



**Town of North Topsail Beach
Planning Board Special Meeting**

**Thursday, July 11, 2024, at 6:00 PM
Town Hall - 2008 Loggerhead Court, North Topsail Beach, NC 28460**

(910) 328-1349 | www.northtopsailbeachnc.gov

PRESENT: Susan Meyer – Chair, Fred Fontana – Vice Chair, Scott Morse, Lisa Brown, Teri Ward

ABSENT: None.

I. CALL TO ORDER

Chair Meyer called the meeting to order at 6:09 p.m.

II. ADOPTION OF AGENDA

Ms. Ward made a motion to adopt the agenda. Mr. Morse seconded the motion. There was discussion about adjusting the agenda. The motion failed unanimously, 0-5.

Vice Chair Fontana made a motion to change the agenda by moving item number VI. make that become item number V. and item number V. will then become item number VI. Ms. Ward seconded the motion. The motion passed unanimously, 5-0.

III. APPROVAL OF MINUTES: June 6, 2024, Regular Meeting Minutes

Mr. Morse made a motion to approve the minutes from last meeting. Ms. Brown seconded the motion. The motion passed unanimously, 5-0.

IV. PUBLIC COMMENT

None. Mr. Daniel Sooy chose to speak during the rezoning section.

V. DISCUSSION

The Planning Board watched the APA Video: Zoning Ordinances Presentation for Planning Officials

VI. NEW BUSINESS: Rezoning Application #RZ24-000001: 1090 New River Inlet Rd (R20 to R15)

Planning Director Hill gave a prelude to the staff report. She explained that the Planning Board was responsible for writing their zoning map amendment recommendation in the format of a plan consistency and reasonableness statement to document that the Board considered the comprehensive plan in that decision. Ms. Hill explained the handouts provided to the Board, the applicant, and the applicant's architect (attached). She read aloud "For a plan that also serves as a land use plan mandated by the Coastal Area Management Act (CAMA), G.S. 160D-501 also clarifies that the plan amendment is not effective for CAMA purposes until it goes through the CAMA plan review and approval process."

Mr. Fontana asked if the Board recommended the rezoning, would CAMA also have to approve the rezoning.

Planning Director Hill confirmed that the rezoning would have to be submitted to CAMA, and explained that she had reached out to CAMA to find out what their procedures were relative to General Statute 160D and was awaiting a response.

Planning Director Hill continued, referencing pages 6-1 and 6-2 of the Town's CAMA Land Use Plan, highlighting the items the plan lists for consideration in deliberation of all zoning petitions. Planning

Director Hill credited the last page of the handouts to the University of North Carolina School of Government Chapter 160D Guidance document explaining how to draft a consistency and reasonableness statement. She emphasized the importance of documenting that the Planning Board compared the rezoning application to the comprehensive plan, identified whether the application was or was not consistent with the comprehensive plan, and specified the areas that was or was not consistent. The reasonableness statement should indicate whether the application was reasonable, whether it was in the public interest, and why.

Planning Director Hill recommended that the Planning Board work through the two statements first, then make the recommendation, and finally adopt the two statements to be presented to the Board of Aldermen.

Planning Director Hill then presented the Staff Report.

The Planning Board asked Planning Director Hill questions.

Mr. Fontana asked if the lot could be developed currently, zoned as R-20.

Planning Director Hill responded that she could not make that determination without a complete application package. The survey created by Mr. Canady included in the packet was more than six months old, and by CAMA regulations the first line must be within six months to be considered accurate.

Ms. Meyer asked if 1078 New River Inlet Road understood the potential emergency vehicle effects.

Planning Director Hill responded that unless the owners read the report, they may be unaware. Ms. Hill explained that she discussed emergency vehicle access to these lots with the Fire Chief.

Ms. Meyer asked if they could access water or sewer.

Planning Director Hill replied that both were available, however the demand on utilities, the impact on the roadways, infrastructure, emergency services, et cetera from increased density should be considered.

Ms. Ward asked if rezoning from R-20 to R-15 would make emergency vehicle access more challenging.

Planning Director Hill confirmed.

Ms. Ward asked how taking action to reduce the erosion rate and spot zoning would impact access.

Planning Director Hill explained the access issue was related to the build-out percentage, and noted there were trees planted and cars parked within was used to be a forty-foot accessway to the surrounding properties, further limiting access.

Mr. Fontana suggested that the erosion rate of three feet per year would make any development along the oceanside of New River Inlet Road challenging.

Planning Director Hill confirmed, and suggested a successful beach renourishment program could potentially bring back formerly unbuildable lots within a few years.

Mr. Fontana asked if this property was in the cobra zone (CBRS).

Ms. Hill confirmed.

Mr. Fontana suggested that insurance may be difficult to obtain, and asked if that had any effect on the Board's rezoning decision.

Ms. Hill answered no. The Board should consider the CAMA Land Use Plan, which is the comprehensive plan. She posed: did the application meet the five requirements per the North Carolina General Statute (NCGS), and the Unified Development Ordinance (UDO).

Ms. Meyer asked if the erosion rate was the same for the surrounding lots.

Ms. Hill replied that she did not know the boundary of the erosion rate and would have to check.

Ms. Meyer asked if the surrounding structures were damaged over fifty percent, would they have to meet the same setbacks.

Ms. Hill explained that if the erosion rate is 3.0, then the small structure setback is ninety feet.

Ms. Meyer asked if rezoning this property would be preferential treatment.

Ms. Hill replied that the other properties would have to go through the same process, and without those applications, she was unable to make that determination.

Mr. Sooy, the owner of the subject property, addressed the Planning Board. He asked the Planning Board to consider that the land was lost to the ocean. Mr. Sooy handed out three pictures (attached) 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.

Ms. Ward asked if a house could be built if the zoning did not change.

Mr. Keaton confirmed yes, a place to sleep, a place to eat, and a bathroom would fit according to the year-old survey.

Ms. Ward asked if the purpose of the rezoning would be to build something bigger with more room.

Mr. Keaton explained that the building envelope was a wedge shape, and the resulting structure would look weird.

Mr. Fontana stated that the benefits of rezoning would be to build closer to the street and a larger house.

Mr. Keaton confirmed and explained the shape would be more of a box than a wedge to be more consistent with the surrounding area.

There was discussion about the hypothetical existing dimensions of the building envelope and the potential for an increased building envelope.

Mr. Fontana requested the potential square footage of the existing envelope versus the rezoned envelope.

Mr. Keaton five hundred square feet per floor plate and mentioned the rezoned proportions would allow for better architecture.

There was discussion about emergency access limitations.

Planning Director Hill explained that to place conditions on this legislative decision situation would be illegal per North Carolina General Statute 160D which explicitly standardized what the Planning Board can and cannot do, such as including the analysis of the application and a written recommendation to the Board of Aldermen.

Mr. Sooy spoke again about the beach renourishment activity he performed on his lot. He said that he understood the rezoning limitations, but he would not build a duplex.

There was further discussion regarding the high erosion rate of the area.

Ms. Ward stated the application was counterintuitive to the Town's mitigation standards.

Mr. Keaton replied that it would allow for wiggle room away from CAMA's ninety-foot setback.

Ms. Ward asked Ms. Hill if the lot remained as R-20, and they built what they could, how would that relate to the standards of the Town.

Planning Director Hill replied that if they built within the existing envelope and it met the Building Code, then it would meet the Building Code. Ms. Hill pointed out the property owner also had the option of requesting a variance from the ninety-foot setback from the Coastal Resource Commission (CRC). Mr. Keaton agreed, and said he believed they must exhaust all other options prior to applying to the CRC. Denying the rezoning request might fulfil that prerequisite.

The Planning Board took a recess at 7:50 p.m.

The Planning Board returned at 7:58 p.m.

The Planning Board members chose to have a discussion prior to deciding whether the application was or was not consistent with the comprehensive plan.

Mr. Fontana asked Planning Director Hill what zoning the comprehensive plan required for this property and this stretch of New River Inlet.

Planning Director Hill explained that the comprehensive plan was the big plan for the Town, rather than specific lots, except for where it listed this property and the properties beside it as low density in the future land use map. Ms. Hill pointed out policy statements such as numbers 25 and 55 in the comprehensive plan were the enforceable items within the plan. She explained that the policy statements within the CAMA Land Use Plan carry the same weight, if not more than the zoning ordinance.

Mr. Fontana asked Planning Director Hill about the accuracy of the claim Mr. Keaton made that the rezoning would be closer to low density than medium density.

Planning Director Hill explained that R-15 zoning allows for duplexes, and the Planning Board must consider all uses in their decision. The definition of low density is two units per acre, or one unit per half acre. Medium density is four units per acre, or one unit per quarter acre. Therefore, a duplex would be medium density.

Mr. Keaton suggested that within a table of the CAMA Land Use Plan, R-15 was generally consistent with the type of development that should happen on this property. The dimensional characteristics of the lots in this area would never be consistent with low-density.

Planning Director Hill explained that it was up to the Planning Board to determine whether the proposal met the low-density requirements of the future land use plan. If it did not meet the requirements, and the Planning Board wanted to recommend approval anyway, they could provide a justification. If the Board of Aldermen approved the rezoning to the higher density, their decision would automatically amend the future land use plan.

There was discussion about the density of R-20 as low density, and R-15 as being generally consistent with low and medium density.

Ms. Ward stated this lot did not meet the low-density criteria.

Planning Director Hill agreed.

Ms. Brown offered that to be consistent with the comprehensive plan, they were saying it was consistent with low-density residential.

Mr. Fontana offered that if they developed the property in a low-density form, it would be consistent, but rezoning would not preclude them from building a medium-density structure which would then make it inconsistent.

Ms. Meyer mentioned the topic of spot zoning and the amiable discussions the applicant had with surrounding property owners, noting that discussion did not mean the other owners would apply for rezoning.

Planning Director Hill agreed and noted that they would be required to meet the same five conditions from the UDO and be consistent with the comprehensive plan. She suggested that rezoning other properties to avoid spot zoning would circumvent the objections of spot zoning and suggested that in some cases there might be a justifiable reason for spot zoning, such as allowing for a neighborhood corner store when the neighborhood desired one, if it served the public interest. The allowable use table would then be amended to support stores in residential zoning.

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

Ms. Brown

Vote

No

Mr. Morse	Is Not
Chair Meyer	Is Not
Vice Chair Fontana	Is Not
Ms. Ward	Is Not

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:

<u>Roll call</u>	<u>Vote</u>
Ms. Ward	Is Not
Vice Chair Fontana	Is Not
Chair Meyer	Is Not
Mr. Morse	Is Not
Ms. Brown	Is Not

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. *

**Clerk’s note: The statements referred to in the above motion are from the Staff Report, STAFF RECOMMENDATION, Consistency and Reasonableness Statement, reasonableness section as follows:*

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 x 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 15,606.8 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 to the property for emergency vehicles. [Added]*

Ms. Brown made a motion that we use the language that is on page two here with compatibility with the comprehensive plan. Mr. Morse seconded the motion.

Mr. Fontana asked Ms. Brown to restate the motion.

Ms. Brown restated the motion is to the language that we're debating here which is to say the proposed zoning amendment is not consistent with the comprehensive plan because and then take the block of information that Deb has at the top of the second page of this packet and use that information as our reasoning, starting with "Promoting." ** The motion passed unanimously, 5-0, as follows:

<u>Roll call</u>	<u>Vote</u>
Ms. Ward	Yes
Vice Chair Fontana	Yes
Chair Meyer	Yes
Mr. Morse	Yes
Ms. Brown	Yes

***Clerk's note: The block of information referred to in the above motion is from the Staff Report, page 2 Compatibility with the COMPREHENSIVE PLAN, as follows:*

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.

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.

VII. ADJOURNMENT

Ms. Ward made a motion to adjourn. Ms. Brown seconded the motion. The motion passed unanimously, 5-0.

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

APPROVED

This 1st day of August 2024

CERTIFIED

This 1st day of August 2024

Susan Meyer, Chair

Kate Winzler, Clerk to the Planning Board

Statutory Authorization

The statutory language regarding plan consistency statements in Chapter 160D, Section 160D-604 and 160D-605 is provided below for quick reference.

160D-604. Planning board review and comment.

...

(d) *Plan consistency.* When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

- **CAMA review:** For a plan that also serves as a land use plan mandated by the Coastal Area Management Act (CAMA), G.S. 160D-501 also clarifies that the plan amendment is not effective for CAMA purposes until it goes through the CAMA plan review and approval process.

B) Statements of reasonableness for zoning map amendments: Since 2005, North Carolina statutes also have required the governing board to adopt a statement of reasonableness for each conditional rezoning or other small-scale rezoning. This requirement was designed to assist cities and counties in assessing the case law requirement (from *Chrismon v. Guilford Cty.*, 322 N.C. 611, 370 S.E.2d 579 (1988)) that spot zoning must be "reasonable." G.S. 160D-605(b) simplifies and clarifies this requirement in

- **Factors of analysis:** The statute lists the factors that should be considered in a reasonableness analysis. The factors are suggested and not mandated, as not all factors will be relevant to all rezoning decisions. The factors, listed below as they appear in G.S. 160D-605(b), have generally been adapted from *Chrismon v. Guilford County*, 322 N.C. 611, 627, 370 S.E.2d 579, 589 (1988), which is the leading North Carolina case on spot zoning:
 - i. the size, physical conditions, and other attributes of the area proposed to be rezoned;
 - ii. the benefits and detriments to the landowners, the neighbors, and the surrounding community;
 - iii. the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
 - iv. why the action taken is in the public interest; and
 - v. any changed conditions warranting the amendment

...

- **Using a single motion:** G.S. 160D-605(c) provides that the statement of reasonableness can be approved in the same motion as the plan consistency statement. As a result, a map amendment, plan consistency statement, future land use amendment (if required), and statement of reasonableness for the same proposed development all can be approved in a single motion.



SECTION 6. TOOLS FOR MANAGING DEVELOPMENT

CONTINUING PLANNING PROCESS

This plan provides the framework upon which zoning and subdivision regulations and the capital improvements plan should be based. In fact, the preparation of a land use plan and map is mandated by North Carolina legislation as a prerequisite for zoning for both cities and counties. Specifically, in implementing this plan, the following should serve as guiding land use/planning principles:

- Consider the future land use map as part of the policies included in this plan.
- Consult this plan, including the future land use map, during the deliberation of all rezoning requests and proposed text amendments.
- Consider the following in deliberation of all zoning petitions:
 - All deliberations should consider this plan's goals, implementing strategies, and future land use map.
 - All uses that are allowed in a zoning district must be considered. A decision to rezone or not to rezone a parcel or parcels of property cannot be based on consideration of only one use or a partial list of the uses allowed within a zoning district.
 - Requests for zoning changes should not be approved if the requested change will result in spot zoning.
 - Access management should be considered in all land use/zoning decisions.

SECTION 6. TOOLS FOR MANAGING DEVELOPMENT



- The concept of uniformity should be supported in all zoning deliberations. Uniformity is a basic premise of zoning which holds that all land in similar circumstances should be zoned alike; any different circumstances should be carefully balanced with a demonstrated need for such different treatment.

Specifically, the Planning Board and Board of Aldermen should ask the following questions:

- Is the request in accordance with this plan? Zoning regulations shall be made in accordance with the Town's Comprehensive Plan (NCGS 160A-383). When adopting or rejecting any zoning amendment, the Board of Aldermen shall also approve a statement describing whether its action is consistent with the Town's Comprehensive Plan and any other officially adopted plan that is applicable, and briefly explaining why the Board of Aldermen considers the action taken to be responsible and in the best public interest.
- Will the request have a serious adverse impact on traffic circulation and other infrastructure?
- Will the request have an adverse impact on other Town services, including police protection, fire protection, or public works?
- Will the request have an adverse impact on Onslow County Schools?
- Is there a good possibility that the request, as proposed, will result in lessening the enjoyment or use of adjacent properties?
- Will the request, as proposed, cause serious noise, odors, light, activity, or unusual disturbances?
- Does the request raise legal questions such as spot zoning, hardship, or violation of precedents?
- Does the request adversely impact water quality or other natural resources?
- Will the request adversely impact beach maintenance or access?

PLANNING BOARD WORKSHEET

for drafting

Consistency & Reasonableness
Statement

The proposed zoning amendment [is / is not] consistent with [the current comprehensive plan] because:

1. [identify policies in the plan with which the proposal is or is not consistent];
2. [identify what policy goals this development advances or hinders]; and
3. [identify how the amendment matches up (or does not match up) to the current future land use map].

The proposed zoning amendment [is / is not] reasonable and in the public interest because it supports the [plan] policies above and because:

1. [describe consistency in size, physical conditions, and other attributes of the area proposed to be rezoned];
2. [list benefits and detriments to the landowners, the neighbors, and/or the surrounding community];
3. [describe how the development that would be permissible under the proposed amendment relates to the current development permissible on the tract and to the character of adjoining areas];
4. this amendment [improves consistency with the long range plan, improves the tax base, preserves environmental and/or cultural resources, facilitates a desired kind of development, provides needed housing/commercial area, etc.] and is therefore in the public interest; and
5. [include any changed conditions warranting the amendment]





