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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	Consent
Item:	Agenda
Date:	09 04 2024

Planning Board Committee Report
Susan Meyer, Chair

PRESENT: Susan Meyer – Chair, Fred Fontana – Vice Chair, Scott Morse, Lisa Brown, Terri Ward. Staff: Deb Hill - MPA AICP CFM CZO - Planning Director, Kate Winzler - CMC, NCCMC - Clerk to the Planning Board

The Planning Board held their regular meeting on Thursday, July 11, 2024, at 6:09 p.m.

DISCUSSION: Training: Zoning Ordinances Presentation for Planning Officials (APA Video)

PUBLIC COMMENT: No citizens addressed the Planning Board during the public comment.

Rezoning Application #RZ24-000001: 1090 NEW RIVER INLET RD (R20 to R15)

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.

Planning Director Hill reviewed the statutory language regarding plan consistency statements in Chapter 160D, Section 160D-604. Planning board review and comment. She presented the staff report and recommended that:

1. That the Planning Board conduct a review of this proposed zoning map amendment;
2. That the Planning Board advise and comment on whether the proposed action is consistent with the Town’s Comprehensive Plan and any other officially adopted plan that is applicable; and
3. That the Planning Board provide a written recommendation to the Board of Aldermen that addresses plan consistency and other matters as deemed appropriate by the Planning Board and
4. Consider a proposed 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.

The Planning Board members questioned Planning Director Hill.

Mr. Sooy asked the Planning Board to consider that the land was lost to the ocean. Mr. Sooy handed out three pictures illustrating the beach renourishment activity that he performed after Hurricane Florence washed out the dune. He explained the first image was a Google image illustrating the washed out dune in 2019, the second image from 2023 included the beach renourishment activity he undertook on the right as well as his neighbor's, Mr. Sutton's property on the left side, and the third image showed a large dip in the dune that related to an easement where people were walking between Mr. Sooy's and Mr. Sutton's property to access the beach. The post and rope in the picture illustrated the property line and utility boxes at the end. Mr. Sooy had the road right-of-way easement established in 1959 removed, with the intention of stopping people from walking across his property. The 1959 easement was intended to connect the sound to the ocean. He explained that Mr. Charles Riggs had applied to build a beach access to stop people from walking over the dune.

Mr. Sooy continued and explained that he removed the forty-foot easement from his property only, not his neighbors' properties. It was created for the properties to have a shared driveway. Mr. Sooy's neighbors' gravel driveway with railroad ties, as well as a utility line tensioner placed in that area both hindered access to the continuation of the driveway through his property.

Mr. Sooy expressed his belief that all the properties should be rezoned based upon the non-conforming dimensional requirements. That would change the minimum setback distance from the road, which would be beneficial to Mr. Sooy and his neighbors, since he wanted to build closer to the road.

Mr. Toby Keaton, of Kersting Architecture in Wilmington, North Carolina, addressed the Planning Board. Mr. Keaton explained that they had not begun a building design pending the rezoning request. He suggested that zoning regulations were to maintain consistency with the surrounding area. Mr. Keaton expressed the idea of increasing the buildable area toward the street to design a building more consistent with the surrounding areas and explained that the next step was to make a CAMA application with a building design for approval. Mr. Keaton suggested that the denied 2007 plan was not relevant to this application, and that the non-conforming lot on the year-old survey did present a buildable area. He suggested that emergency vehicle access in his experience was more of a right-of-way issue, and that other things such as mailboxes, vegetation, and fences could also impede emergency vehicle access in that area, so rezoning was not an applicable comparison. Mr. Keaton suggested that his calculation of rezoning this lot to R-15 density was closer to low density than medium density, at 2.75 dwelling units per acre. He also suggested that the entire context of the neighborhood within the CAMA Land Use Plan was medium density, except for these five adjacent lots, of which Mr. Sooy's lot was the largest at fifteen thousand square feet. Mr. Keaton then suggested that one unit per fifteen thousand square feet would never reach low density. He conceded that a duplex built on the lot would increase density. He explained that he did not know if there was potential for a conditional rezoning to be single-family.

Discussion, questions and answers continued between the Planning Board members, Mr. Sooy, Mr. Keaton and Planning Director Hill.

Chair Meyer asked Clerk Winzler to poll the Planning Board as to whether the application was or was not consistent with the comprehensive plan, the results as follows:

Roll call	Vote
Ms. Brown	No
Mr. Morse	Is Not
Chair Meyer	Is Not
Vice Chair Fontana	Is Not
Ms. Ward	Is Not

The unanimous consensus of the Planning Board is that the application is not consistent with the Comprehensive Plan.

Planning Director Hill asked the Planning Board if they would like to have a discussion or adoption of the statements justifying why it is not consistent.

Chair Meyer asked Clerk Winzler to poll the Planning Board as to whether the application was or was not reasonable, the results as follows:

Roll call	Vote
Ms. Ward	Is Not
Vice Chair Fontana	Is Not
Chair Meyer	Is Not
Mr. Morse	Is Not
Ms. Brown	Is Not

The unanimous consensus of the Planning Board is that the application is not reasonable.

There was discussion regarding the proper protocol for formulating the required statements and the motion. The Planning Board deliberated and discussed several reasons that the rezoning application was not in the public interest, including:

- The erosion rate.
- It is counterintuitive for the Town's standards of hazard mitigation planning.
- Removing the reference to the 2007 application denial.
- Including the confirmed erosion rate by the 2007 and 2021 plats of survey.
- The restriction of emergency vehicles from accessing the property.

Ms. Brown proposed that the Board exclude the first sentence in the first paragraph and the last sentence in the second paragraph.

Vice Chair Fontana made a motion that the proposed rezoning is not reasonable in the public interest because it does not support the comprehensive plan policies as listed in number one by removing the first sentence in paragraph one and the last sentence in the second paragraph under one, and items two, three, and four, and then also adding rezoning would restrict access to the property for emergency vehicles. Mr. Morse seconded the motion.

Ms. Brown requested that the word “would” be changed.

Vice Chair Fontana revised the motion to the proposed rezoning is not reasonable in the public interest because it does not support the comprehensive plan policies as listed in number one by removing the first sentence in paragraph one and the last sentence in the second paragraph under one, and items two, three, and four, and then also adding rezoning may restrict access to the property for emergency vehicles. Ms. Ward seconded the motion. The motion passed unanimously, 5-0.

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 1 du/.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.

Ms. Ward made a motion to send our recommendation to not approve the proposed zoning amendment to the Board of Aldermen. Mr. Fontana seconded. The motion passed unanimously, 5-0.

ADJOURNMENT: The Planning Board Meeting adjourned at 8:33 p.m.

Due to impending Tropical Storm Debby and the Declaration of a State of Emergency in the Town, the Planning Board regular meeting scheduled for Thursday, August 8, 2024, was cancelled and posted by the Deputy Town Clerk Kate Winzler on Tuesday, August 6, 2024.