

## STATEMENT IN SUPPORT OF PROPOSED ZONING TEXT AMENDMENT

April 1, 2022

We are recent full-time residents of Southern Shores. In 2021, we built our home at 9 10<sup>th</sup> Avenue, in the RS-1 district. The lot was created decades ago, long before our Town's incorporation. The relevant Code sections state that RS-1 residential single-family lots must be a minimum size of 20,000 square feet. Sec. 36-202(d)(1). References to the Town Code are taken from Chapter 36 of the Code of [Zoning] Ordinances, as found in the Municode Library.<sup>1</sup> For your convenience, we have attached the Code provisions for RS-1 Residential lots (36-202). For lots meeting the size requirement, the Code establishes a 30% lot coverage limit. Sec. 36-202(d)(6). The Code does not, however, definitively establish lot coverage percentages for lots that are less than the required 20,000 sq. ft.<sup>2</sup> We propose a Zoning Text Amendment (ZTA) to provide a limited, additional allowance of 35% for lots not meeting the 20,000 sq. ft. requirement. This change has very minimal impact on development in Southern Shores, provides clarity in the Code provisions, and is consistent with other local zoning codes.

In 2015, the Town of Southern Shores created the "Town Code Update Project." The Town published a website for homeowners at <https://www.southernshores-nc.gov/town-code-update-project/>. Although the Town Code had been updated in 2009, by 2015 changes in state and federal laws and regulations suggested a rewrite/Update was appropriate.

The Town retained CodeWright Planners LLC as a consultant for the Update. On October 20, 2015 Town and CodeWright presented as PowerPoint referenced to, and linked as, [Town Code Update Kickoff Presentation 10.20.15](#). In this, the Town states the Update's objectives as:

- **Revise the Town Code**
- **UDO [unified development ordinance] inside the Town Code**
- **Clear, predictable regulations**
- **Increased understanding**

This PowerPoint states, verbatim, in slides titled "Rationale" that:

- There are several aspects of the town code that are obsolete or confusing, and should be removed or clarified

The auxiliary police force provisions, the fee structure for the cemetery, relocating town policy to a separate policy document, CAMA permit provisions, **lot coverage requirements** ...

- The town is built out, and the lots that remain are the most difficult to develop. Much of the housing stock is older and there is an increased need for remodeling

<sup>1</sup> The Town of Southern Shores Code of Ordinances is found at [https://www.municode.com/library/nc/southern\\_shores/code\\_of\\_ordinances/toc](https://www.municode.com/library/nc/southern_shores/code_of_ordinances/toc)

<sup>2</sup> The only section of the Code (36-132) addressing nonconforming lots does not address lot coverage.

and redevelopment. **Infill and redevelopment are difficult and complicated, and requires additional regulatory flexibility.**

The Code defines ***Lot coverage***

means that portion of the lot area, expressed as a percentage, that is occupied and obstructed by any **structure above the ground** including, but not limited to, building, decks, pools, parking areas, accessways, private sidewalks, driveways, and roadways, and any accessory use or **structure requiring location on or above the ground**. Sec. 36-57. - Definition of specific terms and words.

At 17,365 square feet, our home was built on a lot not meeting the minimum 20,000 square feet the Code requires. As our home neared completion, we saw that the cement around the edge of the pool was very narrow at 2 feet. There were no walkways. We found our car bottomed out in gaps left between the front drive and the 10-by-10 turnaround required by the Code. Disappointed about the lack of a pool patio, the builder advised that we were nearing the permissible lot coverage and he could not expand the solid concrete around the pool. To solve these problems, we engaged a contractor to fill the front driveway gaps and at his suggestion add a short sidewalk to the front door, build a gravel walkway to the back yard with stepping stones placed on top, lay small pavers around the pool, add sod, mulch, plantings, rock, and irrigation.

Later, we received a courtesy call from the Deputy Town Manager/Planning Director Wes Haskett. Mr. Haskett informed us that the addition to our driveway, front walk, side walkway and pool surround contravened the *as-built drawing* submitted to the Town. Specifically, he advised that the following are impermissible: (1) the addition of concrete to fill driveway gaps and the sidewalk to the front steps; (2) the stepping stones resting on a gravel walkway; and (3) the “concrete” we added to the back yard (to which we replied we didn’t add concrete). Before the call, we believed the front addition of concrete to be of minimal impact to our lot coverage. We further assumed the stepping stones on gravel, with open space on all sides, was still considered a permeable gravel walkway. In fact, gravel walkways are the only exception to lot coverage under the Code<sup>3</sup>. We view the pool pavers as permeable compared to solid concrete because there is small gravel between them. We used a lot of gravel around our home because it manages storm water runoff far better than sand or mulch. We thought we had made acceptable choices in our landscaping.<sup>4</sup>

We submit that our home is precisely the type of property the Town Code Update Project explicitly targets. On December 4, 2015, the Town published FAQs about the Update.

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<sup>3</sup> 36-202(d)(6)(c).

<sup>4</sup> We did some searches online to try to understand what is considered as “built upon” or contributions to “lot coverage”. North Carolina General Statute 143-214.7(b2) defines “built-upon area” as impervious surfaces. Further “built-upon area” does not include, among other things, slatted decks, stone, pools, and landscaping. Gravel and rock are far more permeable than sand.



<https://www.southernshores-nc.gov/wp-content/uploads/2015/11/Updated-Southern-Shores-FAQ-12-4-15.pdf>. The FAQs – like the PowerPoint- speak directly to our situation, and the situation of similarly situated homeowners, as follows:

The Town Code will be also be updated to reflect the Town's current development pattern: most of the Town is built out, and the majority of new development will likely be infill or redevelopment. Infill and redevelopment **require differently tailored development standards that include additional flexibility and options.**

Respectfully, the current lot coverage requirements are not tailored to smaller lots, nor do they provide much flexibility. Under the current state of the Code, grass or sand do not count against lot coverage. Nor do "gravel walkways". Sec. 36-202(d)(6)(c). There is NOT an exception for gravel driveways notwithstanding that such driveways benefit storm water management just as gravel walkways do. Small wood stands for HVAC units and pool equipment count against lot coverage, as do wood steps into houses, even though all usually consist of slatted boards. Sec. 36-202(6)(d) and (e). "Slatted" decks have a reduced contribution to lot coverage, if and only if, connected to the house, and a lot disturbance and stormwater management plans and permit are approved. Stepping stones on grass or gravel also count against lot coverage. Swimming pools count against lot coverage even though they retain storm water.<sup>5</sup>

After talking to Mr. Haskett, we sought advice from engineers and surveyors. They suggested using permeable materials, widely used in other jurisdictions. We then applied to the Dare County North Carolina Community Conservation Assistance Program which provides grants to property owners to remove impermeable materials and replace them with permeable materials. Although the Code is silent, we now understand from Mr. Hackett that permeable artificial turf and/or permeable paver and concrete products, all count against lot coverage. The Town Code does not allow homeowners to use such materials to reduce lot coverage. Commercial developers, however, can use such products; and are encouraged to do so in order to achieve lot coverage that exceeds the current Code limit.<sup>6</sup>

We propose the following Zoning Text Amendment (ZTA) to Code provision 36-202(d)(6) to add subsection f.

<sup>5</sup> See footnote 2.

<sup>6</sup> For example, the planned Marketplace redevelopment is projected to have 67% lot coverage, not the standard 60%, premised in part on the use of permeable products. The proposed parking lot modifications include the use of permeable pavers in order to be eligible for a maximum lot coverage of 67% instead of 60%. Also see STAFF REPORT To Southern Shores Town Council, September 7, 2021, Case: SPA-21-01, Prepared By: Wes Haskett, Deputy Town Manager/Planning Director.



**f. For lots less than 20,000 square feet as set forth in Section 36-202(d)(1), the maximum allowable lot coverage is 35 percent, provided total lot coverage does not exceed 6,000 square feet.**

In essence, nonconforming RS-1 lots of less than 20,000 sq. ft. would have an additional 5% lot coverage. The proposed ZTA caps total lot coverage at 6,000 square feet even if this – mathematically – is less than 35%. This means that any lot less than 20,000 sq. ft. would not have more actual lot coverage than a property equal to or greater than 20,000 sq. ft. (i.e., 30% of 20,000 sq. ft. is 6,000 sq. ft.).<sup>7</sup> It therefore maintains the current Code limit for low density residential lots. Additionally, no current Code provision contradicts the proposed ZTA. The total square feet of lot coverage is limited to 6,000, so that it cannot exceed the Code's current limit for conforming lots (20,000 x 30% = 6,000). This is a relatively "easy fix."

The proposed ZTA meets two goals of the TOWN CODE UPDATE PROJECT. It would make the Code more "clear and predictable" and result in "increased understanding" of legal requirements. We also believe it is consistent with the Update Rationale cited at the beginning, "There are several aspects of the town code that are obsolete or confusing, and should be removed or clarified."

Given the small, finite number of affected properties, the proposed ZTA would not appreciably increase the density of development. The following facts attest to the minimal impact of our proposed ZTA:

- 73% of **Southern Shores** properties are residential. A large majority equal or exceed, 20,000 square feet and are zoned "Single Family Residential." See CAMA Land Use Plan Update July 18, 2012 at pp. 36. <https://www.southernshores-nc.gov/wp-content/uploads/2012/07/8-30-12CertifiedAdoptedLandUsePlan.pdf>.
- A very small number of lots in **Southern Shores** are less than 20,000 sq. ft. and most of those are already developed. See CAMA Plan, above pp. 11 and 37.
- Approximately two-thirds of **Southern Shores** residences are owner-occupied. Only one-third are seasonal rentals. See CAMA Plan, above, at p. 36. **Our home is owner-occupied.**
- The Town Code forecloses the creation of new lots less than 20,000 square feet. Sec. 36-132. - Regulation of structures and uses nonconforming.
- In January 2007, there were an estimated 490 vacant lots in the Town. It was expected that most remaining vacant lots would be built out by 2020. See CAMA Plan, above at pp.15 and 37. As of recent date, Realtor.com shows about 9

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<sup>7</sup> For example, a lot of 18,000 square feet with 35% lot coverage would have 6,300 square feet to work within. The cap of 6,000 prevents this.



vacant lots for sale in Southern Shores and only 2 appear to be less than 20,000 sq ft.<sup>8</sup>

Anecdotally, nonconforming lots have been purchased but then sold, rather than built out, because of the very restrictive lot coverage provisions. Current residents with smaller lots who wish to make improvements to their homes will gain some flexibility to do so. The additional 5% may be just enough to allow a swimming pool<sup>9</sup> and therefore make the nonconforming lots more competitive. Indeed, the Town Code Update Project expressly recognizes this. The FAQs cited above state:

**Some stakeholders have indicated that the interaction between the current residential building heights, limitations on fill, and elevation above base flood requirements combine to make development on the Town's remaining vacant lots difficult. It has been suggested that the Town explore ways to incorporate more flexibility into the Town Code to allow owners of vacant lots which are difficult to build on to realize their investment goals while also protecting the established community character. This issue may be considered since development of vacant lands and redevelopment are the only means by which residents and landowners will be able to meet their future housing needs.**

For lots less than 20,000 square feet, it is a challenge to “meet investment goals” such as pools, patios, decks, hot tubs, and adequate parking while meeting the 30% restriction imposed upon larger lots. Based on informal conversations, local builders struggle to provide the features that Southern Shore residents (and investors) want in their homes given the Code’s coverage requirements for nonconforming lots. Note that the Code offers additional flexibility for properties outside the RS-1 zone. See attached Table.

Our proposal is informed by provisions found in nearby jurisdictions that permit a modest increase in lot coverage percentages for lots that are less than the preferred standard square footage. For example:

- **Currituck County**, for Corolla, allows 35% lot coverage for lots between 10,000 and 19,000 square feet and 45% for lots less than 10,000 square feet. Subsec. 1.8.6: Approved Planned Unit Development District Overlay and Sketch Plan contains a table entitled TABLE 1.8.6.A: BULK AND DIMENSIONAL STANDARDS
- **Currituck**, for its mainland single-family residential district, likewise permits 35% for lots of 19,000 square feet or less. SEC. 3.4: RESIDENTIAL BASE ZONING

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<sup>8</sup> [https://www.realtor.com/realestateandhomes-search/Southern-Shores\\_NC/type-land](https://www.realtor.com/realestateandhomes-search/Southern-Shores_NC/type-land)

<sup>9</sup> As mentioned in footnote 2, swimming pools are excluded from “built upon” area. Realtors will also tell you that if owners are renting their lots, a swimming pool is a “must have” amenity.

DISTRICTS, Subsection 3.4.2: Single-Family Residential-Mainland (SFM) District.

- The **Town of Duck** code provisions on NON-CONFORMING LOTS OF RECORD (Sec. 156.071) provide for increased lot coverage for smaller lots. For lots with 10,000 square feet or less, lot coverage may be 50%. Sec. 156.071 (B)(1)(d). For lots with 10,001 to 14,999 square feet, lot coverage may be up to 40%. Sec. 156.071 (B)(2)(d).
- The **Dare County** Code, for unincorporated areas, has similar provisions differentiating lot coverage depending on square footage of lots. See, e.g., Sec. 22-47 Nonconforming Lots.

Owners of nonconforming lots, whether full time residents or second home owners (whether renting or not) need a modest allowance for customary home improvements such as pools, hot tubs, or patios to fully enjoy our lovely beachside community. Our proposed ZTA is consistent with the Town's stated goals, has limited impact on development, and will not adversely affect our community.

Respectfully submitted,

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**Town of Southern Shores**  
**Table of Examples of More Flexible Zoning/Building Codes Provisions**

*This list is not exhaustive*

<b>Southern Shores Town Code Section</b>	<b>Summary of Provision</b>	<b>Zoning Area</b>
36-207 (b) (4)	40% lot coverage for multi-family dwellings	C
36-207 (c)(7)d	Gravel/crush and run for equipment parking	C
36-207 (d)(5)	Max allowable commercial lot coverage 60%	C
36-207 (d)(5)a	Commercial lots allowed "use of permeable pavement"	C
36-207(d)(5)b	Group Developments which incorporate "permeable payment" may have lot coverage up to 67%	C
36-206 (d)(6)b	85% lot coverage for "town-owned facilities"	Government and institutional district
36-205 (d)(6)c	Maximum allowable lot coverage for schools is 40%	R-1 low-density residential district <sup>1</sup>
36-205 (d)(6)b	85% lot coverage for "town-owned facilities" found in the low-density residential district	R-1 low-density residential district
36-204 (c)(3)	For "Group development residential" single-family may have a lot size of 3000 sq ft. Lot widths, front yard, side yard, rear yard are 0 ft; AND maximum allowable lot coverage is 100%	RS-10 residential district

<sup>1</sup> This district is concentrated around the Duck Village Country Club. Adjacent to this larger area, there is R-1 designation for a smaller area behind the Firehouse on Dogwood Trail and All Saints Church. In addition, a small area between NC 12 and Ocean Blvd carries this designation.

36-203 (d)(1)c	For multifamily dwellings, min. lot size of 7,500 sq. ft. for the first dwelling unit, and 5,151 sq. ft. for each additional dwelling unit.	RS-8 multifamily residential district
36-163(3)(g)2.	Loading spaces may use porous paving as approved by the town engineer or an open-face paving block over sand and filter-cloth base, provided the open-face paving block is equivalent to turfstone with regards to compressive strength, density, absorption, and durability	Code Sec. 163 Off-street parking requirements. This section appears to apply in all zoning areas, to extent applicable.



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## **Sec. 36-202. RS-1 single-family residential district.**

- (a) *Intent.* The RS-1 district is established to provide for the low-density development of single-family detached dwellings in an environment which preserves sand dunes, coastal forests, wetlands, and other unique natural features of the coastal area. The district is intended to promote stable, permanent neighborhoods characterized by low vehicular traffic flows, abundant open space, and low impact of development on the natural environment and adjacent land uses. In order to meet this intent, the density of population in the district is managed by establishment of minimum lot sizes, building setback and height limits, parking regulations and maximum occupancy limits for single-family residences used as vacation cottages.
- (b) *Permitted uses.* The following uses shall be permitted by right:
- (1) Detached single-family dwelling and vacation cottages provided that such residential structure shall not be: (i) advertised to accommodate, designed for, constructed for or actually occupied by more than 14 overnight occupants when used as a vacation cottage; or (ii) have a maximum septic capacity sufficient to serve more than 14 overnight occupants.
  - (2) Customary accessory buildings and structures including, but not limited to, swimming pools, tennis courts, and garages, provided no dwelling unit is located in the accessory structure. Accessory beach access walks, ramps, and steps shall not exceed four feet in width. Accessory ocean dune platforms shall not exceed 200 square feet.
  - (3) Home occupations and home based businesses as regulated in article VIII of this chapter.
  - (4) Town-owned or leased facilities.
  - (5) Piers and docks, only when accessory to a building for which a building permit has been obtained.
    - a. Piers and docks must be permitted by all applicable local, state, and federal agencies having jurisdiction.
    - b. The activity associated with the pier or dock must be permitted by the zoning district where the pier or dock is anchored.
    - c. No such permitted dock or pier shall extend into adjacent waters more than 75 feet from an estuarine bulkhead, mean high waterline, or a line connecting the outermost limits of the coastal wetlands on either side of the proposed structure, whichever is nearest the channel.
    - d. Only one pier or dock is permitted per building site.
  - (6) Estuarine bulkheads must be permitted by all applicable local, state, and federal agencies having jurisdiction.
  - (7) Community beach access including ocean dune platforms, and associated seating areas, walks, ramps and stairs. Such community beach access may be up to six feet in width and must be permitted by all applicable local, state, and federal agencies having jurisdiction.
  - (8) Collocations and eligible facilities requests in compliance with section 36-175(c).
- (c) *Conditional uses permitted.* The following uses are permitted, subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council, as provided in article X of this chapter:
- (1) Community recreation facilities, including boat launching areas, tennis courts, community centers, libraries, picnic areas, bathing beaches, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional sign is allowed.
  - (2) Fire stations.

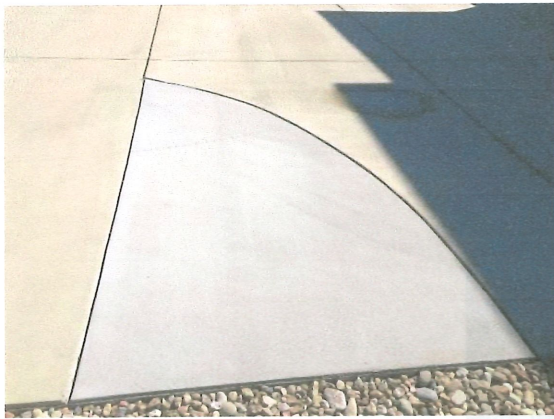
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- (3) Governmental emergency medical evacuation facilities.
  - (4) Child day care, small home.
  - (5) Swimming lessons, subject to all applicable state and local regulations, training, experience and licensing requirements for swimming pools, swimming lessons, lifeguards and swimming instructors shall be met.
    - a. No swimming lesson shall be conducted earlier than 8:00 a.m. nor later than 6:00 p.m.
    - b. Any need for additional parking generated by the conduct of swimming lessons shall be met by off-street parking.
  - (6) Wireless telecommunications sites in compliance with section 36-175.
  - (7) Wind generation facility, in compliance with the requirements of section 36-176.
- (d) *Dimensional requirements.*
- (1) Minimum lot size: 20,000 square feet.
  - (2) Minimum lot width: 100 feet (measured at the building setback line).
  - (3) Minimum front yard (setback): 25 feet.
  - (4) Minimum side yard (setback).
    - a. Minimum side yard setback shall be 15 feet;
    - b. An additional five-foot side yard adjacent to the street is required for a corner lot;
    - c. Minimum side yard setback shall be 15 feet for swimming pools.
  - (5) Minimum rear yard (setback): 25 feet.
  - (6) Maximum allowable lot coverage.
    - a. Maximum allowable lot coverage shall be 30 percent, except for town-owned facilities and fire stations;
    - b. Maximum allowable lot coverage shall be 85 percent for town-owned facilities and fire stations.
    - c. Gravel walkways shall not contribute to lot coverage.
    - d. Open-slatted decks that allow water to penetrate through to pervious material, not exceeding a total of 25 percent of the total footprint area of the attached single-family dwelling, shall not contribute to lot coverage.
    - e. Those allowances and/or exemptions listed in subsection d. of this paragraph (6) shall be available only to an applicant for a building/zoning permit for a single-family dwelling or attached open-slatted deck over pervious material, upon presentation of a survey with all applicable requirements including plan certification, for a lot disturbance and stormwater management permit as described in subsection 36-171(3) of the Town Code of Ordinances.
- In the case of an oceanfront lot, only that area landward of the first line of stable natural vegetation (as defined by CAMA) shall be used for calculating lot coverage.
- (7) Height.
    - a. Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than eight feet above mean sea level, the maximum building height may be measured from up to eight feet above mean sea level.
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Le Blanc Residence 9 10<sup>th</sup> Avenue



Back Yard before landscaped





Two slices of concrete added to driveway



Front walkway



Gravel walkway



Pavers around pool