subdivision ordinances.

Relocation of structures should comply with density standards outlined within the future land use map section of this plan.

- **The application is inconsistent with Future Land Use Map Low Density requirement.** Allowable density is 2 dwelling units per acre or 1du/.5 acres. The proposed density is 1 du or 2 du/.36 acres.
P. 55 The Town supports the land use densities that are specified on page 4-13 of this plan. Through enforcement of the zoning ordinance, these densities will minimize damage from natural hazards and support the hazard mitigation plan. The Future Land Use Map 11-B on p. 4-18 indicates the property is classified as Low Density.
Future Land Use Compatibility Matrix p. 4-15 R-20 is generally consistent with Low Density Residential; the proposed amendment to R-15 is generally consistent with both Low and Medium Density.

The proposed zoning amendment is not reasonable and not in the public interest because it does not support the Comprehensive Plan policies above and because:

1. The challenge is the effect of the erosion rate in that area of 3.0 ft/year, which is used to calculate the CAMA setback from the FLSNV or the Static line, $3.0 \times 30 = 90$ feet. From 1993 to 2023, thirty years, the platted size of the lot, as measured from the approximate high water line – which has also receded - has been reduced from 26,630 sq ft to 15606.8 sq ft. or 41.4%.

Comparing the approximate mean high water line from a plat of survey by Charles Riggs PLS dated 7/19/2000 and the shared boundary “leg” of Gairy I. Canady PLS original plat 6/16/21, In 2000, the distance to the mean high water line was 171.15 feet and in 2021, 109.2 feet, which indicates a loss of 61.95 feet in 21 years.

2. Amending zoning setbacks and granting variances in high erosion rate areas to allow for development is counterintuitive to the higher standards that the Town has adopted in its hazard mitigation planning to protect the community.
3. This amendment does not improve consistency with the long-range plan, nor improve the tax base, nor preserve environmental and/or cultural resources, nor facilitates a desired kind of development, and is therefore not in the public interest; and
4. Changed conditions warranting the amendment would be a reduced erosion rate and a successful beach nourishment project, with owners investing in sand fencing and planting sea oats, resulting in a stable building envelope.
5. Rezoning may restrict access for emergency access vehicles.

The Planning Board unanimously recommended denial. Staff suggests the following motion:

I move to adopt the ordinance as presented and to **DENY** the proposed rezoning to an R-15 district. I find it to be **INCONSISTENT** with the purposes and intent of the Comprehensive Plan because it promotes the development of properties that have been deemed unbuildable due to either state or local development regulations, and the proposed density is not in line with those recommended for Future Land Use Map Low Density requirement. I also find **DENIAL** of the rezoning request is reasonable and in the public interest because amending zoning setbacks and granting variances in high erosion rate areas to allow for development is counterintuitive to the higher standards that the Town has adopted in its hazard mitigation planning to protect the community and rezoning may restrict access for emergency access vehicles.

Alternative Motion for Approval

I move to **APPROVE** the proposed rezoning to a R-15 district. While I find it to be **INCONSISTENT** with the purposes and intent of the Comprehensive Plan because it promotes the development of properties that have been deemed unbuildable due to either state or local development regulations, and the proposed density is not in line with those recommended for Future Land Use Map Low Density requirement, I find **APPROVAL** of the rezoning request is reasonable and in the public interest because the proposal is consistent with the desired character of the surrounding community and the density will not adversely impact the adjacent neighborhoods.

STAFF REPORT

STAFF REPORT CONTACT INFORMATION

Deborah J. Hill, MPA AICP CFM CZO

DOCKET/CASE/APPLICATION NUMBER

Case # RZ24-000001

APPLICANT - Kersting Architecture

PROPERTY OWNER - DANIEL SOOY ¹⁻³

Board of Aldermen Meeting (PUBLIC HEARING)

09 04 2024, 11:30 PM

PROPERTY ADDRESS

1090 New River Inlet Rd

BRIEF SUMMARY OF REQUEST

Michael Ross Kersting Architecture, PA (Kersting Architecture), applicant, on behalf of Daniel and Rebekah Sooy, property owners, is requesting the subject property, 1090 New River Inlet Rd, North Topsail Beach, NC, be rezoned from R-20 Residential District to R-15 Residential District. ⁴⁻⁶

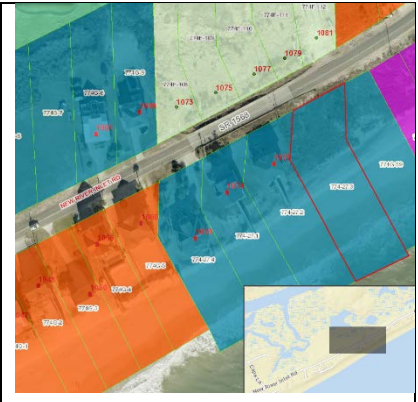


Figure 1: 1090 New River Inlet Rd Location
Source: Onslow County GIS with layers 2022 Aerials and Zoning

SURROUNDING ZONING & LAND USE

N: CUR-15 SINGLE FAMILY

E: R-20 SINGLE FAMILY

S: Atlantic Ocean

W: R-20 SINGLE FAMILY

EXISTING ZONING	EXISTING LAND USE	SITE IMPROVEMENTS	SIZE OF PROPERTY
R-20 RESIDENTIAL DISTRICT	CAMA LUP MAP 10B EXISTING LAND USE p. 3-34 VACANT	NONE	0.36 acres/15606.8 sq ft G. Canady PLS 8/9/2023 ⁶ 0.611 acres/26,630 sq ft MB 28 P 85 02/20/1992 ⁷

PROPERTY HISTORY

The previous owner, Mr. Egland submitted a CAMA Minor Permit application in 2007; however, the permit was denied as the proposed development did not meet the required setback. ⁸

The current owner, Daniel Sooy purchased the property 19-MAY-21 as recorded in DB 5466 P 310. ¹⁻³

Access is available from New River Inlet Rd (SR 1568). ⁶

The former 40' access easement shown on MB 28 PG 85⁷ has been abandoned by the filing of DB 5873 PG 486⁹ (filed 11/17/2022); DB 5873 P489¹⁰; and DB 5873 PG 533¹¹ (filed 11/17/2022) by and between Mr. Daniel Sooy and his neighbors, Mr. Clifford W. Cunniff and Mr. Michael Francis Fleming.

15' of 30' roadway right of way (MB 5 P 48)¹² was vacated by the Withdrawal and Revocation of Roadway Dedication by DB 6002 P 430¹³ recorded 7/20/2023.

This area is served by ONWASA water and sewer service. The property is within the Special Flood Hazard Area: AE12; VE13/15 (Map Number: 3720428700K; eff 6/19/2020) and CBRS L06 as of 10/1/1983. The property is within CAMA's Ocean Hazard AEC with an erosion rate of 3.0 and small structure setback of 90 feet.

On the survey by Gairy Canady PLS dated 8/9/2023⁶, the First Line of Stable Natural Vegetation was marked over a year ago, 6/27/2023 and should be updated.

COMPATIBILITY with the COMPREHENSIVE PLAN

Promoting the development of properties that have been deemed unbuildable due to either state or local development regulations is inconsistent with:

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P. 52 The Town supports relocation of structures endangered by erosion, if the relocated structure will be in compliance with all applicable local, state, and federal policies and regulations including the Town's zoning and subdivision ordinances. Relocation of structures should comply with density standards outlined within the future land use map section of this plan.

The application is inconsistent with Future Land Use Map Low Density requirement. Allowable density is 2 dwelling units per acre or 1du/.5 acres. The proposed density is 1 du or 2 du/.36 acres.

P. 55 The Town supports the land use densities that are specified on page 4-13 of this plan. Through enforcement of the zoning ordinance, these densities will minimize damage from natural hazards and support the hazard mitigation plan. The Future Land Use Map 11-B on p. 4-18 indicates the property is classified as Low Density.

Future Land Use Compatibility Matrix p. 4-15 R-20 is generally consistent with Low Density Residential; the proposed amendment to R-15 is generally consistent with both Low and Medium Density.

COMPATIBILITY with the UNIFIED DEVELOPMENT ORDINANCE

The lot meets the minimum dimensional requirements for R-15 zoning, pursuant to UDO Table 5-1 Dimensional Requirements.

RESPONSE TO STANDARDS

Staff's analysis of this application is in response to the policy guidelines outlined in § 3.08.06 ACTION BY THE PLANNING BOARD (Ord. passed 11-2-2011; Ord. passed 7-1-2021).

(A) Every proposed amendment, supplement, change, modification or repeal of this ordinance shall be referred to the Planning Board for its recommendation and written report to the Board of Aldermen.

(B) The following policy guidelines shall be followed by the Planning Board concerning zoning amendments and no proposed zoning amendment will receive favorable recommendation unless:

- (1) The proposal will place all property similarly situated in the area in the same category, or in appropriate complementary categories;

Statement by Applicant: The lot exists in a small block of R-20 zoned properties which is surrounded by R-5, R-10, and R-15 blocks. Thus, the proposed R-15 zoning would be compatible in this area. (see attached letter from the applicant for further information).

The Owner of the subject property has approached the Owner's of 1104 and 1078 New River Inlet, (adjoining properties on either side of subject property, currently zoned R-20), who have stated they would be amenable to the requested rezoning- thus avoiding so-called "spot zoning."

Staff Analyses: The immediate area consists of R-20 zoned property: the oceanfront properties along New River Inlet Road – 1070, 1074, 1078, 1090 and 1105 New River Inlet Road. The properties on the soundside and separated by a bridge and elevated portion of New River Inlet Road (SR 1568) are zoned CUR-15 with single family only. (Reference: Onslow County GIS 2022 aerial with zoning layer).

- (2) There is convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest and not merely in the interest of an individual or small group;

Statement by Applicant: The oceanside properties along the New River Inlet corridor are predominantly R-15, R-10, and R-5 zones. These zones require a 20' front yard setback. Thus, rezoning from R-20 to R-15 in this area will provide a more consistent streetscape, as well as provide better view corridors for adjacent oceanfront properties. Relaxing the street side setbacks also allows structures to be built further away from the fragile dune environment and further upland away from storm surges. It also decreases the amount of impervious surfaces needed as driveways and other hardened access surfaces from the street may be shortened.

Staff Analyses: Future Land Use Map 11-B p. 4-18 classifies the property as Low Density Residential. Future Land Use Compatibility Matrix p. 4-15 R-20 is generally consistent with Low Density Residential; R-15 is generally consistent with both Low and Medium Density. Appendix A Page 7 of 7, North Topsail Beach Zoning District Densities indicate R-20 is SFR; R-15 is SFR or Duplex.

- (3) There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change (when a new district designation is assigned, any use permitted in the district is allowable, so long as it meets district requirements, and not merely uses which applicants state they intend to make of the property involved);

Statement by Applicant: The proposed single-family use is compatible with surrounding residential uses.

Staff Analyses: The purpose of R-15 is to provide for single-family and duplex residential developments where central water or central sewer, but not both are available. (reference: UDO § 3.04.04). The purpose of R-20 district is to allow single-family only (low-density) residential and recreational uses to be protected from undesirable future development and residential developments not having central water and sewer will occur in sufficiently low density to ensure a healthful environment. (reference: UDO § 3.04.03).

- (4) There is convincing demonstration that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed change; or

Statement by Applicant: The increased buildable area afforded by the 20' front yard setback associated with an R-15 zone will allow for a structure to be in keeping with the architectural proportions of surrounding homes.

Staff Analyses: The adjacent structures at 1074 (built in 1993) and 1078 New River Inlet Road (built in 2000) met the 40-foot easement right-of-way. Planted trees and parked cars within the easement limit emergency vehicle access behind the bridge. Rezoning from R-20

to R-15, shortening the front setback from 30 feet to 20 feet would further restrict emergency vehicle access to 1078 New River Inlet at the elevated bridge.

The former 40' access easement shown on MB 28 PG 85 has been abandoned by the filing of DB 5873 PG 486 (filed 11/17/2022); DB 5873 P489; and DB 5873 PG 533 (filed 11/17/2022) by and between Mr. Daniel Sooy and his neighbors, Mr. Clifford W. Cunniff and Mr. Michael Francis Fleming.

- (5) The proposed change is in accord with any land use plan and sound planning principles.

Statement by Applicant: The proposed R-15 zoning designation is deemed generally compliant with the low-density residential use recommended by the CAMA Land Use Plan. The currently non-conforming lot would better reflect the required dimensional standards of the proposed R-15 zone (the lot is surveyed at 15,606.8 SF) of the Town of North Topsail Beach zoning ordinance.

Staff Analyses:

The challenge is the effect of the erosion rate in that area of 3.0 ft/year, which is used to calculate the CAMA setback from the FLSNV or the Static line, $3.0 \times 30 = 90$ feet. From 1993 to 2023, thirty years, the platted size of the lot, as measured from the approximate high water line – which has also receded - has been reduced from 26,630 sq ft to 15606.8 sq ft. or 41.4%.

Comparing the approximate mean high water line from a plat of survey by Charles Riggs PLS dated 7/19/2000 and the shared boundary “leg” of Gairy I. Canady PLS original plat 6/16/21, In 2000, the distance to the mean high water line was 171.15 feet and in 2021, 109.2 feet, which indicate a loss of 61.95 feet in 21 years.

ATTACHMENTS

1. BK 5466 PG 310-312 p. 8-10
2. Onslow County Tax Parcel Report p. 11
3. Onslow County Appraisal Card p. 12-14
4. Application p. 15-17
5. Toby R. Keeton, AIA letter dated May 3, 2024 w/agent authorization p. 18-23
6. Revised Boundary Survey by Gairy Canady dated 8/9/2023 p. 24
7. MB 28 PG 85 p. 25
8. D J Hill email April 28, 2014 9:43 AM p. 26-27
9. DB 5873 PG 486 p. 28-29
10. DB 5873 P489 p. 30-31
11. DB 5873 PG 533 p. 32-33
12. MB 5 P 48 p. 34
13. DB 6002 P 430 p. 35-38
14. Document “Mail-Daniel Sooy-Outlook” 7/11/24 9:45 AM p. 39-41
15. Draft Ordinance p. 42-44
16. Affidavit of Publication for 8 8 2024 p. 45
17. Notice re-published 8/17 and 8/24 for Public Hearing on 9 4 2024